

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS
BEFORE THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION**

AMAZON EU S.À.R.L.,

Claimant,

v.

INTERNET CORPORATION FOR
ASSIGNED NAMES AND NUMBERS,

Respondent.

ICDR Case No. _____

REQUEST BY AMAZON EU S.À.R.L. FOR INDEPENDENT REVIEW

List of Exhibits

Exhibit No.	Date	Description
C-001	21 Nov. 1998	ICANN, Articles of Incorporation (revised 21 Nov. 1998)
C-002	28 Mar. 2007	GAC Principles Regarding New gTLDs (28 Mar. 2007)
C-003	26 June 2008	Adopted Board Resolutions – Paris (26 June 2008)
C-004	24 Oct. 2008	GAC Comments on the new gTLD Program Draft Applicant Guidebook (24 Oct. 2008)
C-005	2009	ICANN New gTLD Program Pamphlet
C-006	10 Feb. 2009	GAC's Submission to ICANN Regarding the Introduction of New gTLDs (10 Feb. 2009)
C-007	22 Sept. 2009	Letter from P. Dengate Thrush to J. Karklins (22 Sept. 2009)

C-008	30 Sept. 2009	Affirmation Of Commitments by the United States DOC and ICANN
C-009	Oct. 2009	New gTLD Program – Summary Report and Analysis of Public Comment – Applicant Guidebook Excerpts and Explanatory Memoranda (Oct. 2009)
C-010	5 Aug. 2010	Letter from P. Dengate Thrush to H. Dryden (5 Aug. 2010)
C-011	23 Nov. 2010	Letter from P. Dengate Thrush to H. Dryden (23 Nov. 2010)
C-012	21 Feb. 2011	ICANN Board-GAC Consultation Geographic Names (21 Feb. 2011)
C-013	5 Mar. 2011	Email from P. Dengate Thrush to H. Dryden (5 Mar. 2011)
C-014	30 May 2011	ICANN’s Summary Report and Analysis of Public Comment (30 May 2011)
C-015	11 Jan. 2012	Draft gTLD Applicant Guidebook (Version 2012-01-11)
C-016	Mar. 2012	ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure (Mar. 2012)
C-017	Apr. 2012	New gTLD Application Submitted to ICANN by: Amazon EU S.à.r.l – Application ID: 1-1315-58086 [Posted on ICANN’s website on 13 June 2012] (“.AMAZON Application”)
C-018	Apr. 2012	New gTLD Application Submitted to ICANN by: Amazon EU S.à.r.l – Application ID: 1-1318-5591 [Posted on ICANN’s website on 13 June 2012] (“.亚马逊 Application”)
C-019	Apr. 2012	New gTLD Application Submitted to ICANN by: Amazon EU S.à.r.l – Application ID: 1-1318-83995 [Posted on ICANN’s website on 13 June 2012] (“.アマゾン Application”)

C-020	4 June 2012	gTLD Applicant Guidebook (Version 2012-06-04)
C-021	22 July 2012	Letter from S. Crocker to H. Dryden (22 July 2012)
C-022	20 Nov. 2012	GAC Early Warning – Submittal Amazon-BR-PE-58086 (20 Nov. 2012)
C-023	12 Mar. 2013	New Generic Top-Level Domain Names Dispute Resolution Procedure – Objection Form by Prof. Alain Pellet, Independent Objector (12 Mar. 2013)
C-024	22 Mar. 2013	ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1-1318-83995 (22 Mar. 2013)
C-025	5 Apr. 2013	ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1318-5591 (5 Apr. 2013)
C-026	6 Apr. 2013	Letter from Edwards Wildman Palmer UK LLP to J. Jeffries and C. LaHatte (6 Apr. 2013)
C-027	11 Apr. 2013	Beijing GAC Communique (11 Apr. 2013)
C-028	24 Apr. 2013	Letter from Edwards Wildman Palmer UK LLP to J. O. Jeffrey (24 Apr. 2013)
C-029	24 Apr. 2013	DSRP’s Decision to Consolidate the Present Case (24 Apr. 2013)
C-030	10 May 2013	GAC Advice Response Form for Applicants – Applicant Name: Amazon EU S.à.r.l. (10 May 2013)
C-031	18 May 2013	Letter from Edwards Wildman Palmer UK LLP to F. Chehadé, S. Crocker, C. Chalaby and J. Jeffrey (18 May 2013)

C-032	4 June 2013	Approved Resolution – Meeting of the New gTLD Program Committee [Rationale for Resolution 2013.06.04.NG01] (4 June 2013)
C-033	8 June 2013	Letter from A. Pellet to N. C. A. Bolter (8 June 2013)
C-034	July 2013	U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting (July 2013)
C-035	4 July 2013	Letter from S. King to H. Dryden (4 July 2013)
C-036	4 July 2013	Letter from S. King to S. Crocker, F. Chehadé and C. Chalaby (4 July 2013)
C-037	12 July 2013	ICANN – New gTLD Program – Initial Evaluation Report – Application ID: 1-1315-58086 (12 July 2013)
C-038	13 July 2013	Durban – GAC Plenary 2 (13 July 2013)
C-039	13 July 2013	Statement on “.amazon” and other strings containing geographic names – 47 th ICANN GAC Durban Meeting (13 July 2013)
C-040	16 July 2013	DURBAN – GAC Open Plenary 4 (16 July 2013)
C-041	18 July 2013	GAC Communiqué – Durban, South Africa (18 July 2013)
C-042	18 July 2013	ICANN Durban Public Forum Transcript, Comments of Keith Drazek, Chair of the Registries Stakeholder Group (18 July 2013)
C-043	23 Aug. 2013	GAC Advice Response Form for Applicants – Amazon’s Response to the ICANN Board of Directors on the GAC Durban Communiqué (23 Aug. 2013)

C-044	3 Dec. 2013	Letter from S. King to S.Crocker, F. Chehadé and C. Chalaby (3 Dec. 2013)
C-045	24 Dec. 2013	Letter from F. Rojas Samanez to S. Crocker (24 Dec. 2013)
C-046	10 Jan. 2014	Letter from S. King to S.Crocker, F. Chehadé and C. Chalaby (10 Jan. 2014)
C-047	27 Jan. 2014	Expert Determination of Prof. Luca G. Radicati di Brozolo (27 Jan. 2014)
C-048	31 Mar. 2014	Independent Report of Jerome Passa (31 Mar. 2014)
C-049	7 Apr. 2014	Letter from S. D. Crocker to H. Dryden (7 Apr. 2014)
C-050	11 Apr. 2014	Letter from F. Rojas Samanez to S. Crocker (11 Apr. 2014)
C-051	14 Apr. 2014	Letter from S. Hayden to S. Crocker, F. Chedadé and C. Chalaby (14 Apr. 2014)
C-052	29 Apr. 2014	NGPC Meeting – Reference Materials (29 Apr. 2014)
C-053	29 Apr. 2014	NGPC Meeting – Committee Papers (29 Apr. 2014)
C-054	14 May 2014	Approved Resolutions – Meeting of the New gTLD Program Committee (14 May 2014)
C-055	14 May 2014	Minutes – Regular Meeting of the New gTLD Program Committee (14 May 2014)
C-056	14 May 2014	NGPC Meeting – Reference Materials (14 May 2014)
C-057	14 May 2014	NGPC Meeting – Committee Papers (14 May 2014)

C-058	23 May 2014	DIDP Request (23 May 2014)
C-059	29 May 2014	Reconsideration Request for Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l. (29 May 2014)
C-060	3 June 2014	Letter from F. Petillion to ICANN Board Members Re Request for Reconsideration of the Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l. (3 June 2014)
C-061	13 June 2014	Geo Names in New gTLDs Update version (13 June 2014)
C-062	20 June 2014	Response to Documentary Information Disclosure Policy Request (20 June 2014)
C-063	7 July 2014	Reconsideration Request for Failure to Disclose Documents to Amazon EU S.à.r.l. – ID Nos. 1-1315-58086, 1-1318-83995, and 1-1318-5591 (7 July 2014)
C-064	30 July 2014	ICANN Bylaws (amended 30 July 2014)
C-065	22 Aug. 2014	Recommendation of the Board Governance Committee (BGC) Reconsideration Request 14-27 (22 Aug. 2014)
C-066	22 Aug. 2014	Minutes – Board Governance Committee (BGC) Meeting (22 Aug. 2014)
C-067	22 Aug. 2014	Determination of the Board Governance Committee Reconsideration Request (22 Aug. 2014)
C-068	8 Sept. 2014	Approved Resolutions – Meeting of the New gTLD Program Committee [Request 14-27] (8 Sept. 2014)
C-069	8 Sept. 2014	Minutes – Meeting of the New gTLD Program Committee (8 Sept. 2014)

C-070	7 Feb. 2015	Chain of emails re Independent Review – Amazon EU S.à.r.l.
C-071	25 Feb. 2015	Letter from K. Rosette to C. LaHatte (25 Feb. 2015)
C-072	21 Apr. 2015	Letter from K. Rosette to C. LaHatte (21 Apr. 2015)
C-073	28 May 2015	ICANN Ombudsman Blog Creating Dialogue Affirming Fairness, Office of the Ombudsman – Case 14-00333 – Report (28 May 2015)
C-074	June 2015	GAC Operating Principles (June 2015)
C-075	19 Feb. 2016	Letter from F. Chehadé to T. Cruz, J. Lankford and M. S. Lee (19 Feb. 2016)

EXHIBIT C-001

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ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

As Revised November 21, 1998

1. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "Corporation").
2. The name of the Corporation's initial agent for service of process in the State of California, United States of America is C T Corporation System.
3. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501 (c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any further United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the

Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).

4. The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

5. Notwithstanding any other provision (other than Article 8) of these Articles:

a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501 (c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170 (c) (2) of the Code.

b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.

c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof.

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

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

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

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

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

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EXHIBIT C-002

GAC PRINCIPLES REGARDING NEW gTLDs

Presented by the Governmental Advisory Committee
March 28, 2007

1. Preamble

- 1.1 The purpose of this document is to identify a set of general public policy principles related to the introduction, delegation and operation of new generic top level domains (gTLDs). They are intended to inform the ICANN Board of the views of the GAC regarding public policy issues concerning new gTLDs and to respond to the provisions of the World Summit on the Information Society (WSIS) process, in particular “*the need for further development of, and strengthened cooperation among, stakeholders for public policies for generic top-level domains (gTLDs)*”¹ and those related to the management of Internet resources and enunciated in the Geneva and Tunis phases of the WSIS.
- 1.2 These principles shall not prejudice the application of the principle of national sovereignty. The GAC has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest. The WSIS Declaration of December 2003 also states that “*policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.*”²
- 1.3 A gTLD is a top level domain which is not based on the ISO 3166 two-letter country code list³. For the purposes and scope of this document, new gTLDs are defined as any gTLDs added to the Top Level Domain name space after the date of the adoption of these principles by the GAC.
- 1.4 In setting out the following principles, the GAC recalls ICANN’s stated core values as set out in its by-laws:

<p><i>a. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.</i></p> <p><i>b. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.</i></p> <p><i>c. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.</i></p>
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¹ See paragraph 64 of the WSIS Tunis Agenda, at <http://www.itu.int/wsisis/docs2/tunis/off/6rev1.html>

² See paragraph 49.a) of the WSIS Geneva declaration at <http://www.itu.int/wsisis/docs/geneva/official/dop.html>

³ See: <http://www.icann.org/general/glossary.htm#G>

- d. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
- e. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*
- f. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*
- g. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*
- h. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*
- i. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*
- j. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*
- k. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.*

2. Public Policy Aspects related to new gTLDs

When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:

Introduction of new gTLDs

2.1 New gTLDs should respect:

- a) The provisions of the Universal Declaration of Human Rights⁴ which seek to affirm "*fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women*".
- b) The sensitivities regarding terms with national, cultural, geographic and religious significance.

2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

⁴ See <http://www.un.org/Overview/rights.html>

- 2.3 The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).
- 2.4 In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.

Delegation of new gTLDs

- 2.5 The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.
- 2.6 It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.
- 2.7 Applicant registries for new gTLDs should pledge to:
 - a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.
 - b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.
- 2.8 Applicants should publicly document any support they claim to enjoy from specific communities.
- 2.9 Applicants should identify how they will limit the need for defensive registrations and minimise cyber-squatting that can result from bad-faith registrations and other abuses of the registration system

Operation of new gTLDs

- 2.10 A new gTLD operator/registry should undertake to implement practices that ensure an appropriate level of security and stability both for the TLD itself and for the DNS as a whole, including the development of best practices to ensure the accuracy, integrity and validity of registry information.
- 2.11 ICANN and a new gTLD operator/registry should establish clear continuity plans for maintaining the resolution of names in the DNS in the event of registry failure.

These plans should be established in coordination with any contingency measures adopted for ICANN as a whole.

- 2.12 ICANN should continue to ensure that registrants and registrars in new gTLDs have access to an independent appeals process in relation to registry decisions related to pricing changes, renewal procedures, service levels, or the unilateral and significant change of contract conditions.
- 2.13 ICANN should ensure that any material changes to the new gTLD operations, policies or contract obligations be made in an open and transparent manner allowing for adequate public comment.
- 2.14 The GAC WHOIS principles are relevant to new gTLDs.

3. Implementation of these Public Policy Principles

- 3.1 The GAC recalls Article XI, section 2, no. 1 h) of the ICANN Bylaws, which state that the ICANN Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues. Insofar, therefore, as these principles provide guidance on GAC views on the implementation of new gTLDs, they are not intended to substitute for the normal requirement for the ICANN Board to notify the GAC of any proposals for new gTLDs which raise public policy issues.
- 3.2 ICANN should consult the GAC, as appropriate, regarding any questions pertaining to the interpretation of these principles.
- 3.3 If individual GAC members or other governments express formal concerns about any issues related to new gTLDs, the ICANN Board should fully consider those concerns and clearly explain how it will address them.
- 3.4 The evaluation procedures and criteria for introduction, delegation and operation of new TLDs should be developed and implemented with the participation of all stakeholders.

N.B. The public policy priorities for GAC members in relation to the introduction of Internationalised Domain Name TLDs (IDN TLDs) will be addressed separately by the GAC.

EXHIBIT C-003

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Resources

Adopted Board Resolutions | Paris

- | | |
|---|---|
| <p>▶ About ICANN (Internet Corporation for Assigned Names and Numbers) (/resources/pages/welcome-2012-02-25-en)</p> | <p>26 Jun 2008</p> <ul style="list-style-type: none"> • Approval of Minutes • GNSO (Generic Names Supporting Organization) Recommendations on New gTLDs |
| <p>▶ Board (/resources/pages/board-of-directors-2014-03-19-en)</p> | <ul style="list-style-type: none"> • IDNC (Internationalized Domain Name) / IDN Fast-track • GNSO (Generic Names Supporting Organization) Recommendation on Domain Tasting |
| <p>▶ Accountability (/resources/accountability)</p> | <ul style="list-style-type: none"> • Approval of Operating Plan and Budget for Fiscal Year 2008-2009 • Update on Draft Amendments to the Registrar Accreditation Agreement |
| <p>▶ Governance (/resources/pages/governance-2012-02-25-en)</p> | <ul style="list-style-type: none"> • Approval of PIR Request to Implement DNSSEC (DNS Security Extensions) in .ORG |
| <p>▶ Groups (/resources/pages/groups-2012-02-06-en)</p> | <ul style="list-style-type: none"> • ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors' Code of Conduct • Ratification of Selection of Consultant to Conduct Independent Review of the Board |
| <p>Business (/resources/pages/business)</p> | <ul style="list-style-type: none"> • Appointment of Independent Review Working Groups |
| <p>▶ Contractual Compliance (/resources/pages/compliance-2012-02-25-en)</p> | <ul style="list-style-type: none"> • Update on Independent Reviews of ICANN (Internet Corporation for Assigned Names and Numbers) Structures • Board Committee Assignment Revisions |
| <p>▶ Registrars (/resources/pages/registrars-0d-2012-02-25-en)</p> | <ul style="list-style-type: none"> • Approval of BGC Recommendations on GNSO (Generic Names Supporting Organization) Improvements |

- ▶ Registries
(/resources/pages/registries-46-2012-02-25-en)
 - [Receipt of Report of President's Strategy Committee Consultation](#)
 - [Selection of Mexico City for March 2009 ICANN \(Internet Corporation for Assigned Names and Numbers\) Meeting](#)

- Operational Metrics
(/resources/pages/metrics-gdd-2015-01-30-en)
 - [Review of Paris Meeting Structure](#)
 - [Board Response to Discussions Arising from Paris Meeting](#)

- ▶ Identifier Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR)
(/resources/pages/is-ssr-2014-11-24-en)
 - [ICANN \(Internet Corporation for Assigned Names and Numbers\) At-Large Summit Proposal](#)
 - [Other Business](#)
 - [Thanks to Steve Conte](#)

- ▶ ccTLDs
(/resources/pages/cctlds-21-2012-02-25-en)
 - [Thanks to Sponsors](#)
 - [Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others](#)

- ▶ Internationalized Domain Names
(/resources/pages/idn-2012-02-25-en)

Approval of Minutes

Resolved (2008.06.26.01), the minutes of the Board Meeting of 29 May 2008 are approved. <[<http://www.icann.org/minutes/prelim-report-29may08.htm \(/minutes/prelim-report-29may08.htm\)>](http://www.icann.org/minutes/prelim-report-29may08.htm (/minutes/prelim-report-29may08.htm))>

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- ▶ Universal Acceptance Initiative
(/resources/pages/universal-acceptance-2012-02-25-en)

GNSO (Generic Names Supporting Organization) Recommendations on New gTLDs

- ▶ Policy
(/resources/pages/policy-01-2012-02-25-en)

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

- ▶ Public Comment
(/public-comments)

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

- ▶ Technical Functions
(/resources/pages/technical-functions-2015-10-15-en)

Whereas, the [GNSO \(Generic Names Supporting Organization\)](#) successfully completed its policy development process on the Introduction of New gTLDs and on 7 September 2007, and achieved a Supermajority vote on its 19 policy recommendations. <[<http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml \(http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml\)>](http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml (http://gns0.icann.org/meetings/minutes-gns0-06sep07.shtml))>

- ▶ Contact
(/resources/pages/contact-2012-02-06-en)

- ▶ Help
(/resources/pages/help-2012-02-03-en)

Whereas, the Board instructed staff to review the [GNSO \(Generic Names Supporting Organization\)](#) recommendations and determine whether they were capable of implementation.

Whereas, staff has engaged international technical, operational and legal expertise to provide counsel on details to support the implementation of the Policy recommendations and as a result, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) cross-functional teams have developed implementation details in support of the [GNSO \(Generic Names Supporting Organization\)](#)'s policy

recommendations, and have concluded that the recommendations are capable of implementation.

Whereas, staff has provided regular updates to the community and the Board on the implementation plan. <<http://icann.org/topics/new-gtld-program.htm> (<http://icann.org/topics/new-gtld-program.htm>)>

Whereas, consultation with the DNS (Domain Name System) technical community has led to the conclusion that there is not currently any evidence to support establishing a limit to how many TLDs can be inserted in the root based on technical stability concerns. <<http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf> ([/topics/dns-stability-draft-paper-06feb08.pdf](http://www.icann.org/topics/dns-stability-draft-paper-06feb08.pdf))>

Whereas, the Board recognizes that the process will need to be resilient to unforeseen circumstances.

Whereas, the Board has listened to the concerns about the recommendations that have been raised by the community, and will continue to take into account the advice of ICANN (Internet Corporation for Assigned Names and Numbers)'s supporting organizations and advisory committees in the implementation plan.

Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO (Generic Names Supporting Organization) policy recommendations for the introduction of new gTLDs <<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>)>.

Resolved (2008.06.26.03), the Board directs staff to continue to further develop and complete its detailed implementation plan, continue communication with the community on such work, and provide the Board with a final version of the implementation proposals for the board and community to approve before the new gTLD (generic Top Level Domain) introduction process is launched.

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IDNC (Internationalized Domain Name) / IDN Fast-track

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board recognizes that the "IDNC (Internationalized Domain Name) Working Group" developed, after extensive community comment, a final report on feasible methods for timely (fast-track) introduction of a limited number of IDN ccTLDs associated with ISO (International Organization for Standardization) 3166-1 two-letter codes while an overall, long-term IDN ccTLD (Country Code Top Level Domain) policy is under development by the ccNSO (Country Code Names Supporting Organization).

Whereas, the IDNC (Internationalized Domain Name) Working Group has concluded its work and has submitted recommendations for the selection and delegation of "fast-track" IDN ccTLDs and, pursuant to its charter, has taken into account and was guided by consideration of the requirements to:

- Preserve the security and stability of the DNS (Domain Name System);
- Comply with the IDNA protocols;

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

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

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) is looking closely at interaction with the final IDN ccTLD (Country Code Top Level Domain) PDP (Policy Development Process) process and potential risks, and intends to implement IDN ccTLDs using a procedure that will be resilient to unforeseen circumstances.

Whereas, staff will consider the full range of implementation issues related to the introduction of IDN ccTLDs associated with the ISO (International Organization for Standardization) 3166-1 list, including means of promoting adherence to technical standards and mechanisms to cover the costs associated with IDN ccTLDs.

Whereas, the Board intends that the timing of the process for the introduction of IDN ccTLDs should be aligned with the process for the introduction of New gTLDs.

Resolved (2008.06.26.04), the Board thanks the members of the IDNC (Internationalized Domain Name) WG (Working Group) for completing their chartered tasks in a timely manner.

Resolved (2008.06.26.05), the Board directs staff to: (1) post the IDNC (Internationalized Domain Name) WG (Working Group) final report for public comments; (2) commence work on implementation issues in consultation with relevant stakeholders; and (3) submit a detailed implementation report including a list of any outstanding issues to the Board in advance of the ICANN (Internet Corporation for Assigned Names and Numbers) Cairo meeting in November 2008.

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GNSO (Generic Names Supporting Organization) Recommendation on Domain Tasting

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

Whereas, on 17 April 2008, the GNSO (Generic Names Supporting Organization) Council approved, by a Supermajority vote, a motion to prohibit any gTLD (generic Top Level Domain) operator that has implemented an AGP (Add Grace Period) from offering a refund for any domain name deleted during the AGP (Add Grace Period) that exceeds 10% of its net new registrations in that month, or fifty domain names, whichever is greater. <<http://gns0.icann.org/meetings/minutes-gns0-17apr08.shtml>> (<http://gns0.icann.org/meetings/minutes-gns0-17apr08.shtml>)>

Whereas, on 25 April 2008, the GNSO (Generic Names Supporting Organization) Council forwarded its formal "Report to the ICANN (Internet Corporation for Assigned Names and Numbers) Board - Recommendation for Domain Tasting"

<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf> (<http://gnso.icann.org/issues/domain-tasting/domain-tasting-board-report-gnso-council-25apr08.pdf>)>, which outlines the full text of the motion and the full context and procedural history of this proceeding.

Whereas, the Board is also considering the Proposed FY 09 Operating Plan and Budget <http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>, which includes (at the encouragement of the GNSO (Generic Names Supporting Organization) Council) a proposal similar to the GNSO (Generic Names Supporting Organization) policy recommendation to expand the applicability of the ICANN (Internet Corporation for Assigned Names and Numbers) transaction fee in order to limit domain tasting.

Resolved (2008.06.26.06), the Board adopts the GNSO (Generic Names Supporting Organization) policy recommendation on domain tasting, and directs staff to implement the policy following appropriate comment and notice periods on the implementation documents.

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Approval of Operating Plan and Budget for Fiscal Year 2008-2009

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) approved an update to the Strategic Plan in December 2007. < <http://www.icann.org/strategic-plan/> ([/strategic-plan](http://www.icann.org/strategic-plan/))>

Whereas, the Initial Operating Plan and Budget Framework for fiscal year 2009 was presented at the New Delhi ICANN (Internet Corporation for Assigned Names and Numbers) meeting and was posted in February 2008 for community consultation. <http://www.icann.org/announcements/announcement-2-04feb08.htm> ([/announcements/announcement-2-04feb08.htm](http://www.icann.org/announcements/announcement-2-04feb08.htm))>

Whereas, community consultations were held to discuss and obtain feedback on the Initial Framework.

Whereas, the draft FY09 Operating Plan and Budget was posted for public comment in accordance with the Bylaws on 17 May 2008 based upon the Initial Framework, community consultation, and consultations with the Board Finance Committee. A slightly revised version was posted on 23 May 2008. <http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](http://www.icann.org/financials/fiscal-30jun09.htm))>

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

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board Finance Committee has discussed, and guided staff on, the FY09 Operating Plan and Budget at each of its regularly scheduled monthly meetings.

Whereas, the final FY09 Operating Plan and Budget was posted on 26 June 2008. <http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> ([/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf](http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf))>

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board Finance Committee met in Paris on 22 June 2008 to discuss the FY09 Operating Plan and Budget, and recommended that the Board adopt the FY09 Operating Plan and Budget.

Whereas, the President has advised that the FY09 Operating Plan and Budget reflects the work of staff and community to identify the plan of activities, the expected revenue, and resources necessary to be spent in fiscal year ending 30 June 2009.

Whereas, continuing consultation on the budget has been conducted at ICANN (Internet Corporation for Assigned Names and Numbers)'s meeting in Paris, at constituency meetings, and during the public forum.

Resolved (2008.06.26.07), the Board adopts the Fiscal Year 2008-2009 Operating Plan and Budget. <<http://www.icann.org/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf> (/en/financials/proposed-opplan-budget-v3-fy09-25jun08-en.pdf)>

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Update on Draft Amendments to the Registrar Accreditation Agreement

(For discussion only.)

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Approval of PIR Request to Implement DNSSEC (DNS Security Extensions) in .ORG

Whereas, Public Interest Registry has submitted a proposal to implement DNS (Domain Name System) Security (Security – Security, Stability and Resiliency (SSR))Extensions (DNSSEC (DNS Security Extensions)) in .ORG.

<<http://icann.org/registries/rsep/pir-request-03apr08.pdf> (<http://icann.org/registries/rsep/pir-request-03apr08.pdf>)>

Whereas, staff has evaluated the .ORG DNSSEC (DNS Security Extensions) proposal as a new registry service via the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/> (<http://icann.org/registries/rsep/>)>, and the proposal included a requested amendment to Section 3.1(c)(i) of the .ORG Registry Agreement <<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf> (<http://icann.org/tlds/agreements/org/proposed-org-amendment-23apr08.pdf>)> which was posted for public comment along with the PIR proposal.

Whereas, the evaluation under the threshold test of the Registry Services Evaluation Policy <<http://icann.org/registries/rsep/rsep.html> (<http://icann.org/registries/rsep/rsep.html>)> found a likelihood of security and stability issues associated with the proposed implementation. The RSTEP (Registry Services Technical Evaluation Panel) Review Team considered the proposal and found that there was a risk of a meaningful adverse effect on security and stability, which could be effectively mitigated by policies, decisions and actions to which PIR has expressly committed in its proposal or could be reasonably required to commit. <<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf> (<http://icann.org/registries/rsep/rstep-report-pir-dnssec-04jun08.pdf>)>

Whereas, the Chair of the SSAC (Security and Stability Advisory Committee) has advised that RSTEP (Registry Services Technical Evaluation Panel)'s thorough investigation of every issue that has been raised concerning the security and stability effects of DNSSEC (DNS Security Extensions) deployment concludes that effective measures to deal with all of them can be taken by PIR, and that this conclusion after exhaustive review greatly increases the confidence with which DNSSEC (DNS Security Extensions) deployment in .ORG can be undertaken.

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

Resolved (2008.06.26.08), that PIR's proposal to implement DNSSEC (DNS Security Extensions) in .ORG is approved, with the understanding that PIR will continue to cooperate and consult with ICANN (Internet Corporation for Assigned Names and Numbers) on details of the implementation. The President and the General Counsel are authorized to enter the associated amendment to the .ORG Registry Agreement, and to take other actions as appropriate to enable the deployment of DNSSEC (DNS Security Extensions) in .ORG.

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

Whereas, the members of ICANN (Internet Corporation for Assigned Names and Numbers)'s Board of Directors are committed to maintaining a high standard of ethical conduct.

Whereas, the Board Governance Committee has developed a Code of Conduct to provide the Board with guiding principles for conducting themselves in an ethical manner.

Resolved (2008.06.26.09), the Board directs staff to post the newly proposed ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors' Code of Conduct for public comment, for consideration by the Board as soon as feasible. [Reference to PDF will be inserted when posted.]

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Ratification of Selection of Consultant to Conduct Independent Review of the Board

Whereas, the Board Governance Committee has recommended that Boston Consulting Group be selected as the consultant to perform the independent review of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

Whereas, the BGC's recommendation to retain BCG was approved by the Executive Committee during its meeting on 12 June 2008.

Resolved (2008.06.26.10), the Board ratifies the Executive Committee's approval of the Board Governance Committee's recommendation to select Boston Consulting Group as the consultant to perform the independent review of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

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Appointment of Independent Review Working Groups

Whereas, the Board Governance Committee has recommended that several working groups should be formed to coordinate pending independent reviews of ICANN (Internet Corporation for Assigned Names and Numbers) structures.

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

- ICANN (Internet Corporation for Assigned Names and Numbers) Board Independent Review Working Group: Amadeu Abril i Abril, Roberto Gaetano (Chair), Steve Goldstein, Thomas Narten, Rajasekhar Ramaraj, Rita Rodin, and Jean Jacques Subrenat.
- DNS (Domain Name System) Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) Independent Review Working Group: Harald Alvestrand (Chair), Steve Crocker and Bruce Tonkin.
- Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)) Independent Review Working Group: Robert Blokzijl, Dennis Jennings (Chair), Reinhard Scholl and Suzanne Woolf.

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Update on Independent Reviews of ICANN (Internet Corporation for Assigned Names and Numbers) Structures

(For discussion only.)

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Board Committee Assignment Revisions

Whereas, the Board Governance Committee has recommended that the membership of several Board should be revised, and that all other committees should remain unchanged until the 2008 Annual Meeting.

Resolved (2008.06.26.12), the membership of the Audit, Finance, and Reconsideration committees are revised as follows:

- Audit Committee: Raimundo Beca, Demi Getschko, Dennis Jennings, Njeri Rionge and Rita Rodin (Chair).
- Finance Committee: Raimundo Beca, Peter Dengate Thrush, Steve Goldstein, Dennis Jennings, Rajasekhar Ramaraj (Chair), and Bruce Tonkin (as observer).
- Reconsideration Committee: Susan Crawford (Chair), Demi Getschko, Dennis Jennings, Rita Rodin, and Jean-Jacques Subrenat.

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Approval of BGC Recommendations on GNSO (Generic Names Supporting Organization) Improvements

Whereas, Article IV, Section 4 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws calls for periodic reviews of the performance and operation of ICANN (Internet Corporation for Assigned Names and Numbers)'s structures by an entity or entities independent of the organization under review.

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

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

Whereas, the Board Governance Committee determined that the GNSO (Generic Names Supporting Organization) Improvements working group had fulfilled its charter and forwarded the final report to the Board for consideration.

Whereas, a public comment forum was held open for 60 days to receive, consider and summarize <<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html> (<http://forum.icann.org/lists/gnso-improvements-report-2008/msg00033.html>)> public comments on the final report.

Whereas, the GNSO (Generic Names Supporting Organization) Council and Staff have worked diligently over the past few months to develop a top-level plan for approaching the implementation of the improvement recommendations, as requested by the Board at its New Delhi meeting.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) has a continuing need for a strong structure for developing policies that reflect to the extent possible a consensus of all stakeholders in the community including ICANN (Internet Corporation for Assigned Names and Numbers)'s contracted parties.

Resolved (2008.06.26.13), the Board endorses the recommendations of the Board Governance Committee's GNSO (Generic Names Supporting Organization) Review Working Group, other than on GNSO (Generic Names Supporting Organization) Council restructuring, and requests that the GNSO (Generic Names Supporting Organization) convene a small working group on Council restructuring including one representative from the current NomCom appointees, one member from each constituency and one member from each liaison-appointing advisory committee (if that advisory committee so desires), and that this group should reach consensus and submit a consensus recommendation on Council restructuring by no later than 25 July 2008 for consideration by the ICANN (Internet Corporation for Assigned Names and

Numbers) Board as soon as possible, but no later than the Board's meeting in August 2008.

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Receipt of Report of President's Strategy Committee Consultation

Whereas, the Chairman of the Board requested that the President's Strategy Committee undertake a process on how to strengthen and complete the ICANN (Internet Corporation for Assigned Names and Numbers) multi-stakeholder model.

Whereas, the PSC has developed three papers that outline key areas and possible responses to address them: "Transition Action Plan," "Improving Institutional Confidence in ICANN (Internet Corporation for Assigned Names and Numbers)," and "FAQ." <<http://icann.org/en/announcements/announcement-16jun08-en.htm> (<http://icann.org/en/announcements/announcement-16jun08-en.htm>) >

Whereas, these documents and the proposals contained in them have been discussed at ICANN (Internet Corporation for Assigned Names and Numbers)'s meeting in Paris.

Whereas, a dedicated webpage has been launched to provide the community with information, including regular updates <<http://icann.org/jpa/iic/> (<http://icann.org/jpa/iic/>) >.

Resolved (2008.06.26.14), the Board thanks the President's Strategy Committee for its work to date, and instructs ICANN (Internet Corporation for Assigned Names and Numbers) staff to undertake the public consultation recommended in the action plan, and strongly encourages the entire ICANN (Internet Corporation for Assigned Names and Numbers) community to participate in the continuing consultations on the future of ICANN (Internet Corporation for Assigned Names and Numbers) by reviewing and submitting comments to the PSC by 31 July 2008.

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

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) intends to hold its first meeting for calendar year 2009 in the Latin America region;

Whereas, the Mexican Internet Association (AMIPCI) has agreed to host the meeting;

Resolved (2008.06.26.15), the Board accepts the AMIPCI proposal to host ICANN (Internet Corporation for Assigned Names and Numbers)'s 34th global meeting in Mexico City, in March 2009.

Review of Paris Meeting Structure

(For discussion only.)

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Board Response to Discussions Arising from Paris Meeting

(For discussion only.)

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

Whereas, at the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in New Delhi in February 2008, the Board resolved to direct staff to work with the ALAC (At-Large Advisory Committee) to finalise a proposal to fund an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit, for consideration as part of the 2008-2009 operating plan and budget process.

<http://www.icann.org/minutes/resolutions-15feb08.htm> ([/minutes/resolutions-15feb08.htm](#))>

Whereas, potential funding for such a summit has been identified in the FY09 budget. <http://www.icann.org/financials/fiscal-30jun09.htm> ([/financials/fiscal-30jun09.htm](#))>

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

Resolved (2008.06.26.16), the Board approves the proposal to hold an ICANN (Internet Corporation for Assigned Names and Numbers) At-Large Summit as a one-time special event, and requests that the ALAC (At-Large Advisory Committee) work with ICANN (Internet Corporation for Assigned Names and Numbers) Staff to implement the Summit in a manner that achieves efficiency, including considering the Mexico meeting as the venue.

Resolved (2008.06.26.17), with the maturation of At-Large and the proposal for the At-Large Summit's objectives set out, the Board expects the ALAC (At-Large Advisory Committee) to look to more self-funding for At-Large travel in the fiscal year 2010 plan, consistent with the travel policies of other constituencies.

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Other Business

(TBD)

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Thanks to Steve Conte

Whereas, Steve Conte has served as an employee of ICANN (Internet Corporation for Assigned Names and Numbers) for over five years.

Whereas, Steve has served ICANN (Internet Corporation for Assigned Names and Numbers) in a number of roles, currently as ICANN (Internet Corporation for Assigned Names and Numbers)'s Chief Security (Security – Security, Stability and Resiliency (SSR)) Officer, but also as a vital support to the Board and its work at meetings.

Whereas, Steve has given notice to ICANN (Internet Corporation for Assigned Names and Numbers) that he has accepted a new position with the Internet Society (ISOC (Internet Society)), and that his employment with ICANN (Internet Corporation for Assigned Names and Numbers) will conclude at the end of this meeting.

Whereas, Steve is of gentle nature, possessed of endless patience and fierce integrity, a love of music, and great dedication to the Internet and those who nurture it.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board wishes to recognize Steve for his service to ICANN (Internet Corporation for Assigned Names and Numbers) and the global Internet community. In particular, Steve has tirelessly and with good nature supported the past 19 ICANN (Internet Corporation for Assigned Names and Numbers) meetings and his extraordinary efforts have been most appreciated.

Resolved (2008.06.26.18), the ICANN (Internet Corporation for Assigned Names and Numbers) Board formally thanks Steve Conte for his service to ICANN (Internet Corporation for Assigned Names and Numbers), and expresses its good wishes to Steve for his work with ISOC (Internet Society) and all his future endeavors.

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Thanks to Sponsors

The Board extends its thanks to all sponsors of this meeting:

L'Association Française pour le Nommage Internet en Coopération (AFNIC (Association Française pour le Nommage Internet en Coopération)), France Télécom, Groupe Jutheau Husson, Stichting Internet Domeinregistratie Nederland (SIDN), Association Marocaine des Professionnels des Telecommunications (MATI), Afiliias Limited, Deutsches Network Information Center (DENIC), The European Registry of Domain Names (EURid), European Domain Name (Domain Name) Registration (EuroDNS), INDOM, Toit de la Grande Arche Parvis de la Défense, Musee de L'informatique, NeuStar, Inc., Public Interest Registry, VeriSign, Inc., AusRegistry, Fundació puntCAT, Council of European National Top Level Domain Registries (CENTR (Council of European National Top level domain Registries)), China Internet Network Information Center (CNNIC), Institut National de Recherche en Informatique et en Automatique (INRIA), InterNetX, Key-Systems GmbH, Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com, Nask, Nominet UK, The Internet Infrastructure Foundation (.SE), Registry ASP, Amen, DotAsia Organisation Ltd., Domaine FR, Golog, Iron Mountain Intellectual Property Management, Inc., Nameaction, Inc., NIC (Network Information Center).AT Internet Verwaltungs und Betriebsgesellschaft m.b.H, UNINETT Norid A/S, IIT – CNR (Registro del ccTLD (Country Code Top Level Domain).it), Renater, Domaine.info, and ICANNWiki.

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Thanks to Local Hosts, Staff, Scribes, Interpreters, Event Teams, and Others

The Board wishes to extend its thanks to the local host organizers, AGIFEM, its President Daniel Dardailler, Vice-President Pierre Bonis and CEO Sebastien Bachollet, as well as Board Members from Afnic, Amen, Domaine.fr, Eurodns, Indom, Internet Society France, Internet fr, Namebay, Renater, and W3C (World Wide Web Consortium).

The Board would also like to thank Eric Besson, the Minister for Forward Planning, Assessment of Public Policies and Development of the Digital Economy for his participation in the Welcome Ceremony and the Welcome Cocktail.

The Board thanks the Au Toit de la Grande Arche , its president, Francis Bouvier, and Directeur, Philippe Nieuwbourg, and Bertrand Delanoë, Maire de Paris, and Jean-Louis Missika, adjoint au Maire de Paris for their hospitality at the social events at the ICANN (Internet Corporation for Assigned Names and Numbers) Paris meeting.

The Board expresses its appreciation to the scr bes Laura Brewer, Teri Darrenougue, Jennifer Schuck, and Charles Motter and to the entire ICANN (Internet Corporation for Assigned Names and Numbers) staff for their efforts in facilitating the smooth operation of the meeting. ICANN (Internet Corporation for Assigned Names and Numbers) would particularly like to acknowledge the many efforts of Michael Evans for his assistance in organizing the past eighteen public board meetings and many other smaller events for the ICANN (Internet Corporation for Assigned Names and Numbers) community.

The Board also wishes to express its appreciation to VeriLan Events Services, Inc. for technical support, Auvitec and Prosn for audio/visual support, Calliope Interpreters France for interpretation, and France Telecom for bandwidth. Additional thanks are given to the Le Meridien Montparnasse for this fine facility, and to the event facilities and support.

The Board also wishes to thank all those who worked to introduce a Business Access Agenda for the first time at this meeting, Ayesha Hassan of the International Chamber of Commerce, Marilyn Cade, and ICANN (Internet Corporation for Assigned Names and Numbers) Staff.

The members of the Board wish to especially thank their fellow Board Member Jean-Jacques Subrenat for his assistance in making the arrangements for this meeting in Paris, France.

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Learning (/en/about/learning)	Global Support (/resources/pages/customer-support-2015-06-22-en)	Independent Review Process (/resources/pages/irp-2012-02-25-en)	Agreements (/en/about/agreements)	Domain Name Dispute Resolution (/en/help/dndr)
Participate (/en/about/participate)	Security Team (/about/staff/security)	Request for Reconsideration (/groups/board/governance/reconsideration)	AOC Review (/en/about/aoc-review)	Name Collision (/en/help/name-collision)
Groups (/https://www.icann.org/resources/pages/groups-2012-02-06-en)	PGP Keys (/en/contact/pgp-keys)	Ombudsman (/help/ombudsman)	Annual Report (/about/annual-report)	Registrar Problems (/en/news/announcements/announcements06mar07-en.htm)
Board (/resources/pages/board-of-directors-2014-03-19-en)	Certificate Authority (/contact/certificate-authority)	Registry Liaison (/resources/pages/contact-f2-2012-02-25-en)	Financials (/en/about/financials)	WHOIS (/http://whois.icann.org/)
President's Corner (/presidents-corner)	AOC Review (/http://forms.icann.org/en/about/aoc-review/contact)	Reviews (/http://forms.icann.org/en/groups/reviews/contact?fuseaction=app_allposition&company_id=16025&version=1)	Document Disclosure (/en/about/transparency)	Planning (/en/about/planning)
Staff (/en/about/staff)	Organizational Chart (/http://forms.icann.org/en/groups/reviews/contact?fuseaction=app_allposition&company_id=16025&version=1)	Request a Speaker (/http://forms.icann.org/en/contact/speakers)	Planning (/en/about/planning)	Dashboard Beta (/https://www.icann.org/dashboard)
Careers (/https://icann-openhire.silkroad.com/en/organization?id=1&fuseaction=app_allposition&company_id=16025&version=1)	Request a Speaker (/http://forms.icann.org/en/contact/speakers)	For Journalists (/en/news/press)	RFPs (/en/news/rfps)	Litigation (/en/news/litigation)
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EXHIBIT C-004

Annex B

GAC comments on the new gTLD Program: Draft Applicant Guidebook**(posted 24 October 2008)**

As stated as early as 1999 in its GAC Operating Principles, and subsequently in its Principles on ccTLDs and Principles on new gTLDs, the GAC considers that the Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community.

The GAC's main concern is to ensure that the careful expansion of the domain name space does not cause any threat to the stability and security of the Internet. This is a strategic issue for the future of the DNS and its contribution to the global information society.

The introduction of new gTLDs must therefore be viewed as a means to enhance the social and economic value of the name space. It should be conducted with a view to provide benefits for the users, while respecting the legitimate rights and expectations of other stakeholders, and reducing the risks of confusion or market distortions. It should pay attention to a fair and equitable treatment of not only applicants but the affected communities.

In this context, the GAC wishes to provide the following comments in the perspective of further community-wide discussions:

General vision of the Domain Name Space

ICANN's bylaws contain as a core value "the introduction and promotion of competition in the registration of domain names where practicable and beneficial in the public interest".

In this context, the GAC considers that the study requested by the Board in its meeting of October 18, 2006, on "economic questions relating to the domain registration market" and particularly on "whether the domain registration market is one market or whether each TLD functions as a separate market" would have provided useful insights to develop a common vision within the whole Internet community and a needed reference framework for many of the pending issues regarding the introduction of new gTLDs.

In the absence of such a study, key decisions and stakeholder responses remain ill-informed about market and competition issues associated with the planned broad expansion of the domain space. For this reason, the GAC recommends that the requested study be completed as soon as possible to allow the ICANN community to make informed decisions about this important issue.

Limits of the single-fee structure

The GAC has concerns about the proposed single fee structure and its deterrent effect on the prospective proposals for new domains emanating from innovative SME or developing countries, as well as those serving non-commercial purposes.

In particular, it is likely that some proposals addressing specific cultural, linguistic, local or regional communities may not be able to afford the entry costs and recurring costs envisaged in the current framework. Many countries and territories have significant linguistic and cultural minorities who stand to benefit from an Internet tailored to their particular needs with a DNS reflecting their particular cultural and social needs and aspirations. ICANN should give urgent consideration to the immense potential for social and cultural exploitation of gTLDs both in Latin and other scripts.

The GAC proposes therefore that consideration be given to the introduction of a new type of TLD which could be designated in the new gTLD round, the scTLD – social and cultural TLD which would be designed to address the needs and interests of a clearly defined social and/or cultural community and would essentially be non-commercially based. The GAC would be willing to discuss with other stakeholders the characteristics that such a new class of TLDs might have.

Fee level and management of surplus

The GAC notes a lack of transparency about cost evaluation principles applied in determining the current fee level and how these compare with previous new gTLD Rounds. In this context, GAC recalls that the fee structure should also encourage a level playing field between new applicants and incumbent gTLD operators, especially for those new gTLDs that will be commercially run. High start-up costs mean higher initial prices for registrants and a greater risk of failure for the registry, which would be prejudicial both to competition and stability. The GAC fears the current fee level will not be conducive to innovation and will unduly favour well-financed applicants and purely commercial proposals.

Moreover, and in line with GAC comments on the PSC report regarding the general budget of ICANN, community consensus should be sought on appropriate uses for any revenue surplus.

Importance of contract compliance

It is essential that ICANN show sufficient capacity to enforce contract compliance of both existing and new registries, and indicates how it intends to do so.

Reducing the cost to business (defensive registration)

The GAC shares the concerns of business stakeholders about a range of overarching issues relating to overall costs to business. In particular efforts should be made to help limit the need for defensive registrations in the new gTLDs.

This also includes ensuring that registries provide appropriate mechanisms to prevent fraudulent registrations. The GAC believes it is important to gain a clear understanding of the views of the business community on those issues.

Auctions versus Competitive bidding

Auctions have been used in the past by governments to allocate public resources (with revenues accruing to public finances) but as a private sector corporation, ICANN is an unusual position regarding its "gate-keeper" function for the Domain Name System. The GAC questions whether it would be appropriate for ICANN to select operators for new gTLDs based on auctions in which the bidders are required to compete by offering to pay ICANN the highest possible fee for the right to operate a new gTLD registry.

IDNs

The introduction of domain names in non-Latin scripts is a fundamental development of the Domain Name Space, necessary to fulfill the vision of an Internet accessible to everybody in his/her own language.

In view of the explicitly manifested need in some countries which are not using Latin script, the GAC believes it remains crucially important to progress the IDN ccTLD fast track successfully to implementation in 2009.

Geographic names

The GAC expects ICANN to apply GAC gTLD principles in respect to the handling of geographic names and in particular principles 2.2¹ (including place names) and 2.7² that are not comprehensively addressed in the implementation proposals.

Strings being meaningful representations or abbreviations of a country and territory name in any script or language should not be allowed in the gTLD space until the related IDN ccTLD policy development processes have been completed

The proposed introduction of new gTLDs and in particular any process relating to the protection of geographic names should not result in an unreasonable administrative burden for government administrations.

These views relate to the GAC's analysis of the Draft Applicant Guidebook posted by ICANN staff on 23 October 2008. The GAC will seek to provide ICANN with any additional comments it feels appropriate on the Draft Applicant Guidebook version 2 posted on 18 February 2009 before or during its meeting in Sydney.

¹ ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

² Principle 2.7 states: "Applicant registries for new gTLDs should pledge to: a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD; b) to ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD."

EXHIBIT C-005



New gTLD Program

New gTLD Program in Brief

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization dedicated to coordinating the Internet's addressing system, one of its foundational principles has been to promote competition in the domain name marketplace while ensuring Internet security and stability. The expansion of the generic top-level domains (gTLDs) will allow for more innovation, choice and change to the Internet's addressing system, now represented by 21 gTLDs.

The decision to introduce new gTLDs followed a detailed and lengthy consultation process with all constituencies of the global Internet community represented by a wide variety of stakeholders – governments, individuals, civil society, business and intellectual property constituencies, and the technology community. Also contributing to this policy work were ICANN's Governmental Advisory Committee (GAC), At-Large Advisory Committee (ALAC), Country Code Names Supporting Organization (ccNSO), and Security and Stability Advisory Committee (SSAC). The policy was completed by the Generic Names Supporting Organization (GNSO) in 2007, and adopted by ICANN's Board in June, 2008. The program is expected to launch in calendar year 2010.

The ICANN team continues to share with the Internet community the ongoing program developments through the release of draft Applicant Guidebooks, excerpts, explanatory memoranda and in-person meetings. All details can be found on this page.

In a world with over 1.6 billion Internet users – and growing – diversity, choice and competition are key to the continued success and reach of the global network.

New gTLD History at a Glance

- Eight gTLDs predated ICANN's creation – dot-com, dot-edu, dot-gov, dot-int, dot-mil, dot-net, dot-org and dot-arpa.
- ICANN has successfully carried out two previous application rounds for new gTLDs: 2000 (dot-aero, dot-biz, dot-coop, dot-info, dot-museum, dot-name and dot-pro); and 2004 (dot-asia, dot-cat, dot-jobs, dot-mobi, dot-tel, dot-travel).
- The Generic Names Supporting Organization (GNSO) has developed policy recommendations that are the foundation guiding ICANN in introducing new gTLDs. The policy work started in December 2005 and concluded in September 2007.
- In June 2008, during ICANN's Paris meeting, ICANN Board approved the GNSO recommendations for introducing New gTLDs to the Internet's addressing system.

Fast Facts

- According to Internet World Stats, there are an estimated 1.6 billion Internet users worldwide.
- An Internet address is made up of a series of characters separated by dots. For example, in the website address www.icann.org, the top-level domain is ".org" and the second-level domain is "icann". In some cases, you can also find third-level domain names.
- There are currently 21 gTLDs. A gTLD can, in some cases, identify the nature of an organization operating a specific website. For example, a website with a dot-com address usually indicates a commercial organization: dot-museum is dedicated to museums, dot-mobi for mobile phone users, dot-aero for the aviation industry, and so on.
- There are around 250 two-letter country-code TLDs (ccTLDs), which identify a country or territory. For example, the Internet extension dot-jp corresponds to Japan, while dot-eu corresponds to the European Union.
- The year 2008 ended with a total base of 177 million domain name registrations across all of the top-level domains (TLDs). This represents 16 percent growth over the previous year and 2 percent growth over the third quarter of 2008. Of the 177 million second-level domain name registrations, 96 million are gTLD registrations.

Did you know?

- The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for introducing new generic top-level domains (gTLDs). The priority is to ensure that new gTLDs are awarded in a fair and transparent process to organizations that can effectively manage them on behalf of Internet users.
- ICANN is currently developing the program that facilitates the creation of new Internet extensions, or gTLDs. Under this new process, more extensions will be created, and with them, potentially a whole new way of using the Internet. Also, for the first time, Internationalized Domain Names (IDNs) will be available at the top level, enabling new extensions in different scripts such as Arabic, Chinese, Greek, Hindu, and more. Millions of people around the world will be able to use the Internet's naming system in their own languages.
- The Internet's fundamental protocol – TCP/IP – has passed its 30th birthday, and the naming system on top of it – DNS – has passed its 25th birthday. The Internet has gone from a few networked computers to a network accessed by a billion people, from a Western phenomenon to a truly global one, and from research roots to an engine of commerce accounting for trillions of dollars in commerce.
- During that time, the use of top-level domain (TLD) identifiers, such as dot-com, dot-net, dot-uk, has actually changed very little. The most widely recognized global TLD is dot-com. While the scale of these TLDs has changed dramatically since their inception – more than 20 years ago for dot-com – the availability and usage of these top-level names has been permitted to change very little.
- The entity responsible for operating a gTLD is called a registry. Depending on the kind of gTLD, these organizations are referred to as registry operators or sponsors. New gTLD registries must sign agreements with ICANN to meet technical requirements and comply with applicable policies.

What are gTLDs?

gTLD stands for generic top-level domain – what Internet users see as an Internet extension like dot-com, dot-org or dot-info – and they are part of the structure of the Internet's domain name system.

Why are new gTLDs being introduced?

The wider Internet community that takes part in the ICANN policy development process has advocated for new gTLDs. Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market.

In addition the Joint Project Agreement that ICANN has with the US Department of Commerce says, "ICANN shall maintain and build on processes to ensure that competition, consumer interests, and Internet DNS stability and security issues are identified and considered in TLD management decisions, including the consideration and implementation of new TLDs."

Opening the top-level space so that names can be proposed rather than be restricted to the existing 21 gTLDs could open up a new wave of innovation. Competition and innovation best occur when a stable and open platform is available and the barriers to entry are reduced.

Will this change how the Internet operates?

This planned increase of the number of gTLDs is not expected to affect the way the Internet operates, but it will potentially change the way people find information on the Internet.

What is ICANN doing to protect trademark holders?

First, an objection-based process will enable rightsholders to demonstrate that a proposed gTLD would infringe their legal rights. Second, applicants for new gTLDs will be required to describe in their applications the rights protection mechanism they propose for second-level registrations, which must be made public. Third, all new gTLDs must ensure that second-level registrations are subject to ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP), a process that has worked well to protect rights for many years. Finally, ICANN has been working closely with the trademark community to find additional solutions to potential issues for trademark holders in implementing new gTLDs.

Will ICANN prevent the registration of objectionable or racist extensions?

Offensive names could be subject to an objection-based process based on public morality and order. This process will be conducted by an international arbitration body using criteria drawing on provisions in a number of international treaties.

How are IDNs related to gTLDs?

IDN is the short name for Internationalized Domain Name. IDNs are domain names with characters in addition to a, b..., z; 0, 1, ..., 9; and "-".

Such domain names could contain characters with diacritical marks as required by many European languages, or characters from non-Latin scripts; for example, Arabic or Chinese. During the 2010 application round, IDN gTLDs will be allowed for the first time in the history of the Internet. The IDN top-level domain names will offer many new opportunities and benefits for Internet users around the world by allowing them to establish and use top-level domains in their native languages and scripts.

How many new gTLDs are expected?

There is no way of knowing the exact number of applications ICANN will receive during the 2010 application round or how many of these applications will qualify and become gTLD registries. Market speculations have estimated anything from hundreds to thousands of applications.

Is applying for a new gTLD the same as buying a domain name?

No. Nowadays, organizations and individuals around the world can buy second-level and, in some cases, even third-level domain names. They simply need to find an accredited registrar or reseller, comply with the registrant terms and conditions and pay annual fees. The application for a new gTLD is a much more complex process. An applicant for a new gTLD is, in fact, applying to create and operate a registry business and sign a contract with ICANN.

Can I register my idea for a new gTLD with ICANN in advance of the next application period?

No, ICANN will not be taking reservations or pre-registrations of new gTLDs.

Can I simply reserve a gTLD and decide later whether or not to use it?

One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. The application process requires applicants to provide a detailed plan for the launch and operations of the proposed gTLD. ICANN expects new gTLDs to be operational shortly after the registry agreement is signed.

How and when can I see which TLDs are being applied for and who is behind the applications?

After the application period is closed, ICANN will verify all applications for completeness and then release on its website the list of TLDs, applicant names and nonconfidential information about the applications.

Is this the only opportunity to apply for a new gTLD?

No. ICANN plans to hold additional rounds in the future. The exact dates for these future rounds are not yet available. "Applicants who are unsuccessful may re-apply in future rounds.

Application Process

Who can apply for a new gTLD?

Any public or private organization from any part of the world can apply to create and operate a new gTLD. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements.

What is the New gTLD Applicant Guidebook?

The Applicant Guidebook is a step-by-step guide for future applicants for a new gTLD to understand what to expect during the application and evaluation periods and how the process works. Since late 2008, the Applicant Guidebook has been released in drafts posted for public comment. This is part of ICANN's bottom-up decision-making model and is a great opportunity for the Internet community to weigh in on the final set of criteria and processes. The final Applicant Guidebook is expected in 2010 and will contain a definitive set of rules and requirements.

Why is ICANN asking for so much information from the applicants?

One of ICANN's core missions is to preserve the security, stability and global interoperability of the Internet. Future new gTLD registries are expected to comply with ICANN's contract and follow all best practices and standards to ensure this mission is fulfilled.

Can I apply for more than one gTLD?

Yes. However, each application will be treated individually and there is no discounted application fee.

Can I apply for any kind of gTLD or are there any specific restrictions?

ICANN has a set of specific rules for gTLD strings that each applicant must carefully consider. For example, an application for a gTLD composed of numbers only will be rejected. Applicants for IDN gTLDs must carefully follow the additional technical specifications for IDNs outlined in the Applicant Guidebook.

Applicants representing a community-based TLD or a geographic TLD must meet additional specific requirements.

What will happen during the application period and how long will it take?

The application period will likely last for several weeks. Applicants will use a dedicated interface named TAS (TLD Application System) to answer questions about the applied-for TLD and their business and technical capability to operate a registry. The interface will also allow applicants to upload supporting documents and serve as a tracking and workflow management tool for ICANN staff, applicants and the various service providers supporting the evaluation or objection processes.

What happens if there are other applications for the same gTLD?

ICANN does not allow for two or more identical gTLDs. If there are two or more applications for the same gTLD, applicants will be required to follow the string contention procedures outlined in the Applicant Guidebook. Applicants should also be aware that the same specific rules will apply if two or more gTLD strings are considered to be highly similar by a panel of experts. The two processes proposed by ICANN to deal with the identical and similar gTLD applications are auctions and community priority (comparative) evaluation. The latter applies only in cases where there is a community-based applicant.

What can I do if someone applies for a gTLD that represents my brand or trademark?

ICANN will have a dispute resolution mechanism managed by a dispute resolution service provider (DRSP) that will process objections from third-parties that feel that their legal rights are being infringed upon.

Can third parties prevent an applicant from getting a new gTLD?

After the list of all gTLD applications is published on ICANN's website, there will be an open objection period followed by established dispute resolution procedures. Objections can be filed only on four specific enumerated grounds. Details about these procedures, such as who has standing, where and how objections are filed, and how much objections will cost, among other, can be found in the Applicant Guidebook.

Timeline and Fees

When can I apply?

The application period is expected to take place in 2010. The application period will have specific open and close dates and times.

How much is the application fee?

The application fee is estimated at US\$185,000. There is also a US\$100 user registration fee to access the TAS. All applicants will be required to pay the same initial application and user registration fees. Various methods of payment will be accepted. Because an application might follow different paths, such as going through an objection or auction process, additional fees may apply to some applicants.

Will ICANN issue refunds?

Yes, refunds will apply in specific circumstances. Details about refund conditions are specified in the Applicant Guidebook.

Are there any ongoing fees once a gTLD is approved by ICANN?

Yes. Once an application successfully passes all evaluation steps, the applicant must sign a Registry Agreement with ICANN. Under the agreement, there are two fees: a fixed fee of US\$6,250 per calendar quarter and a transaction fee of US\$0.20 on future domain registrations and renewals.

The information presented here about the application and evaluation process is the most up-to-date available. However, it is a high-level summary and is subject to change. For exact details about the program please review the actual text of the Applicant Guidebook with the proposed Registry Agreement as it is being revised and finalized. For information about the New gTLD Program, please visit www.icann.org or email ICANN staff at newgldt@icann.org.

Where can I find more information?

For current information on the New gTLD Program, go to <http://www.icann.org/en/topics/new-gtld-program.htm>

To learn about GNSO Policy Development, go to <http://gns0.icann.org/>

To learn about IDNs, go to <http://www.icann.org/en/topics/idn/>

A full list of current gTLDs is available at <http://www.icann.org/registries/listing.html>

Glossary and useful terms

Applicant – an entity that has applied to ICANN for a new gTLD by submitting its application form through the online application system.

Application – an application for a new gTLD. An application includes the completed application form, any supporting documents and any other information that may be submitted by the applicant at ICANN's request.

Applicant Guidebook – a step-by-step guide for future applicants for a new gTLD to understand what to expect during the application and evaluation periods and how the process works.

Auction – a method for allocating property or goods to the highest bidder.

Community priority (comparative) evaluation – a process to resolve string contention, which may be elected by a community-based applicant.

Community-based TLD – a community-based gTLD is one operated for the benefit of a defined community consisting of a restricted population. An applicant designating its application as community-based must be prepared to substantiate its status as representative of the community it names in the application.

TCP/IP -Transmission Control Protocol/Internet Protocol – the Internet's basic communication language or protocol. The communications protocol underlying the Internet, IP allows large, geographically diverse networks of computers to communicate with each other quickly and economically over a variety of physical links. An IP address is the numerical address by which a location in the Internet is identified. Computers on the Internet use IP addresses to route traffic and establish connections among themselves; people generally use the human-friendly names made possible by the Domain Name System.

Objection – a formal objection filed with a dispute resolution service provider in accordance with that provider's procedures.

DNS – Domain Name System – helps users find their way around the Internet. Every computer on the Internet has a unique address – just like a telephone number – which is a rather complicated string of numbers. It is called its IP address. IP addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the domain name) to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a mnemonic device that makes addresses easier to remember.

DRSP – dispute resolution service provider – An entity engaged by ICANN to adjudicate dispute resolution proceedings in response to formally filed objections.

TAS – TLD Application System – The online interface for submitting applications to ICANN.

Registry – is the authoritative, master database of all domain names registered in each top-level domain. The registry operator keeps the master database and also generates the zone file that allows computers to route Internet traffic to and from top-level domains anywhere in the world.

Registry Agreement – The agreement executed between ICANN and successful gTLD applicants, which appears in draft form at <http://www.icann.org/en/topics/new-gtlds/>.

Registrar – currently, a domain name in gTLDs can be registered with a registrar. The registrar can provide a variety of contact and technical information that makes up the domain name registration, keep records of the contact information and submit the technical information to a central directory, the registry. Registrants are required to enter a registration contract with the registrar that sets forth the terms under which the registration is accepted and will be maintained.

TLD – top-level domains are the names at the top of the DNS naming hierarchy. They appear in domain names as the string of letters following the last (rightmost) dot, such as "net" in "www.example.net". The administrator for a TLD controls what second-level names are recognized in that TLD. The administrators of the root domain or root zone control what TLDs

are recognized by the DNS. Commonly used TLDs include dot-com, dot-net, dot-edu, dot-jp, dot-de, and the like.

GAC – Governmental Advisory Committee – is an advisory committee composed of appointed representatives of national governments, multinational governmental organizations and treaty organizations, and distinct economies. Its function is to advise the ICANN Board on matters of concern to governments.

ALAC – At-Large Advisory Committee – considers and provides advice on the activities of the ICANN as they relate to the interests of individual Internet users.

ccNSO – Country-Code Names Supporting Organization – engages and provides leadership in activities relevant to country-code top-level domains (ccTLDs). This is achieved by developing policy recommendations to the ICANN Board, nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs, and coordinating with other ICANN SOs, committees or ICANN constituencies.

SSAC – Security and Stability Advisory Committee – the standing committee on the security and stability of the Internet's naming and address allocation systems. Its charter includes a focus on risk analysis and auditing. SSAC consists of approximately 20 technical experts from industry and academia as well as operators of Internet root servers, registrars and TLD registries.

GNSO – Generic Names Supporting Organization – one of ICANN's supporting organizations, formed of six constituencies: commercial and business constituency, gTLD registry constituency, ISP constituency, non-commercial constituency, registrar constituency, and IP constituency.

ISP – Internet Service Provider – An ISP provides access to the Internet to organizations or individuals. These services may include web hosting, email, VoIP (voice over IP), and support for many other applications.

String – the set of characters comprising an applied-for gTLD.

String Contention – The scenario in which there is more than one qualified applicant for the same gTLD or for gTLDs that are so similar that user confusion would result if more than one were to be delegated to the root zone.

Script – a collection of symbols used for writing a language. There are three basic kinds of scripts. Alphabetic (Arabic, Cyrillic, Latin) has individual elements termed letters. Ideographic (Chinese) has elements that are ideographs. Syllabary (Hangul) has individual elements that represent syllables. The writing systems of most languages use only one script but there are exceptions. For example, Japanese uses four different scripts representing all three categories. Scripts that do not appear in the Unicode code chart are completely unavailable for inclusion in IDNs.

About ICANN

To reach another person on the Internet you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world. Without that coordination we wouldn't have one global Internet. ICANN was formed in 1998. It is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. ICANN doesn't control content on the Internet. It cannot stop spam and it doesn't deal with access to the Internet. But through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet. For more information please visit: www.icann.org.



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EXHIBIT C-006

**GOVERNMENTAL ADVISORY COMMITTEE'S SUBMISSION TO
THE CHAIRMAN OF THE BOARD OF DIRECTORS, ICANN
REGARDING THE INTRODUCTION OF NEW gTLDs**

(revised draft V3 – February 10, 2009)

As stated as early as 1999 in its GAC Operating Principles, and subsequently in its Principles on ccTLDs and Principles on new gTLDs, the GAC considers that the Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community.

The GAC's main concern is to ensure that the careful expansion of the domain name space does not cause any threat to the stability and security of the Internet. This is a strategic issue for the future of the DNS and its contribution to the global information society.

The introduction of new gTLDs must therefore be viewed as a means to enhance the social and economic value of the name space. It should be conducted with a view to provide benefits for the users, while respecting the legitimate rights and expectations of other stakeholders, and reducing the risks of confusion or market distortions. It should pay attention to a fair and equitable treatment of not only applicants but the affected communities.

In this context, the GAC wishes to provide the following comments in the perspective of further community-wide discussions during the Mexico meeting.

General vision of the Domain Name Space

ICANN's bylaws contain as a core value "the introduction and promotion of competition in the registration of domain names where practicable and beneficial in the public interest".

In this context, the GAC considers that the study requested by the Board in its meeting of October 18, 2006, on "economic questions relating to the domain registration market" and particularly on "whether the domain registration market is one market or whether each TLD functions as a separate market" would have provided useful insights to develop a common vision within the whole Internet Community and a needed reference framework for many of the pending issues regarding the introduction of new gTLDs.

In the absence of such a study, key decisions and stakeholder responses remain ill-informed about market and competition issues associated with the planned broad expansion of the domain space. [For this reason, the GAC recommends that the Board should take steps to conduct such a study to allow the ICANN community to make informed decisions about this important issue].

Limits of the single-fee structure

The GAC has concerns about the proposed single fee structure and its deterrent effect on the prospective proposals for new domains emanating from innovative SME or developing countries, as well as those serving non-commercial purposes.

In particular, it is likely that some proposals addressing specific cultural, linguistic, local or regional communities may not be able to afford the entry costs and recurring costs envisaged in the current framework. Many countries and territories have significant linguistic and cultural minorities who stand to benefit from an Internet tailored to their particular needs with a DNS reflecting their particular cultural and social needs and aspirations. ICANN should give urgent consideration to the immense potential for social and cultural exploitation of gTLDs both in Latin and other scripts.

The GAC proposes therefore that consideration be given to the introduction of a new type of TLD which could already be designated in the new gTLD round, the scTLD – social and cultural TLD which would be essentially non-commercially based. The GAC would be willing to discuss with other stakeholders in Mexico the characteristics that such a new class of TLDs might have.

Fee level and management of surplus

The GAC notes a lack of transparency about cost evaluation principles applied in determining the current fee level and how these compare with previous new gTLD Rounds. In this context, GAC recalls that the fee structure should also encourage a level playing field between new applicants and incumbent gTLD operators, especially for those new gTLDs that will be commercially run. High start-up costs mean higher initial prices for registrants and a greater risk of failure for the registry, which would be prejudicial both to competition and stability. The GAC fears the current fee level will not be conducive to innovation and will unduly favour well-financed applicants and purely commercial proposals.

Moreover, and in line with GAC comments on the PSC report regarding the general budget of ICANN, community consensus should be sought on appropriate uses for any revenue surplus.

Importance of contract compliance

It is essential that ICANN show sufficient capacity to enforce contract compliance of both existing and new registries, and indicates how it intends to do so.

Reducing the need for defensive registrations

The GAC shares the concerns of business stakeholders about a range of overarching issues relating to overall costs to business. In particular efforts should be made to help limit the need for defensive registrations in the new gTLDs. [The GAC believes it is important to gain a clear understanding of the views of the business community on this issue].

This also includes ensuring that registries provide appropriate mechanisms to prevent fraudulent registrations.

Auctions vs Competitive bidding

Auctions [have been used in the past by governments to allocate scarce public resources (with revenues accruing to public finances) but as a private sector corporation, ICANN is an unusual position regarding its "gate-keeper" function for the Domain Name System and careful consideration needs to be given to whether auctions are an appropriate way to facilitate expansion of the TLD name space].

The GAC believes that alternative competitive bidding procedures and criteria should be explored to maximize the benefits for the global Internet community. As mentioned in the GAC principles on new gTLDs, "the evaluation and selection procedures for [the delegation of] new TLD registries should respect the principles of fairness, transparency and non-discrimination".

IDNs

The introduction of domain names in non-Latin scripts is a fundamental development of the Domain Name Space, necessary to fulfill the vision of an Internet accessible to everybody in his/her own language.

In view of the explicitly manifested need in some countries which are not using Latin script, the GAC believes it remains crucially important to progress the IDN ccTLD fast track successfully to implementation in 2009. [The GAC appreciates and indeed initially supported the original rationale for the decision to try and link the two IDN processes but now feels that progress on IDN ccTLDs needs to be prioritised in light of the state of play regarding community discussions on new gTLDs.]

Moreover, regarding the new gTLD process, the GAC feels that more attention should be devoted to encouraging and facilitating the introduction of IDN gTLDs in this context, in order to guarantee a more balanced Domain Name space in each script.

Geographic names

The GAC expects ICANN to apply GAC gTLD principles in respect to the handling of geographic names and in particular principles 2.2 (including place names) and 2.7¹ that are not comprehensively addressed in the implementation proposals.

¹ Principle 2.7 states : "Applicant registries for new gTLDs should pledge to : a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD; b) to ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD."

The proposed introduction of new gTLDs and in particular any process relating to the protection of geographic names should not result in an unreasonable administrative burden for government administrations.

The GAC looks forward to receiving the ICANN Board's detailed responses to this GAC submission during its upcoming meeting with the Board in Mexico City and believes the meeting in Mexico City should provide the opportunity for a community-wide discussion on those issues.

[The GAC also notes the substantive nature of some of the inputs received so far by ICANN in its public consultation process and the implications that this may have for the intended scheduling of the new gTLD round.]

EXHIBIT C-007



The Internet Corporation for Assigned Names and Numbers

22 September 2009

Janis Karklins
Chairman of the Governmental Advisory Committee
Ambassador of Latvia to France
via email: janis.karklins@icann.org

Dear Janis

Thank you for the GAC's letter of 18 August, containing the GAC's comments on version 2 of the Draft Applicant Guidebook. I appreciate the detailed consideration given by the GAC to the issue of new gTLDs. Outlined below is a detailed response to the GAC's comments, which I trust the GAC will find useful. I look forward to the Board continuing discussions with the GAC in Seoul, on version 3 of the Draft Applicant Guidebook which will be published by the end of September 2009.

I. ICANN'S PREPAREDNESS FOR NEW gTLD ROUND

1. Scalability of gTLD Expansion and Stability of the Internet

The GAC is aware that many root server operators have raised concerns about the effect that a major expansion of the gTLD space would have on the stability of the Internet. The GAC considers that a controlled and prudent expansion of the DNS space is of primary importance for safeguarding the stability, security and interoperability of the Internet on which the global economy and social welfare relies so much.

The GAC notes that the SSAC and RSSAC have been asked to prepare a report on the scalability of the root zone and the impact of the potential simultaneous introduction of new gTLDs, DNSSEC, IPv6 glue, and IDNs into the root zone, which will be published in August. The GAC will look to this report to provide reassurance that the scaling up of the root will not impair the stability of the Internet and that the technical safeguards are sufficient. The GAC is hopeful the report will stress the importance of developing an alert or warning system, as well as the need for a process for halting the adoption of new top level domains should the root zone begin to show signs of breach or weakness. It should be noted that although the GAC is encouraged this study is underway there is some concern as to why the proper analysis did not occur earlier.

RESPONSE

In February 2009, with Resolution 2009-02-03-04, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC),



and the ICANN staff, including the IANA team, to study the potential issues regarding the addition of IDNs, IPv6 addresses, DNSSEC and substantial numbers of new TLDs to the root zone. The Terms of Reference for this study are at:

<http://www.icann.org/en/committees/dns-root/root-scaling-study-tor-05may09-en.htm>.

We note the GAC's concern that the analysis of the scalability of the root zone should have been undertaken earlier, at the time the new gTLD PDP was being undertaken, and confirm that it was the opinion of the technical community that the DNS could scale to accommodate an unlimited number of TLDs, including IDNs. (See:

www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf.)

The more recent advent of DNSSEC and IPv6 glue and their potential simultaneous impact on the scalability of the DNS, in addition to new TLDs, has resulted in the current study being undertaken to ascertain, if these combined effects will have an adverse effect on the DNS.

Interisle was selected to perform this study. In the course of their study, they recommended that a modeling effort be undertaken with the assistance of TNO. TNO produced a model and a companion report. The Interisle report was posted for public along with a covering note from the joint RSSAC/SSAC/ICANN staff steering group for this study on 18 September 2009, <http://www.icann.org/en/announcements/announcement-2-18sep09-en.htm>. The TNO model and simulation system is undergoing verification and will be released soon along with the companion report. The Interisle report addresses the interactions between potential changes that would impact the root zone and the inherently adaptable nature of the root system as the fundamental aspect of considering the implications of these changes. The report also does stress the need for an early warning system as a means for understanding emerging risks to enable effective planning in response. The SSAC and RSSAC along with the study steering group will be evaluating the report against the Terms of Reference and preparing recommendations for the Board and the public related to establishment of an early warning system and approaches to addressing concerns raised in the report.

In addition and as part ICANN's ongoing efforts to ensure the stability of the DNS, ICANN staff contracted with the DNS Operations, Analysis and Research Center (<https://www.dns-oarc.net/>) as independent and well-respected experts to provide an analysis of the impact of adding IPv6, DNSSEC, and additional top-level domains to the ICANN-operated L root server.

This study, while independent of the Root Server System Root Scaling Study and focused specifically on the impact to the ICANN-operated L root server, has been used as input in the more comprehensive study undertaken by the Root Scaling Study Group.

The final report of the DNS-OARC study has now been published at <http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.



Questions 2 and 3 are combined as responses overlap

2. Economic Studies

The GAC had registered its concern at the Mexico City meeting that the two preliminary reports on competition and price caps had not provided appropriate answers to the 2006 Board request for economic studies to be undertaken. Such analysis is needed to take full account of the entire domain name environment. The GAC remains concerned that the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms.

The GAC notes that the economic reports commissioned by ICANN have failed to distinguish adequately between real demand and derived demand arising from widespread concern in the business community about the multiplication of the opportunity for cybersquatting, fraud and malicious conduct generally. The GAC notes that the recent IRT report addresses a number of related intellectual property protection and enforcement issues. However, the GAC believes there is an urgent need for separate empirical research to be undertaken regarding the costs of defensive registrations and the impact on consumers of the availability of new gTLDs. To the extent that the uses of new gTLDs are innovative and respond to registrant demand, the GAC expects there would be benefits to consumers.

The GAC also recommends that any analysis of the gTLD environment encompass fact gathering beyond empirical studies. A thorough analysis would include interviews with and perhaps surveys of a wide cross-section of market participants. As a first step in this process, the GAC recommends that ICANN more systematically conduct outreach and data gathering from the variety of resources represented by the participants in the malicious conduct and e-crimes sessions in Sydney.

3. Competition

The GAC has considered whether there is a risk that the gTLD process could create a multitude of monopolies rather than increasing competition. This rests in part on important, but unanswered questions relating to: (1) whether registrants view gTLDs as reasonable substitutes for one another; and (2) why some registrants purchase the same domain name in multiple TLDs.

Further concerns have arisen regarding the apparent desire to alter existing policy that requires a structural separation between registrars and registries. Change to this policy should be guided primarily by whether and how such a change would benefit consumers and registrants. Studies to date have not fully addressed this aspect of the marketplace, nor have they included an analysis of the potential harm to domain name registrants of permitting registrars to operate as new gTLD registries.



RESPONSES

New gTLD – Economic Study

I. Summary

The calls for economic studies cover several different issues, and even these questions/phrases mean different things to different people. The issues fall into the following three categories:

- 1) Fulfillment of 2006 Board resolution
- 2) Economic analysis of benefit vs. cost
- 3) Public benefit of introducing new gTLDs / demand for new gTLDs

ICANN proposes a plan for dealing with each of these issue areas separately. Once we have agreed on an overall plan internally, ICANN will structure our answers into appropriate categories externally as well, and avoid the inappropriate grouping under the heading "economic studies".

There has been substantial work to answer the economic questions associated with new gTLDs. A set of four related studies was released. Existing economic studies indicate significant consumer benefit flowing from the introduction of new gTLDs and identify risks that should be mitigated prior to introduction. Some of the elements that offer benefits to consumers include: lower cost, more choice, new languages (IDN), and innovation. Staff has taken action to mitigate identified risks through improved new gTLD implementation plans, primarily related to IP concerns and malware concerns.

There has been comment that additional study should be undertaken. That form of comment has cited different objectives. We anticipate that the analytical value of further studies will be small; and, it appears that an objective of the calls for additional study is to delay the implementation. It may well be that no action/outcome (other than delay) will quell that criticism. Still, there may be consensus-building value in heeding the call for additional study, and staff is proposing additional study.

II. Background

Contractual Issues

There has been a considerable amount of research and work undertaken on the impact that the introduction of new gTLDs will have on various stakeholders, including consumers, trademark owners, existing registries and registrars. In addition to the economic studies commissioned by ICANN, much of the work undertaken on the 'overarching issues' have addressed the issues of



cybersquatting, malicious conduct and trademark related issues, such as defensive registrations, which are nominated by the GAC as areas of concern.

While acknowledging the GAC's assertion that the economic studies did not answer the Board's call in 2006 for economic studies, it must be noted that the Board's request of 2006, was associated with considering the renewal and amendment of *existing* gTLD contracts, such as .biz and .info, and not new gTLDs. These issues are:

- Should there be price caps for registration services?
- Are registrations in different TLDs substitutable?
- What are the effects of the switching costs involved in moving from one TLD to another?
- What is the effect of the market structure and pricing on new TLD entrants?

During the comment period of the first Draft Applicant Guidebook a number of issues were raised that focused on the costs associated with the introduction of new gTLDs, and the risks associated with:

- Trademark infringements,
- Protection of trademarks at top-level,
- Costs for defensive second-level registrations,
- Potential growth in malicious conduct, and
- Potential for user confusion

In an attempt to answer questions related to registry contractual issues, market structure questions and possible new costs and risks as identified by the Board and comments received on the first Draft Applicant Guidebook, a series of related studies of the domain name marketplace were undertaken, and subsequently released, namely:

- Preliminary Report of Dennis Carlton Regarding the Impact of New gTLDs on Consumer Welfare (March 2009)
- Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries (March 2009)
- Report Of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New GTLDs (May 2009)
- Comments on Michael Kende's Assessment of Preliminary Reports on Competition and Pricing (May 2009)

The studies identified potential costs associated with gTLD expansion, for example:

- Potential for user confusion,
- Imposing significant costs on trademark holders by forcing them to establish "defensive" registrations,
- Increased opportunity for malicious conduct, and
- Taxing the capabilities of the root zone,

and recommended that the gTLD implementation undertake actions in mitigation of those concerns. These actions include:



- Existing objection and dispute resolution procedures for:
 - Similar TLD applications causing user confusion
 - Misuse of community labels
 - Infringement of rights
- Introduction of additional rights protection mechanisms
- Measures to mitigate and reduce malicious conduct
- Root zone scaling study

The study also anticipated benefits with gTLD expansion:

- Removing artificial restrictions on the marketplace
- Increasing output, lowering prices and increasing innovation
- Increased, enhanced participation
- Expanded community representation
- Expanded regional participation through IDNs
- Clearer, easier brand identification: i.e., a brand no longer has to be “brand.com”

Finally, there were conclusions regarding price controls:

- Price caps or ceilings on prices charged by operators of new gTLD registries are not necessary.
- Trademark holders should be protected through alternate rights protection mechanisms.
- New gTLD registries that attempt to act opportunistically by subsequently raising prices face significant risk of harming their reputation and the loss of customers.
- The imposition of price caps for new gTLDs may inhibit the development and marketplace acceptance of new gTLDs.

III. Action Plan

Fulfillment of 2006 Board resolution:

- Consider analysis that has been done with respect to the 2006 Board resolution, to determine if additional action can be fruitfully taken.
- Augment the existing studies to map the findings to the questions posed by the Board.
- Seek positive closure on this issue with the Board and community.

Economic analysis of benefit vs. cost:

- Retain economists to review and summarize work to date, ideally putting that work into the context of the questions some have said remain open.
- With that work done, state that the question is answered from an ICANN viewpoint.

Public benefit of introducing new gTLDs:

- Assuming positive results of a feasibility assessment (understanding expected outcome, cost, and time), staff will initiate a new study on public benefit of new gTLDs. .



- The public benefit analysis will be a verification of the policy work. This approach will enable implementation work proceed while this additional study is being done.
- This is intended to be responsive to the community call for a new study.

Registry-Registrar Separation

I. Status quo

ICANN has not had a policy prohibiting gTLD registrars from applying for or operating registries. Historically, ICANN has permitted registry-registrar cross-ownership with structural separation requirements. Recent agreements entered with registry operators since 2005 have included prohibitions on acquiring more than a 15% interest in registrars.

Currently, there is not a prohibition on registries acting as resellers or using registrars as back-end registry service providers. Registrars currently provide back-end services for TLD registries.

Current practices have worked well in the context of a relatively static set of competitors on the registry and registrar side. It is expected that the numbers of registries using back-end registry service providers may grow substantially in the new gTLD environment. This isn't anticipated in current practices, and requires a reevaluation of structural separation in the new gTLD environment.

II. New gTLD implementation planning

Based on the requirement to reevaluate current structures, and at community request, ICANN commissioned an independent study that recommended a limited lifting of co-ownership restrictions. That and a set of face-to-face community meetings resulted in a model published in the initial Guidebook.

The registry constituency issued a report that opposed integration and sought to prohibit registrars from competing for back-end services. Two registrars published responses. As a result of the registry report, ICANN engaged another set of economists who recommend that, with caveats, all restrictions be removed.

The two economists were selected for their diversity of views – they are on opposite ends of the spectrum in antitrust thinking. It was thought that they would either: develop separate views for discussion; or, arrive at the same view, indicating a conclusion that would have broad “economist” support.

The anticipated changes in the market and the fact that no party is recommending an un-changed status quo requires ICANN to consider new options. There are four options to be considered:



- 1) No cross-ownership restrictions except where there is market power and/or registry price caps (regulation needs, if any, left to regulating authorities)
- 2) No cross-ownership restrictions for new registries, existing restrictions for existing registries (probably most disagreeable outcome to registries)
- 3) Limited lifting with enhanced structural separation:
 - a. The registrar cannot sell names in the co-owned registry, or
 - b. The registrar can sell a very limited number of names in the co-owned registry
While this approach may represent a reasonable transition strategy, economists indicate this removes the possible consumer advantages in efficiencies due to structural integration.
- 4) Complete restrictions:
 - a. Registries cannot have ownership percentage in registrars, and vice versa
 - b. Registrars prohibited from providing back-end services (this might be accompanied by reciprocal restrictions, i.e., that registries cannot provide back-end services for other registries and registries cannot own resellers).

The final position will take into consideration:

1. Registrar accreditation still required.
2. If an entity is abusing its market position to hinder competition, a relevant government competition authority should make that determination. ICANN has contractual authority, and governmental authority on competition issues is most appropriate.
3. Rules made should be enforceable, not easily circumvented. Rules to prevent “selling shelf space” or against owning resellers can be overcome through other forms of agreement or organization. Imposing co-ownership restrictions on registries with price caps would not necessarily prevent them from inserting themselves higher in the value chain and circumventing the effects of price caps.
4. While some risks are avoided through limited lifting of restrictions, the limitation also obviates most of the benefits.
5. ICANN might consider removing price controls on registries without market power in order to facilitate their entry to moving into the less regulated space.

With the current input:

- The incumbent registries generally advocate imposing new and tighter restrictions on the ability of registry operators to own registrars. Additionally, existing registries want to define back-end registry operation to be the same as a commercial registry operator. This restriction and interpretation would effectively limit registrars' ability to compete against registries' TLD and back-end services offerings. Registries argue that since they have been prevented from owning registrars they would be at a disadvantage if the restrictions



are not tightened since they have not established retail relationships with registrants. One of the risks identified is that registrars can leverage “shelf space” to gain back-end service market share.

- Registries argue that abuses can occur if a single entity holds the registry and customer (registrar) data.
- Economists are still at work, but so far have indicated (in the CRA report and at the Sydney workshop) that there are potential benefits to consumers from allowing cross-ownership, including lower prices and more innovation.
- Economists also indicate that separation does not fully meet registry concerns. Registrars can and will allocate shelf space through means other than agreement to provide back-end services: for cash payments or other forms of consideration. They also indicate that data abuses can be prevented through agreement.

Sources:

<http://www.icann.org/en/registries/agreements.htm>

<http://www.icann.org/en/registrars/accredited-list.html>

<http://www.icann.org/en/tlds/app-index.htm>

4. Balancing Competing Business Models

Such is the global reach of the Internet that varied business models will arise amongst different commercial parties, especially where the parties operate in different jurisdictions, in different markets and in varying spheres of economic development.

While noting that applicants would be allowed to scale their applications, so that an applicant that intends to compete with large top level domains and have millions of registrations would require infrastructure on a greater scale, while a registry that intends to address a small local community would need infrastructure on a lesser scale, the GAC seeks reassurances that the evaluation of the applicant's business model would be conducted on merit and not rely solely on corporate size and financial criteria.

RESPONSE

The balancing of competing business models is a fundamental principle that ICANN has applied in its implementation of the evaluation process. ICANN has avoided setting highly prescriptive technical or financial requirements precisely to enable consideration of applications representing a variety of applicant types, jurisdictions, and purposes, both commercial and non-commercial.



In accordance with the GNSO's policy recommendations, the evaluation process does evaluate whether the applicant has the technical, operational, and financial capability to run a TLD registry that will be secure and stable. In addition, successful applicants will have to pass pre-delegation tests to ensure that they have put in place operations that meet certain technical aspects of the evaluation criteria. The evaluation process takes into account such elements as the level of preparation shown by the applicant, level of resiliency in proposed systems, and consistency of technical, operational, and financial elements within the application. The current evaluation criteria contain no advantage for corporate size or financial strength beyond that required to meet the plans specified in the application.

5. Risk of End User Confusion

It will prove likely that the average Internet user will place greater emphasis on retaining the ease of navigation around the existing DNS. The DAG2 does not specifically address the issue of how the new gTLDs will integrate with the existing gTLDs. The GAC believes therefore that there is a need for more studies to be commissioned which assess the impacts of a radically changed new gTLD regime on end users. Such studies should focus in particular on the extent to which the expected proliferation of domains may cause confusion or may exacerbate the harms from the malicious conduct and criminal activity that consumers experience in the current marketplace, or whether a more measured rollout would be more beneficial and cause less consumer confusion. The GAC wishes to emphasize the point that such fact finding studies as these should have been conducted prior to the decision to introduce new gTLDs.

RESPONSE

There are several areas of the Draft Applicant Guidebook that address issues of potential confusion. One GNSO policy recommendation states that new gTLD strings must not be confusingly similar to an existing top-level domain. This recommendation is implemented through the work of the string evaluation panel that will compare each applied for string against every other string, existing and applied for, to determine if a likelihood of user confusion if both strings are delegated in the root zone. Their work will be abetted a string similarity algorithm, developed specifically for the new gTLD evaluation process at considerable expense. The algorithm, while not dispositive, will provide evidence of the degree of similarity.

In addition to this evaluation, parties with 'standing' may object to an applied for string as being so similar to an existing, or an applied for string, that user confusion will likely result. The confusion may result from visual, oral or semantic similarity.

Another policy recommendation states that strings must not infringe the existing legal rights of others. ICANN has made a significant investment to develop rights protection mechanisms (including the formation of an advisory panel, the Implementation Recommendation Team) so



that user confusion does not result in the misappropriation of trademarks. These potential mechanisms include the establishment of a Trademark Clearinghouse, rapid takedown procedure, a requirement for thick Whois data maintenance, and a post-delegation dispute mechanism. Consideration of these proposed mechanisms is now ongoing.

In addition to these new rights protection mechanisms, the Guidebook has always provided for an objection process where rights holders can object to applied for strings considered to violate their rights. Any rights holder has standing to object and these procedures and standards are well defined in the Guidebook.

Considerable study has been undertaken (both before and after the publication of the first Guidebook) to determine and mitigate the potential for end user confusion. Input to this study was received from a number of stakeholders on possible costs and risks associated with the introduction of new gTLDs, notably Anti Phishing Working Group (APWG), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking, financial, and Internet security communities. Studies by the APWG and RISG were published. ICANN also consulted with firms that advise national trademark offices to best understand how to address confusion issues.

Certain trademark owner input comment indicates that new TLDs will enable brand owners to establish user awareness about their TLD labels and that new TLDs will increase the use of search engines, rather than typing trial addresses in address bars thereby reducing the number of typos and resulting in fewer successful cybersquatting instances and phishing attacks.

It is acknowledged that some significant level of user confusion with domain names clearly exists at present, for example, the use of lookalike and similar domains are currently a significant factor in both phishing and fraud. ICANN views the introduction of new gTLDs as an opportunity to reduce this confusion by allowing e-commerce entities, as well as others, to operate their sites from a unique domain space which matches its brand and which is under their control. If, for example, authentic paypal sites ended only in .paypal - potentially the current risk of fraud or phishing using labels such as pay.pal.com or paypal.com or paypal.com.us would be reduced.

Steps taken to mitigate malicious conduct will continue. ICANN will explore the formation of a working group combining members within the security industry and ICANN community to help develop and assess solutions and specific implementations of proposed mitigation measures.

6. Administrative Resources



Consideration should also be given to the increase in the required administrative resources available to ICANN for the management of the DNS arising from the expected significant increase in domains, and whether other activities, such as contract compliance, will be impacted by the possible diversion of resources to processing new gTLD applications.

The GAC also notes that potential new registries will come from many countries in the world with different languages and cultures. ICANN will need to address the need for it to adjust as an organization to a more diverse Internet community with the likely appearance of contractors outside the United States working within different legal environments and legal systems.

RESPONSE

ICANN is currently identifying operational impacts on the organization from the introduction of new TLDs. ICANN departments and internal processes that may be impacted by the introduction of new TLDs will be reviewed and prioritized, to ensure that sufficient resources are available. A separate department will be established to oversee the processing/evaluation of applications, assisted by a number of evaluation panels. ICANN does not foresee any diversion of resources from existing functions due to the processing of new gTLD applications.

ICANN has recently added contractual compliance and legal staffing resources in the Asia / Pacific region, and intends to hire additional compliance staff prior to the delegation of new TLDs in the root. This is a small part of the scaling of ICANN staffing to be operationally ready to address the requirements for providing services for new TLDs. An operational readiness plan is being prepared to provide IANA, registry liaison, contractual compliance, finance and other services.

ICANN anticipates new registries will be added that are representative of the global Internet community. These registries will come from many countries worldwide, supporting a wide range of languages, cultures and scripts. ICANN is already adjusting by employing a diverse international staff in offices located in its offices located in Australia, Belgium and the United States, as well as in regional locations such as Egypt, Niger, Poland, France, the Netherlands, Switzerland, the Caribbean and Italy.

II. IMPLEMENTATION ISSUES

1. Level of Awareness among Stakeholders and the Business Community

ICANN should address the very low level of awareness of the proposed gTLD round amongst the business community, in particular amongst small and medium sized businesses, outside the Internet industry and the existing registry and registrar communities. The GAC recommends that



ICANN more actively promote the opportunity for business in the period prior to the launch of the first and subsequent gTLD rounds.

RESPONSE

As you are aware, ICANN has recently undertaken a number of outreach activities in New York, London, Hong Kong and Abu Dhabi. While the primary focus of these events was to discuss the work of the rights protection mechanisms, it was also an opportunity to inform a broader audience about ICANN and the introduction of new gTLDs. Further events are being planned for Latin America for later in the year. ICANN's Global Partnerships team has provided information at various events they have attended in their respective regions.

A comprehensive communications strategy has been developed that will be published as part of the implementation plan for new gTLDs, and ICANN would welcome assistance from GAC members in identifying avenues and options for outreach in their respective countries. A significant amount has been expended on this effort to date and the go-forward budget, leading to the delegation of new gTLDs is approximately \$2.7 million dollars.

2. gTLD Categories

The GAC proposes that ICANN should actively consider a more category-based approach to the introduction of new gTLDs. This could allow for different procedures for different types of TLDs, including non-commercial cultural, linguistic and regional gTLDs which would strengthen cultural diversity on the Internet, creation of local content, and freedom of expression. It would also potentially lessen consumer confusion and provide a structure for a more measured rollout of new gTLDs.

Furthermore the GAC believes that the structure of the gTLD application fee regime should reflect these different categories and the limited financial resources available to applicants for some of them. The GAC also feels that it would be logical and reasonable to apply existing policy principles and processes for ccTLDs (such as those policy provisions outlined in the GAC's ccTLD principles) to any top level domains intended to service a specific community within a specific national jurisdiction.

RESPONSE

Significant consideration has been given to the issue of the introducing category-based TLDs in the new gTLD process. The policy recommendations of the GNSO and the GAC principles have resulted in the creation of three gTLD categories or types:

- Community-based TLDs
- Geographic Name TLDs



- Everything else (called Open TLDs)

Similarly to the GAC, community comment suggests the creation of several TLD categories: for example, single-owner, country, intergovernmental organization, socio-cultural, community and open. Depending on the category, various accommodations are suggested; for example, no requirements for an ICANN contract, or to use accredited registrars, or to follow consensus policy, or policy provisions outlined in the GAC’s ccTLD principles. Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties.

The following table indicates some of the categories of TLDs and the accommodations proposed in some of the public comments:

***TLD
CATEGORIES
PROPOSED***

TYPE	Contract	Use of Registrars	Consensus Policy	May Be For-Profit	Fees	Restrictions	Name Blocked
Single-owner	Yes	No	Yes	Yes	Volume discounts	Restricted	Sometimes
Geographic	No	No	No	Yes	Voluntary	Open	Yes
I/O	Yes	Certain Cases	No	Yes	Normal	Open	Yes
Cultural	No	No	No	No	None	Restricted	No
Community	Yes	No	Yes	Yes	Normal	Restricted	No
Open	Yes	Yes	Yes	Yes	Normal	Open	No



The introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment. Additionally, there will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to maintain not-for-process status? These discussions and debates will take considerable time and resources and may ultimately not result in consensus.

Parsing fees among TLD categories is problematic at this time due to the uncertain number of applications and thus the current lack of clarity about the extent to which economies of scale can be realized in supporting new gTLDs operationally. It will be difficult to create different fee structures (application or annual fees) in this uncertain environment. Reductions in some application fees will result in increases to others. This is also true in the area of annual registry fees. The annual fee reduction made between the first and second version of the Draft Applicant Guidebook lowered fees to the extent possible given the unknown number of TLDs that will be delegated into the root zone. ICANN has always stated that the idea of fee categories and lower fees will be investigated after the first round and following removal of many of the contingencies and uncertainties.

Finally, the structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional gTLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures foreclose those future developments.

3. Geographic Names at the Top Level

The GAC has commented on the use of geographic names as gTLDs on various occasions. The GAC principles of 28 March 2007 emphasize that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities" (Article 2.2). In a letter dated 24 April 2009, the ICANN Board received input from the GAC regarding the issue of geographic names as new gTLDs. In this letter the GAC pointed out that the rights of relevant governments or



public authorities, as representatives of the sovereign state or territory, cannot be limited as such by ICANN or by any procedures introduced by ICANN for new gTLDs.

The GAC is of the opinion that the DAG2 is a substantial improvement on its predecessor, but that it does not yet fully reflect the GAC position that governments and other public authorities, as representatives of citizens of a sovereign state, territory, province or city, have a legitimate interest in the use of geographical names as new TLDs.

The GAC therefore proposes the following amendments to be incorporated in version 3 of the Draft Applicant Guidebook (further in the text - DAG3):

i. Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space

These strings represent countries or territories and the principle of sovereignty must apply. TLDs in this category should therefore be treated in the same way as ccTLDs.

The use of exhaustive listings (e.g. ISO 3166-1) will not cover all the ccTLD-like applications envisaged by the GAC and ccNSO, in particular in the following categories:

'Commonly referred to as' type strings representing a country or territory but which are not official titles, e.g. .america, .ceylon, .holland;

Common or general names that are often applied to more than one country, e.g: .guinea

RESPONSE

While understanding the sentiment that a country name TLD should be treated as a ccTLD, ICANN policy constrains the way in which it is possible to provide country name TLDs to all countries and territories is under the new gTLD program at this time.¹ The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. Applications for country and territory names will require evidence of support or non-objection from the relevant government or public authority which is consistent with GAC principle 2.2.², and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought.

¹ Meaningful representations of country or territory names in non-Latin scripts will be available under the IDN Fast Track process but country and territory names in Latin scripts are available in the gTLD program only, until the ccTLD policy development is complete.

² ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities



Safeguards have been developed to ensure that the relevant government or public authority's sovereign rights are respected, and that the process is understood. It is ultimately the government or public authority's discretion whether to support, or not support, an application for a country name TLD, and the circumstances under which they would be willing to do so.

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "... revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition, provided in a [Geographical Names](#) excerpt of the guidebook posted on 30 May 2009, continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. While the revised criteria may have resulted in some changes to what names are afforded protection, it has not changed the original intent to protect all names listed on the ISO 3166-1 list, including the short or long form of the name. It is felt that the sovereign rights of governments continue to be adequately protected as the definition is based on a list developed and maintained by an international organisation.

In the context of the revised definition, the name America is afforded protection, while the names Ceylon and Holland are not. However, the objection process does provide a secondary avenue of recourse. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. With regard to the names .Guinea and .Guinea-Bissau; only the relevant government or public authority for the respective countries can agree to support, or not-object, to the use of their respective names.

ii. gTLDs using strings with geographic names other than country names or territories (so called geoTLDs) should follow specific rules of procedure

The Draft Applicant Guidebook already provides for specific rules of procedure, such as the creation of a Geographic Names Panel or the requirement that an applicant for a geoTLD must document the government's or public authority's support for, or non-objection to, the applicant's application, and must demonstrate the government's or public authority's understanding of the string being requested and its intended use.



However, the gTLD regime as proposed in DAG2 implies that the active involvement of public authorities would be limited to the application and evaluation phase of the new gTLD process. However, the GAC is of the view that the principles of subsidiarity should also apply after delegation. An approval or non-objection from the relevant government or public authority could for example be based on certain obligations on a gTLD registry for which the registry is held accountable (which may include direct legally binding agreement under contract with the relevant public authority). In such cases there could be a need for procedures that allow the relevant governments or public authorities to initiate a re-delegation process, perhaps because of infringement of competition legislation, misuse or breach of contract, or breach of the terms of approval/non-objection.

Furthermore, in cases of a change in the ownership structure of a geoTLD, ICANN should establish a new process of approval or non-objection for that geoTLD by the relevant public authority. The GAC will provide input in this regard in the near future.

RESPONSE

There is nothing to prevent a Government or public authority conditioning the granting of their approval of TLD requests to the TLD operator and so can influence policy making in a manner appropriate and acceptable to the government or public authority for that TLD. In addition, if the geographic name gTLD designates itself as a community TLD it will have restrictions in its agreement consistent with the restrictions associated with its community-based designation. If the TLD strays from those obligations to represent the community (through registration restrictions, for example), the government can lodge an objection and the decision maker can order the registry to comply with the restrictions in the agreement or face sanctions). To ensure this path is available, the government could condition its approval of the TLD application upon the TLD identifying itself as community TLD so that the government could lodge an objection if the registry operator does not live up to its obligations.

The ICANN gTLD Registry Continuity Plan was developed to transition a TLD to a successor operator in the event that a registry or sponsor is unable to execute critical registry functions, and continue the operation of a TLD in the longer term. This plan will be amended in light of the new gTLD process and, in the case of geographical names as defined in the limited manner by this process, will require the approval of the relevant government or public authority.

4. Objection Procedures and Costs

The GAC considers that the dispute resolution process appears to have the potential to be extremely complex and protracted. The GAC also believes that the cost of pursuing disputes may well prove to be a barrier to legitimate objections by interested parties.



The GAC notes the importance of sensitivities with regard to terms with national, cultural, geographic, and religious significance. The GAC has serious concerns about the practical modalities for addressing objections on these grounds, including ICANN's proposal to establish a panel of three judicial experts which may not fully take account of cultural and other national and differences in legal interpretation as to what is morally offensive or threatening to public order.

Specifically the GAC believes that there is a need for more work to be done regarding the costs and the ability to object, noting that public interest groups may wish to object but may be unable to do so due to the costs involved. The GAC will deliberate further on alternative solutions with respect to how best to deal with applications for new gTLDs that may be considered morally offensive or threatening to public order.

DAG2 appears to require governments to follow the same procedures and pay the same costs as other objectors. In situations where a government or public authority objects to a particular application on the grounds of public policy however, it would be inappropriate for ICANN to require the said public body to incur the costs or subject itself to the limitations associated with a formal objection process primarily designed for non-governmental stakeholders. Moreover, where the government or public authority is a member of the GAC, the ICANN By-laws already provide a more appropriate mechanism for the GAC to provide advice directly to the Board on issues of public policy.

The GAC notes that the public comment section associated with each application may well provide one avenue for governments wishing to make representations should they chose to use it. The proposed Independent Objector might also consider representations from governments at no cost to them. The GAC would therefore invite the ICANN Board to include these existing and potentially new provisions in the procedures foreseen for the DAG3.

The GAC would also point out that in many cases governments might already have to bear the costs associated with industry stakeholder and cross-government consultation, and increase their monitoring of the application process more generally just to make sure they are aware of issues raised by applications for new gTLDs.

RESPONSE

With regard to the issues raised regarding procedure and cost, the New gTLD Dispute Resolution Procedure (the "Procedure") was designed to be a well, defined, smooth procedure. The procedures can be found at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedure-18feb09-en.pdf> and are summarized in Module 3 of the Guidebook. The Procedure includes provisions that are specifically aimed at reducing complexity and avoiding protracted proceedings, such as:

- Electronic filings (Article 6(a));



- Limits upon the length of written submissions (Articles 8(b) & 11(e));
- Short time limits for submissions and other steps in the procedure (Articles 7(a), 7(e), 9(a), 10(a), 11(b), 13(a), 17(b), & 21(a));
- Consolidation of objections (Article 12);
- Strict limits upon document production (Article 18); and
- Strict limits upon hearings (Article 19).

ICANN would welcome specific suggestions for improving the Procedure. However, the benefits that may be derived from further reducing the complexity and duration of the proceedings must be balanced against the panel's duty to ensure that the parties are treated with equality and that each party is given a reasonable opportunity to present its position (Procedure, Article 4(e)).

It is foreseen that morality and public order objections will be heard and decided by panels of experts who are eminent jurists of international reputation. The panels will comprise three experts, in order to ensure that diverse backgrounds and perspectives are present in the Panel. See Procedure, Article 13(b)(iii). Such proceedings will necessarily involve a certain level of costs, for example, to cover the time and costs associated with engaging the eminent jurists who serve on the panel.

It is difficult to predict with accuracy whether the costs of the objection procedure will prove to be a barrier to legitimate objections; however, it is felt that the existence of a fee to lodge an objection is necessary as a deterrent to frivolous objections. Interested parties may pool their resources to finance an objection that they consider to be legitimate and important. The rule that the prevailing party will be fully reimbursed for the filing fee and advance payment of costs that it paid (Article 14(e)) is intended to lessen the financial burden upon parties that file a well-founded objection. Finally, it should be recalled that the Independent Objector may also file an objection where, for various reasons (including cost), no other objection had been filed.

Considerable legal research was undertaken which examined the rules of public policy, as they apply to freedom of speech and encompassed the treatment of names of that may have national, cultural, geographic and religious sensitivities in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. The possibility of objecting to an applied-for gTLD on the grounds of morality and public order is derived from the GNSO's Recommendation No. 6, which states, in part, that "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law." Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order



objection should be based upon norms that are widely accepted in the international community. It is felt that a rule that did not require wide acceptance would facilitate pressure to align the standards with those imposed by the most repressive regimes. In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

ICANN considers that a rule-based dispute resolution procedure, leading to a reasoned expert determination (that will normally be published) by three jurists of international renown, is an appropriate method of addressing and resolving disputes arising from objections based upon morality or public order. Indeed, no viable alternative has been suggested.

The Draft Applicant Guidebook does require governments to follow the same procedures and to pay the same costs as other objectors; however, it must be emphasised that the process has been developed to provide more than one avenue for governments, or anyone else, to raise concerns about an application. It has become quite common for governments and other public entities to participate in international dispute resolution proceedings with private parties (e.g., arbitration and other alternative dispute resolution procedures). For example, international arbitration is generally stipulated for the resolution of disputes between States and private investors under bilateral investment treaties (BITs). Such arbitrations may be conducted under rules such as those of the International Centre for the Settlement of Investment Disputes (ICSID), the United Nations Commission on International Trade Law (UNCITRAL) or the International Chamber of Commerce (ICC). Recent years have seen a great increase in the conclusion of BITs. The United Nations Conference on Trade and Development (UNCTAD) has reported that the number of BITs increased dramatically in the 1990s, from 385 in 1989 to a total of 2,265 in 2003, involving 176 countries.³ The total reached 2,676 by the end of 2008.⁴

Governments that are members of the GAC have a mechanism to provide advice to ICANN's Board, in accordance with ICANN's Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld.

³ Source: http://www.unctadxi.org/templates/Page____1007.aspx (last visited 25 August 2009).

⁴ *Recent Developments in International Investment Agreements (2008–June 2009)*, p. 2, IIA Monitor No. 3 (2009), (United Nations, New York and Geneva, 2009). Available at: <http://www.unctad.org/Templates/Startpage.asp?intItemID=2310> (last visited 25 August 2009).



Finally, it should be recalled again in this context that the Independent Objector may file an objection against an applied-for gTLD in cases where governments (and others) choose not to do so. The Independent Objector will be entitled to take into account comments made by any person or entity (including, of course, governments) when deciding whether to file an objection.

5. Application Process

The GAC understands that ICANN intends to hold annual application rounds and those would be announced at the same time as the current round. However, the GAC is of the view that there is a need for clarity on how often the application process for gTLDs will be run, for how long it will remain open and whether there will be a limit on the number of gTLDs released in each round. There is also a question as to whether translation services will be provided as internationalized gTLDs are introduced. The GAC understands that ICANN will set up a separate organization overseen by a director to process applications.

The GAC seeks clarification on how ICANN will promote the new gTLD round so that affected parties are aware of their rights to object.

RESPONSE

As described in the Draft Applicant Guidebook, ICANN's goal is for subsequent application rounds to begin within one year of the close of the application submission period for the initial round. ICANN anticipates being able to announce future rounds soon after launching the program. ICANN anticipates potential changes to the process based on experiences gained, and is not prepared to announce exact timing at this stage. Regarding how long application processes will remain open, it is anticipated that an application submission period will be approximately 60-90 days. There is not currently expected to be a limit on the number of gTLDs approved in each application round.

Regarding translation services, draft Applicant Guidebook materials have been published in six languages, and ICANN expects to continue making program materials available in multiple languages. While the applications are required to be submitted in English, ICANN has allowed for supporting documents (for example, proof of legal establishment, financial statements) to be submitted in the original language, with any resulting translation needs being covered by ICANN. In addition, ICANN will continue its organization-wide initiative for translation and interpretation to support global engagement. It is certainly expected that the new gTLD program communications will be a key part of this effort.

ICANN has established a separate function within the organization to handle the processing of applications. It is not a separate organization.



6. Application Fee and Surpluses

A single fee structure creates limitations, notably by skewing the market in favor of applications from the developed world and those with significant financial resources. The GAC notes that ICANN had stated in its briefings that it was difficult to forecast costs accurately enough to offer different tiers of pricing, including discounts for community-based TLDs. However, the GAC believes that experience gained in the initial round would inform decisions on fee levels, and the scope for discounts and subsidies in subsequent application rounds.

The GAC is of the view that clarification is urgently needed to explain the level of the fee for a single application and the costs on which it was based, including historic and legal liability costs. The GAC notes that where governments are involved, as, for example, sponsors of community-based applications, legal liability costs might be less.

The GAC understands that ICANN will set up a separate organization to process applications which would not be heavily staffed and thus not expensive to run. If this is the case, it should allow ICANN to lower the costs or to provide for a more tiered pricing system.

The GAC expects that the gTLD round may well generate substantial surpluses and is of the view that ICANN should make clear how it would use such surpluses. As noted in previous GAC comments, community consensus should be sought on appropriate uses for any surplus revenues.

RESPONSE

As the GAC suggests and as ICANN has stated several times, the experience gained from the initial round of applications will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds. ICANN has always stated that the idea of fee categories and lower fees will be investigated after the first round and following removal of many of the contingencies and uncertainties.

The fees are revenue neutral.

With regard to the GAC view that clarification is urgently needed to explain the level of the fee for a single application and the costs on which it is based, a detailed explanation of the application fee derivation is provided in the Cost Considerations of the new gTLD Program paper <http://www.icann.org/en/topics/new-gtlds/cost-considerations-23oct08-en.pdf> that was posted on 23 October 2008. The fee of \$185,000 is based on a detailed cost estimation process which contains three elements: costs for developing the new gTLD process (based on historical costs of previous rounds), readily identifiable costs of evaluating and processing an application, and the more uncertain/difficult to estimate elements of the application and delegation process.



The evaluation fee was based on detailed analyses of specific tasks and steps needed to perform the evaluation. ICANN has taken a detailed and thorough approach to estimating program development costs, process and risk costs associated with this new program, and consistently used a set of principles in applying the estimation methodology. The results have been tested with sensitivity and other analysis, and appropriate expertise has been retained and applied.

The costs of the program have recently been re-evaluated and the results of the re-evaluation and the supporting data will be posted with the next version of the Applicant Guidebook.

Although the evaluation fee of \$185,000 may be burdensome for certain organizations that are considering applying for a new gTLD, the evaluation fee was developed based upon a policy of revenue-cost neutrality, conservatism, and a detailed cost estimating exercise. The impact on a specific applicant or a class of applicant, by policy, is not a factor in the development of the evaluation fee. While it is acknowledged that some applications may have lower processing costs than others, and the costs associated with evaluating applications may vary, it is difficult, if not impossible, to determine which applications will require more or less resources. The application fee is based upon the estimated average cost of all applications based upon principles of fairness and conservatism.

In the event that there is a surplus from the new gTLD application round, the excess funds will not be used for ICANN's general operations. They will be disposed of in a manner consistent with the community's feedback and the policy recommendations. ICANN's multi-stakeholder model for decision making will be employed to ensure that all decisions regarding the underlying guiding principles, amounts, recipients, timing and manner of disposition of surplus funds, if any, will be handled in accordance with the communities' wishes.

To conclude, I hope you found this information useful and clear. Please contact my office with follow-up that the GAC might have and I will ensure that those questions are addressed. We look forward to comments of the GAC to the Guidebook excerpts and associated material published at <http://www.icann.org/en/announcements/announcement-2-31may09-en.htm> and to the third version of the Guidebook that will be published prior to the Seoul meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter Thrush", is written over a light blue circular stamp.

Peter Dengate Thrush
Chairman of the Board

EXHIBIT C-008

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

1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce (“DOC”) and the Internet Corporation for Assigned Names and Numbers (“ICANN”), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (DNS)¹, globally by a private sector led organization, the parties agree as follows:
2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the DNS - is required to ensure interoperability.
3. This document affirms key commitments by DOC and ICANN, including commitments to: (a) ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the DNS; (c) promote competition, consumer trust, and consumer choice in the DNS marketplace; and (d) facilitate international participation in DNS technical coordination.
4. DOC affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for DNS technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. ICANN and DOC recognize that there is a group of participants that engage in ICANN's processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, ICANN commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the DNS.
5. DOC recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by DOC of any specific plan or proposal for the implementation of

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

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

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

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

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

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

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

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

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

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

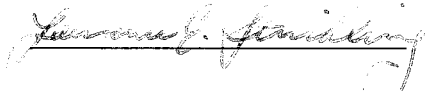
9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns,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

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

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

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

FOR THE NATIONAL
TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION:



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

Date: September 30, 2009

FOR THE INTERNET CORPORATION
FOR ASSIGNED NAMES AND
NUMBERS:



Name: Rod Beckstrom
Title: President and CEO

Date: September 30, 2009

EXHIBIT C-009

NEW gTLD Program

SUMMARY REPORT AND ANALYSIS OF PUBLIC COMMENT – Applicant Guidebook Excerpts and Explanatory Memoranda



EXECUTIVE SUMMARY

As the launch of the process for delegating new gTLDs nears, ICANN continues to solicit and consider public comment in order to hone the implementation plan. Most recently, amendments were published to several sections of the Applicant Guidebook – the instruction manual for gTLD applicants. These amendments were published for comment.

This document summarises these comments and is intended to provide an indication of the analysis and balancing that occurred when determining how the suggestions could best be incorporated into the Guidebook. Each comment was carefully read, considered and analyzed for how the ideas expressed might appear in the evaluation process.

There were fewer comments in this iteration of the Guidebook for two reasons. One, comments were focused on specific excerpts of the Guidebook, and two, there were fewer changes this time as some issues are settling and some issues were addressed in different comment fora (e.g., the trademark issues) had a separate comment section. Nonetheless, most comments are well-thought through and merit full attention.

Sources

Public Comments Postings (31 May to 20 July 2009). Links to the full text of these postings (for Modules 2-5) may be found at <http://www.icann.org/en/topics/new-gtlds/comments-e-en.htm>.

GENERAL CONCERNS/OTHER

I. Key Points

- ICANN’s launch of new gTLDs targets the narrowly tailored ICANN mission to: ensure DNS stability and security; encourage competition and choice for consumers; expand regional participation in the DNS; and facilitate the multi-stakeholder policy development model.
- The new gTLD implementation strives to meet each of the GNSO policy recommendations, recognizing that each is targeted at meeting the elements of ICANN’s mission statement described above.

II. Comment Summary

New gTLD Program: process, GNSO and staff role

The “Analysis and Proposed Position” sections of the May 31-posted Analysis of new gTLD Public Comments do not adequately address the real concerns raised in the comments. ICANN points back to the “GNSO Council” vote that happened ages ago, as though it still has any validity. Real consensus can only be formed if it was the GNSO itself that would create future guidebooks via a PDP process workgroup-style system, one open to all stakeholders. The staff-created and staff-centric approach is not working; it is elevating the role of staff compared to the level of the public and is top-down instead of bottom up. G. Kirikos (31 May 2009).

Business owners—cost, timing, and business development concerns

How accessible will the gTLD process be for business owners and potential business owners? Is there any actual dollar amount that has been considered for the cost of a gTLD? When is the tentative date that this process will be operational? How is ICANN going to prevent and distinguish between domain squatters and businesses with legitimate business models in place to purchase a gTLD and build a business around it? The need to limit domain squatters is understandable but there is also limitless potential to build businesses around these new domains. J. Springer (19 June 2009).

Rationale for new gTLDs; support for expansion plan, but more clarity needed

ICANN’s reasoning for opening new gTLDs is not convincing and not clear, and there is skepticism from many in the Internet communities. It is agreed that there should be a plan for expansion. ICANN should not be event driven (reacting only to what is being proposed). How frequently ICANN opens new rounds of new gTLDs is not clear (i.e., is it only based on requests by the private sector). It is also not clear how end users’ opinions are being considered. A. Al-Zoman (19 July 2009).

Need to address impact of new gTLDs on countries and communities

ICANN’s proposal does not adequately address the social, economic and technical impacts of new gTLDs on countries and communities, or the interest of Internet users and the entire Internet. Instead ICANN is focused on the number and size of the new domain names. ICANN’s proposal lacks: a comprehensive analysis of economic and competition impacts; business awareness; and an analysis of the risk of end user confusion and/or harm. A. Al-Zoman (19 July 2009).

New gTLDs are not generic any more

New gTLDs should be only for generic names and should not include names—e.g., geographic, community, language, country, brand, etc.) A. Al-Zoman (19 July 2009).

Social/linguistic/cultural and public authority-sponsored TLDs

ICANN should give consideration to the specific need for non-commercial categories of TLDs including social, linguistic and cultural TLDs, and public authority-sponsored TLDs, including appropriate application procedures and financial arrangements, taking into account non-profit operation and developmental objectives. *A. Al-Zoman (19 July 2009).*

End user trust and confidence

With so many gTLDs in the market, users will lose their faith in the DNS (many similar labels (2nd LDs) with multiple (10s or 100s) TLDs). *A. Al-Zoman (19 July 2009).*

Process-language barrier

The whole process, including consultations, documentations, forms, communications, people involved) is done in English. Non-English speaking communities would be left behind because of the language barrier. For example, there is a process for English TLDs different from “other” languages’ TLDs; there is a need for a linguistic committee to approve IDN TLDs but it is not needed for English TLDs. ICANN, as an international body, should treat all languages equally, regardless of the location of ICANN’s headquarters. The current technical limitation of the DNS (i.e., ASCII based system) should not deter the support of the “other” languages on an equal footing. *A. Al-Zoman (19 July 2009).*

Need to define top level domain

ICANN needs to define what is a top-level domain in order to avoid useless squandering of time and financial resources of ICANN reviewers, staff and those of new TLD applicants, and to avoid needless bogging down of the process based on string confusion, misappropriation of community and infringement on the rights of others. The definition should be “the apex of a well-defined human activity, a community or a sector.” The key word in that definition is “apex,” which directly equates to the word “top” of “top-level domain.” This area was well-addressed in the new TLD application process used in the last round of introductions of new TLDs, but is missing from the current DAG and this omission needs to be rectified. Going forward, ICANN staff cannot discard or overlook the core principles used before in adding new TLDs unless it intends to unilaterally abandon the logical expansion of the domain name space that the ICANN community has worked so long and hard to establish from the outset of ICANN’s existence. This would be tantamount to abandoning the bottom up principles upon which ICANN was founded and stands today. Without this critical definition ICANN would open the door to a proliferation of TLDs that would be miniature sub-segments of apex TLDs (e.g., a .nyc as well as a .brooklyn, .bronx, etc.), leading to user confusion at best and without doubt challenges from apex TLDs, unnecessary registrations and pernicious compliance issues.

This issue can be addressed and clarified in the definition of “confusingly similar strings.” The current definition should be expanded beyond the semantic equivalence to also address the diminution of a TLD. This will not only address user confusion but also stop the loss of valuable resources that will be wasted on a myriad of objections that could have been avoided from the start. This issue is in the interest of all stakeholders in the new TLD process, especially trademark holders, those with responsibility for Internet security and stability, ICANN compliance staff and most importantly Internet users now and in the future. *R. Andruff (21 July 2009).*

Material misrepresentations—ICANN audits of registries

COA called for changes to the draft registry contract in its April 2009 comments to ICANN to ensure that ICANN has full authority to audit registries for material misrepresentations made in the application and for material statements that are no longer true, regardless of whether these

representations concern the relationship to a defined community. COA urges ICANN to respond substantively to this concern. *COA (20 July 2009)*.

Government and community concerns

The new gTLD program does not yet respond to all the concerns that governments have. With the new program ICANN is involving itself in an area beyond its mandate. By allowing itself to set some policies to harmonize the whole (Internet) it is intervening indirectly in world cultural issues and worse, is breaching local community harmonies. If local community/country cultural concerns are not treated sensitively, the right for a new gTLD may ignite a civil war in that local community. Local communities cannot depend on objection mechanisms to avoid such a catastrophe. The new gTLD program has a serious deficiency regarding the protection of values that are safeguarded by communities, countries, nations and governments since ancient times (e.g., geographic names, religion values, morality and public order, social security, local trade names/marks, etc.) *A. Al-Zoman (19 July 2009)*.

III. Analysis

Since it was founded in 1998, one of ICANN's key mandates has been to create competition in the domain name market, "The new corporation ultimately should ... oversee policy for determining the circumstances under which new TLDs are added to the root system." The secure introduction of new gTLDs, as specified in the White Paper, remains an essential element in fostering competition and choice for Internet users in the provision of domain registration services.

The introduction of new gTLDs is identified as a core objective in each of MoUs (1998 – present) and the Joint Project Agreement: "Define and implement a predictable strategy for selecting new TLDs." The study and planning stages, extending back several years include two trial rounds of top-level domain applications held in 2000 and 2003. Experiences from those rounds have been used to shape the current process.

The policy recommendations to guide the introduction of new gTLDs were created by the Generic Names Supporting Organization (GNSO) over a two-year effort through its bottom-up, multi-stakeholder policy development process. The GNSO approved its Final Report on the Introduction of New Top Level Domains in September 2007 by a 19-1-3 vote, a clear supermajority under the ICANN Bylaws.

Principles guiding the policy development process included that:

- new gTLDs will benefit registrant choice and competition;
- the implementation plan should also allow for IDNs at the top level;
- the introduction of new gTLDs should not cause security or stability issues; and
- protection of various appropriate interests requires objection and dispute resolution processes.

This summarization of comments and the analyses are intended to meet the goals raised in the general concerns above and in the specific issues described below.

IDN

I. Key Points

- The topic of management of variant strings and the minimum number of characters in a gTLD string remains under discussion.
 - The proposed reservation of variant TLDs until a delegation function exists that ensures aliased functionality is urged not to apply to gTLD strings in CJK scripts.
 - The proposed required minimum of 3 characters in a gTLD string is considered based on mistaken arguments and requested to be relaxed to allow for shorter strings, in particular for CJK strings.

II. Summary of Comments

IDN variants

JET urges ICANN to implement TLDs with IDN variants, at least for the Chinese, Japanese and Korean strings, according to RFC 3743. Implementation of IDN variants is of utmost importance to these communities as variants are often used interchangeably, similar although not the same, as uppercase and lowercase characters in English. Not implementing RFC 3743 would result in registrants having to pay multiple times for the “same” domain name. *JET (20 July 2009)*.

CJK Languages: mistaken arguments in support of 3-character string requirement

The explanatory memorandum on the 3-character string requirement has a series of mistaken arguments in support of requiring 3 “distinct characters” for each gTLD string.

- **First**, the memorandum’s discussion of “fairness of treatment” between CJK based languages and other languages is false. Proposing “equal treatment” in terms of uncomparable measurements is grossly unfair. In any non-ideographic language, there are very few words composed of just 2 characters. By contrast, most words in CJK expressing a generally understood concept are composed of just two ideographs and at least 1,000 often-used Chinese and Japanese words are just one character. In Korean, words appear to a Westerner as one or two characters but in reality these are syllable blocks composed of multiple Jamo characters.
- **Second**, the memorandum is false in arguing in favor of requiring three-character strings by stating that few Chinese characters are words, or that most Chinese words consist of more than one character. The overwhelming majority of words one can find in a Chinese, Japanese or Korean dictionary are composed of what appears as one or two “distinct characters” to a Westerner but which are actually “compound words,” – i.e., combinations of full words. It is impossible to see how one could justify imposition of a Western-style “abbreviation” by requiring more characters than the full word!
- **Third**, with regard to the memorandum’s discussion of the suggestion that ICANN perform a trial implementation of a certain small number of gTLDs with less than 3 characters to inform the development of a process for allocating such strings more widely, there are no stability issues to address with such a trial, and requiring such a trial would be a deliberate and malevolent act of discrimination.
- **Fourth**, the memorandum’s statements about issues related to the lack of a model for “translating” TLDs (e.g., two letter ISOs cannot be translated meaningfully into IDN strings of less than 3 characters) are misguided. There is no reason why IDN TLDs should be “translations” of Western (or any other) expressions, and there is no need for them to be

“abbreviations” in the Western sense. In addition, language-to-language translations of TLDs tend to be either hilarious or confusing. A generalized translation-based approach to TLDs is utterly impossible.

- **Fifth**, the concerns cited in the memorandum that delegation of single and two-character labels now might jeopardize the future shape of the ccTLD delegation mechanism do not exist. Mapping codes to names is a compilation effort, not standardization, as the country names exist independently of the standards or documentation authority. The compilation effort is already protected in the gTLD process as country names may only be used with the approval of the relevant government. As a result, there is no imaginable standardization or compilation effort whatsoever that could possibly be “jeopardized” by allowing 2-character or 1-character ideographic gTLDs.

The proper way forward is to adapt the Draft Applicant Guidebook. One solution is to make the minimum length dependent on script. ICANN should also allow the respective language communities to request a minimum string length based on considerations specific to the underlying languages or script. *W. Staub (9 June 2009)*.

CJK three characters problem

The policy of three or more visually distinct letters or characters is not practical for Chinese, Japanese and Korean. With respect to the discussion in the explanatory memorandum, JET points out the following: (1) On “fairness of treatment” ICANN cannot rely on “character counting” for fairness. It is not unusual to find Chinese or Japanese translation of an English text shorter by a magnitude of 3 times or more by character counts. (2) The statement that “few Chinese characters are words” is wrong. Every well-formed Chinese character, on its own, has a meaning. (3) Regarding the “ICANN ccTLD delegation function,” JET agrees that there is a certain elegance in a simple rule (like reserving two characters for ccTLDs allowing one to immediately identify the type of TLD it is from the string). However, this rule may not be feasible in IDN ccTLDs in the long run (an example given is Singapore in Chinese). In addition, the ccTLD Fast Track Draft Implementation Plan has no restriction that IDN ccTLDs be two characters only. JET is also unaware of any intention from the Maintenance Agency for ISO 3166 country codes to expand the list beyond ASCII character codes. Therefore the three character legacy rule should not be applied to IDN. *JET (20 July 2009)*.

“Fairness of treatment” in CNNIC’s view is to enable every person on the globe to have access to the Internet, regardless of race or language. Given the dominance of ASCII characters on the Internet, it is high time to give the fairness treatment to IDNs. The statement that “few Chinese characters are words, most Chinese words are two or more characters” appears to be a misnomer. Each single Chinese character is a word and in some cases can possess multiple meanings. The presence of a second character is then used to clarify this meaning. In fact it is very hard to find a 3 character word in Chinese; this usually exists as “borrowed” words (i.e., translated phonetic pronunciation of an English term). In the East Asian community it is agreed that the 3-character limitation will exclude most meaningful words as a TLD string. This is why CNNIC is repeatedly raising this issue and appealing for the lift of this limitation. *CNNIC (21 July 2009)*.

Community consultation—IDN TLD and removal of three character limitation

Removing the 3 character limitation would be a major policy decision. ICANN should carefully consult with the relevant communities regarding these IDN TLD issues. *JET (20 July 2009)*.

Three-character new gTLD rule questioned

Is it correct that the current position with regard to the new gTLDs is that two character new gTLDs are not allowed (.bp, .bt, .hp, etc.) although ICANN has been presented with counter arguments as to why these rules should be relaxed? *R. White (23 June 2009)*.

III. Analysis and Proposed Position

There have been broad community discussions and opinions on the topics of variant TLD management and allowable number of characters in a gTLD string. These discussions have taken place both online at the designated public comment forum, as summarized above, and in several meetings throughout the ICANN meeting in Sydney. Those discussions indicated that requiring gTLD strings to be three or more characters would hobble the utility of new TLDs in certain languages (such as Chinese, Japanese and Korean) where complete words are routinely expressed in one or two characters. The current position in the Guidebook requires that TLD strings be at least three characters long. This has been interpreted as a requirement for both the A-label, as well as the U-label. The reason for this rule in the past has been to avoid confusion with country code labels. Country code labels are and have been limited to two-character ASCII strings.

Before developing a mechanism for determining which two-letter IDN labels might be delegated, two threshold questions (and some associated issues) must be answered. What is the possibility that a two-letter non-Latin label would be so similar to an ASCII TLD that user confusion would result? What is the possibility and timing that the ISO list will be expanded to include non-Latin scripts?

Preliminary discussions indicate a low possibility that two-letter non-Latin labels would be confused with existing or anticipated ASCII country code labels. Therefore, clear, fair rules for delegating certain two-character labels as gTLDs must in some way avoid confusion by only allowing those scripts that will never result in confusion.

Regarding the second question, there have been many discussions about expanding the ISO lists of country names to possibly include country code names that will be delegated in the Fast Track process, as well as expanding the character set beyond English into other languages. From those discussions it appears that such a process would take many years. Therefore, rules are being developed that comply with the policy work of the GNSO and the IDNC working group and also allow, under certain conditions, the delegation of two-character names in the gTLD name space.

The topic was also discussed during the ICANN Board meeting in Sydney (see <http://syd.icann.org/node/3782> for details) and it was decided that ICANN should form a small working group to discuss these two topics and provide the community with their recommendation in time for the ICANN meeting in Korea (25-30 October 2009).

Discussions on possible methods of managing variants at the top-level indicated that restricting variants from being delegated in the DNS root zone might disfranchise certain regions that otherwise would benefit greatly from the introduction of IDN TLDs.

Delegating variant TLDs in the root zone without a mechanism for ensuring that the TLDs are treated in a method that guarantees a good user experience is a stability concern related to confusability for end-users. This can be compared to the “companyname.com” situation, where two domain names (one with all Latin characters and the other with mixed Latin and Cyrillic) look identical, but were different technically. Users clicked on the “wrong” address leading to a

site different than expected. This activity resulted in a change in the IDN Guidelines, requiring that scripts not be mixed in domain names unless there is a linguistic reason for doing so (i.e., in the case of Japanese that is represented by mixing of four scripts). This is also a requirement for TLDs, but does not solve the variant issue.

At the same time, disallowing or blocking variant TLDs means that some users will have a very difficult time using the IDN TLDs. In some cases it is not possible for the user to know which character he or she is typing. Some keyboards will offer one or another variant character but not both. In this way, without the variant TLDs in the root, communities may be getting error messages when attempting to reach, for example, a web address with a domain name under one of these IDN TLDs. This is not the intent IDN deployment. Rather, the objective is to help all communities have equal access to the Internet.

Not all variants are visually confusing. To maximize benefit, ICANN attempted to define variants in a narrow manner, only including variants that are visually confusing. The intent was allow variant TLDs be delegated in the DNS root zone that are not confusing with others while a stable solution was found to address the variants that are similar.

At this time though, it is an open question whether stability issues include variant TLDs that look different, and are typed differently, but are used interchangeably for the same term by the users.

Another open question is the content of an agreement between the IDN TLD operator and ICANN requiring that registrations under the two variant TLDs be handled (say, in a bundled or aliased manner, following RFC3747, or a different technical solution) in a certain manner.

Finally, there is the question of whether it is necessary to enforce rules required for the development of IDN Tables. IDN Tables hold information about the characters that should be treated as variants. The TLD operators develop IDN tables. Presently, TLD operators are urged to consider linguistic and writing system issues in their work of defining variants, and cooperate with other TLD operators that offer the same or very similar looking characters. This is not always practically possible, and there are currently no rules about defining variants. There also are no defined dispute mechanisms in cases where communities may disagree on a variant definition.

The working group has been formed and is working on the two topics under the charter proposed during the Sydney Board meeting, and plan to publish their recommendation prior to the Korea meeting. This will include a plan for releasing two-character labels in some form so that Internet use is not hobbled.

TRADEMARK PROTECTION

I. Key Points

- Significant community discussion has occurred and several consultation sessions have been conducted concerning trademark issues.
- Several solutions to potential trademark issues are proposed in this version of the Guidebook and in separate documentation posted for community comment.

II. Comment Summary

Added protection

There needs to be more effective protection for intellectual property rights including local ones. *A. Al-Zoman (19 July 2009).*

III. Analysis

In response to comments to the first applicant Guidebook the Board formed the Implementation Recommendation Team (IRT), asking them and others to develop specific solutions to address the issue raised in this comment. As a result, several specific solutions have been published for public comment and discussed in depth in public consultations held in Sydney, New York and London. The results of the public comment forum and the transcripts of the consultation sessions have been summarized and published under separate cover. Analysis of those solutions and the comment summaries has led to recommendations for implementation of certain specific rights protection mechanisms into the proposed Applicant Guidebook or, alternatively, as models for further discussion.

Please refer to companion documents to see this analysis regarding the IRT recommendations.

EVALUATION

I. Key points

- Community status requirements are more detailed.
- Background information and security requirements for applicants are strengthened.

II. Summary of Comments

Community-based designation

Question 24 should provide greater transparency and detail regarding claims of community status. That should enable potential objectors to make more informed decisions about whether to invoke the community objection procedure and also facilitate the comparative evaluation/community priority process, if applicable. *IPC (20 July 2009).*

Applicant background—support for requiring more transparency

IPC applauds the proposal to require greater transparency about new TLD applicants. The drafted questions should be reviewed and broadened where necessary to ensure that they capture the needed information. For example: (1) information should be requested regarding all partners of an applicant that takes a partnership form; (2) ICANN should inquire about criminal or fraudulent activities of the officers of entities (e.g., corporations) that hold a significant interest in the applicant; (3) Criminal record disclosures should not be limited to financial or fiduciary related crimes, but at a minimum should cover all felonies; (4) Disciplinary actions by governments should not be limited to those imposed by the relevant person's or entity's domicile; (5) Question 11(f) should be rephrased to cover all allegations of intellectual property infringement "in connection with the registration or use of" a domain name; (6) The notes should spell out that all applicants will be subject to a background check, and that false, misleading or materially incomplete responses will be grounds for rejection of the application. *IPC (20 July 2009).*

Corporate gTLDs should be recognized as a category, although a different label might be used

COA continues to believe it would be beneficial and efficient to recognize a category of gTLD applications open for registration only by persons or entities standing in a specified relationship with a particular company (e.g., employees, suppliers and/or distributors). Under the current typology, many such applicants may be tempted to “shoehorn” their applications into the community TLD category, but this is not the intended purpose for the community category and could have inadvertent detrimental consequences for legitimate community applicants. Given that the ICANN staff responded to this proposal by concluding that the ICANN community should continue to discuss TLD categories, COA would welcome guidance from ICANN about when and where further discussion of this issue will take place and how it might be brought to a substantive conclusion prior to when the applicant guidebook takes final form. *COA (20 July 2009)*.

Security policy

IPC commends ICANN for recognizing in Question 36 that “due to the nature of the applied-for gTLD string” some applicants may be expected to meet higher security standards than would be the case for other, less sensitive strings. Also, IPC is pleased with the statement that “certain financial or industry-oriented TLDs” may require stronger safeguards (e.g., this category should include TLD strings referencing industry sectors associated with high levels of online intellectual property infringement, and that the security and other policies of applicants for such strings should be expected to include adequate safeguards against such illegal (and in some instances criminal) activities). In any event, the criterion that the applicant demonstrate “security measures appropriate for the applied-for gTLD string” is an important and potentially valuable addition to the evaluation process. *IPC (20 July 2009)*.

Whois (question 38)—improvement incentives for new registries

ICANN should take this opportunity to provide incentives for new registries to take on some of the responsibility for ensuring that the ICANN-accredited registrars which they employ to sponsor registrations live up to their obligations regarding Whois: e.g., encourage registrars to take proactive steps to improve accuracy of Whois data; that they consistently cancel registrations of those who supply false Whois data; and, if they provide proxy or private registration services (if allowed by the registry), that they include and implement a process enabling copyright or trademark owners with reasonable evidence of actionable harm to obtain access to the actual contact data of registrants. Registries committing to these policies should receive extra points in the evaluation process. *IPC (20 July 2009)*.

Funding and revenue (question 52)

Confirmation is requested regarding whether an “Exceeds Requirement” score can be achieved by satisfying one (not both) of the second or third criteria, in addition to satisfying the first and fourth criteria. *eNOM (21 July 2009)*.

III. Analysis

A comment suggests refining a question regarding claims of community status with more details. Although the Guidebook question is fairly detailed, it is agreed that additional detail will improve transparency and facilitate community priority evaluation, if such a case arises. Accordingly, staff has specifically reviewed the drafting of this question to seek to improve clarity in these regards for the next version. In particular, the applicant is asked to provide more detail regarding aspects of the community representations and detail about the structure of the

representative organization. There is additional information required to describe the nexus between the applied for name and community. See the Guidebook for complete information.

ICANN's work with the community on mitigating potential malicious conduct through increased application scrutiny is described in an explanatory memorandum published coincident with this work. Changes have been made to the Guidebook, in accordance with the comments provided here. Partners are included in those required to provide information; it is believed that entities holding a significant interest are shareholders (including corporations) and shareholders are required to present information about prior criminal activity – it is not considered practical however to inquire about officers of shareholders in all cases as there could be a cascading effect; the list of crimes to be disclosed does include all felonies and also includes misdemeanors involving financial or fiduciary related crimes; disciplinary actions by governments are no longer limited to those imposed by the relevant person's or entity's domicile; Question 11(f) has been broadened rephrased to cover all allegations of intellectual property infringement in connection with the registration or use of a domain name; the terms and conditions include and module 1 has been augmented to note that all applicants may be subject to a background check, and that false, misleading or materially incomplete responses may be grounds for rejection of the application. ICANN may not conduct the check in all instances but puts the applicant on notice that it may be conducted.

Significant consideration has been given to the issue of the introducing category-based TLDs in the new gTLD process. The policy recommendations of the GNSO and the GAC principles have resulted in the creation of three gTLD categories or types:

- Community-based TLDs
- Geographic Name TLDs
- Everything else (called standard or open TLDs)

Community comment suggests the creation of several TLD categories: for example, single-owner, country, intergovernmental organization, socio-cultural, community and open. Depending on the category, various accommodations are suggested: for example, no requirements for an ICANN contract, or to use accredited registrars, or to follow consensus policy, or policy provisions outlined in the GAC's ccTLD principles. Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties.

Beyond the accommodations sought, many or all of the suggested categories seem to be variations of community-based TLDs. The preference for community-based TLDs in the evaluation/contention process is based on policy advice from the GNSO and is intended to ensure that community-based applicants receive the TLD string to which their community is strongly related. Perhaps the most important aspect of the suggested categories is that an applicant within these categories does, in fact, receive the string associated with its community, and that is what the existing process is designed to do.

The introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment. Additionally, there will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to

maintain not-for-process status? These discussions and debates will take considerable time and resources and may ultimately not result in consensus.

The structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees.

ICANN is a strong proponent of innovative use of new TLDs. This is especially so in cases where TLDs can be delegated to address the needs of specific communities such as intergovernmental organizations, socio-cultural groups and registered brands. Rather than having ICANN limit this type of innovation and identification with certain TLD models, more creativity might be spawned by allowing different groups to self-identify the type of TLD they purport to be and promote that model among their community. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant. Socio-economic groups, brand owners and other groups can be accommodated under the existing structure and self-identify as a particular type of TLD. Over time, the market and community interests will sort TLD types – a model preferable to having ICANN make that determination a priori.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional gTLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures forecloses those future developments.

In the case of security: an applicant for a new gTLD might have the option of taking steps to gain a verified high security zone status by meeting a set of requirements additional to those that are in place for all applicants. If achieved, this status would allow the new gTLD registry operator to display a seal indicating that it is verified as a high-security zone, to enhance consumer awareness and trust. The processes required to achieve verification include verification of both registry operations and supporting registrar operations. The verification assessment is performed by an independent entity, external to the gTLD evaluation process.

These high security zones will contribute to increased reliability and accuracy of Whois – the registrar must actively monitor and authenticate the accuracy of Whois data.

Regarding the question whether an “Exceeds Requirement” score can be achieved on the specified application question by satisfying one (not both) of the second or third criteria, in addition to satisfying the first and fourth criteria – all four criteria must be satisfied in cases where they apply. Some applicants may have all funding from existing sources or all from projected revenue – in which case only the second or third criterion apply. It is case specific.

GEOGRAPHICAL NAMES

I. Key Points

- At the second level, registrations of specific representations of country and territory names (i.e., in official lists), require a .info style of approval for release from reservation.
- Top-level registrations of certain regional and sub-regional names, country and territory names, and capital city names require the approval (or non-objection) of the relevant governments.

II. Comment Summary

Concern about definition of geographical names

eNOM generally endorses the additional clarity and guidance on geographic names, but is concerned that the phrase “in any language” that applies to country, territory and capitol city names at the top level may cause unintended consequences. It could create situations where an applied for string is a widely and commonly used (non-geographic) term in its own language but is also an “exotic” translation of a geographic term in some other language (“exotic” meaning the translation is in a language not commonly used in the country/territory the DAG provision is trying to protect). It causes unpredictability as applicants cannot identify all possible language variations of all countries, territories and capitols. It may result in a commonly used term in one language being denied to Internet users of that language because the term is also an exotic translation of a geographic place. In order to mitigate this situation, the DAG should be modified to give the Geographic Names Panel discretion to allow a string to proceed in certain circumstances (suggested language: “If the applied for string is a common generic word and, in the judgment of the Geographic Names Panel the translated language is of peripheral relevance to the designated country, the Panel can recommend that the requirement for obtaining Government approval be waived—except the relevant Government can still file an objection to the waiver”). *eNOM (21 July 2009)*.

Country names and territory names on the ISO list should be treated as ccTLDs

To allow the “given names” of countries to be defined as generic (and thus delegated as gTLDs) is illogical and incompatible with any normal understanding of the term generic. Allowing a TLD that is a meaningful representation of a country to be a gTLD is likely to involve ICANN in the internal policy of a country. It is highly likely that the government will at some stage want to have policy input into what a country TLD is used for or expect it to be answerable under national law. A change in government could radically affect the official position within the country about the gTLD which could adversely affect the stability and security of the DNS. There will also be significant confusion caused for Internet users if some country names are ccTLDs under local law and with local policies while others are gTLDs bound by ICANN policy processes (e.g., registrar accreditation, dispute resolution and Whois). *ccNSO Council (6 July 2009)*. The main concerns of UNINETT Norid AS about geographical names are not reflected in the third DAG draft. The principle repeatedly set forward by the ccNSO Council—that all country names and territory names are ccTLDs, not gTLDs—has not been taken into account. UNINETT Norid AS fully supports the ccNSO’s input and requests that it be given serious consideration when revising the DAG version 3. *UNINETT Norid AS (6 July 2009)*.

Concern about blurring of ccTLDs and gTLDs

Introducing new gTLDs for geographic names or languages will blur the difference between ccTLDs and gTLDs and make setting new different policies for ccTLDs and gTLDs more difficult. *A. Al-Zoman (19 July 2009)*.

National and public policy interests

ICANN needs to ensure respect for national and public policy interests, including the need for adequate protection of geographic names and delegation/re-delegation procedures. *A. Al-Zoman (19 July 2009)*.

ICANN policy to protect geographical names—interference with legal rights of businesses

ICANN is making new international law which will wrongfully interfere with the legal rights of businesses. E.g., could ICANN explain on what basis it can deny an application by Bern

Unlimited, LCC which owns a number of national trademark registrations with the word mark BERN? Now multiple national governments are granting this business the legal right not only to use the mark in commerce but to protect it against others using it in a confusingly similar manner. However, under ICANN's proposed rules this business will be prohibited from applying for a TLD if the Swiss government does not give its approval or non-objection. *M. Palage (21 July 2009)*.

Concerns about defining country names and territory names (DAG Section 2.1.1.4)

The current formulation proposed for defining country names does not cover the same terms that were protected by the earlier definition of “meaningful representation.” Acknowledging the desire for a defined list, it is also important to keep the fundamental principles associated with national sovereignty firmly in view. Lists can often easily be circumvented and not respond to reasonable expectations from the governments or users based in the country concerned. New gTLD applications will not be processed automatically so there is no need for a defined list. The list creation formula itself is very complicated. Parties not currently involved in this process will not yet have had the opportunity to check that all meaningful representations of their country names are properly protected in these lists. *ccNSO Council (July 2009)*. In DAG Section 2.1.1.4., the definition of which strings are counted as country names has changed significantly and does not cover the same terms that were protected by the earlier definition of “meaningful representation.” The basic problem of a defined list is that it can be circumvented or may not cover what was intended by the broader definition of “meaningful representation.” (The two islands of Svalbard and Jan Mayen, and Bouvet Island, are examples of a country/territory that experiences problems with the new definition.) UNINET Norid AS requests reinstatement and expansion of the previous definition of “meaningful representation” of a country or territory name according to the comments submitted in April 2009 by the ccNSO Council. *UNINETT Norid AS (6 July 2009)*.

Country/Territory Names—support for safeguards

IPC supports in principle the concept of safeguards against use at the top and second levels for certain country and territory names, identified through objective criteria, even though these names do not enjoy specific protected status under international treaties. This concept is fundamentally the same as the one underlying the Globally Protected Marks List proposed by the IRT. IPC notes that in Section 2.1.1.4, safeguards would also apply to “permutations or transpositions” of country names. While examples are provided for permutations, none is provided for transpositions. It is difficult to evaluate the proposal without a further explanation of those terms. If a broad interpretation were given to those terms, it could improperly expand the scope of the safeguards. *IPC (20 July 2009)*.

Second level country and territory names protection

eNOM supports the proposed expansion of reserved names in Module 2 to include initial protection of country and territory names at the second level. This new contract provision satisfies the GAC Principles Regarding New gTLDs as related to geographic names. *eNOM (21 July 2009)*.

Section 2.1.1.4.1—expansion of geographical names, including ISO 3166-1 alpha-3 codes

GoDaddy opposes inclusion of ISO 3166-1 alpha-3 codes in the definition of geographical names: first, the alpha 3 codes are not as widely used or recognized as country or territorial abbreviations, as compared to the related alpha-2 codes. Most international users, and even many residents of a given country or territory, often do not associate the alpha-3 code with that country; second, reserving alpha-3 codes as geographic names will potentially collide with many

well-known (and often unrelated) companies, organizations, and entities that use the identical string as an acronym, abbreviation or ticker symbol, and may wish to use them as gTLDs (examples provided in comments text). Other strings in the alpha-3 list would be significantly more recognizable as potential top-level domains than the countries they represent (examples provided in comments text). *GoDaddy (20 July 2009)*.

Adherence to GAC principles

ICANN should adhere to GAC principles in general, and also adopt the following specific principles: New gTLDs should respect the sensitivity about terms with national, cultural, geographic and religious significance; ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities. *A. Al-Zoman (19 July 2009)*.

III. Analysis

Country and Territory Names

Definition of country and territory names

The ccNSO has raised concerns that some terms that were protected under the ‘meaningful representation’ definition are no longer afforded protection, and that it is important to keep the fundamental principles associated with national sovereignty firmly in view. Conversely, GoDaddy has raised concerns that the revised criteria is too far reaching, particularly the inclusion of the alpha-3 codes. However, it is likely that an alpha-3 code representing a country or territory would have been considered under the previous definition as a “short-form designation for the name of the country or territory that is recognizable and denotes the country or territory”. This was previously noted on page 53 of the Analysis and Public Comment, February 2009 document, which states, *inter alia*, “...the definition of meaningful representation of a country or territory name includes short-form designation of the name of the Territory. This could include three letter country codes such as .AUS for Australia and .AUT for Austria.”

These comments illustrate the Board’s concern that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, “... revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard.”

The revised definition continues to be based on the ISO 3166-1 standard and fulfills the Board’s requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term meaningful representation created.

The Board’s intent is, to the extent possible, to provide a bright line rule for applicants.

While the revised criteria may have resulted in some changes to what names are afforded protection, it has not changed the original intent to protect all names listed on the ISO 3166-1 list, or a short or long form the name. It is felt that the sovereign rights of governments continue to be adequately protected as the definition is based on a list developed and maintained by an international organisation. In addition to the protections provided in the applicant guidebook, the objection process does provide a secondary avenue of recourse. An application will be

rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

The IPC noted its support in principle for the concept of safeguards against the use, at the top and second level, of certain country and territory names. However, a question was raised about what is a ‘transposition’ of a country or territory name given that no example is provided in the guidebook. Transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

As stated in the comments, it is acknowledged that the translation of country or territory names ‘in any language’ may provide some uncertainty for applicants given the absence of a comprehensive list. However, the proposed solution suggested by eNom is considered to be inconsistent with the intention to respect the sovereign rights of governments in the process. In the event that the Geographic Names Panel determines that a string is a translation of a country, territory or capital city name in any language, it is not considered appropriate to provide the GNP with the discretion to waive the requirement for obtaining government support or non-objection if, as suggested, the panel also considers that the ‘translated language is of peripheral relevance to the designated country’. It is only the relevant government or public authority that rightfully has the discretion to make that decision.

In circumstances where the applicant did not know that the string requested represented a country or territory name in another language, the applicant will be given 60 days to contact the relevant government or public authority to acquire the necessary support or non-objection to the use of the string.

A resource document available to applicants is a list of country names in their respective official language/s and translation in the 6 official UN languages prepared by the Working Group on Country Names of the United Nations Conference on the standardization of Geographical Names

<http://unstats.un.org/unsd/geoinfo/9th-UNCSSGN-Docs/E-CONF-98-89-Add1.pdf>

Blurring the distinction between ccTLDs and gTLDs—should country and territory names be treated the same as ccTLDs

The ccNSO and other ccTLD managers have raised concerns that allowing applications for country and territory names in the gTLD process will blur the distinction between ccTLDs and gTLDs. Further, it is asserted that to allow the ‘given names’ of countries to be defined as generic (and thus delegated as gTLDs) is illogical and incompatible with any normal understanding of the term generic. They have requested that applications for country and territory names not be allowed in the gTLD process, at least until the completion of the IDN ccTLD PDP, which will address this issue. The current timetable for the completion of this process is mid 2011. Comments received from others support the notion of country and territory name applications being allowed under the gTLD process.

While understanding the concern that it is important to maintain the distinction between a ccTLD and a gTLD, there is also anticipation that governments may want a .country name TLD. With the exception of names allowed under the IDN ccTLD fast track, this is only possible under the new gTLD process, under very specific circumstances. With regard to concerns that a country name is not a generic term, in the context of ICANN terminology, a ccTLD has

traditionally been referred to as a two letter¹ country code TLD while most TLDs with three or more characters² are referred to as "generic" TLDs, or "gTLDs". At the time the DNS hierarchy was developed, the number of characters was the distinguishing factor between a ccTLD and a gTLD. To date, there has been no community agreement on whether there is a need to redefine these terms.

The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations. Applications for country and territory names will require evidence of support or non-objection from the relevant government or public authority, which is consistent with GAC principle 2.2³, and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought.

Geographic names were discussed during the GNSO Policy Development Process, and while two letter TLDs are not available in the new gTLD process in recognition of the possibility of new ccTLDs, the GNSO Reserved Names Working Group did not find reason to protect geographic names and considered that the objection process was adequate to protect a geographic name, while the GAC considered that such terms should be avoided unless in agreement with the relevant governments or public authorities.

The treatment of country and territory names in the gTLD process has been developed to provide safeguards to ensure that the relevant government or public authority's sovereign rights are respected, and that the process is understood. It is ultimately the government or public authority's discretion whether to support or not support an application for a country name TLD, and circumstances under which they would be willing to do so.

Capital City Names

A concern has been raised that ICANN is making new international law because TLDs which contain capital city names will require the approval of relevant governments. ICANN has sought to protect the geographic name only, for example the name of the city or the country or territory. Citing the example used in the comment received, a business wishing to apply for .bernunlimited would not require the support of the Swiss government. However, an application for .bern would require the support or non-objection from the relevant Swiss government or public authority,

OBJECTION PROCESS

Procedures

I. Key Points

- ICANN agrees that it is important to encourage the DRSPs to consolidate objections whenever possible and is reaching out to the DRSPs to do just that.
- ICANN is communicating with the DRSPs to ensure a process is in place whereby a running list of objections will be made public throughout the objection period.

¹ <http://www.icann.org/en/general/glossary.htm#C>

² <http://www.icann.org/en/general/glossary.htm#G>

³ ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities

II. Summary of Comments

Government/Country Objection Procedure—cost and complexity

The cost and complexity of the objection procedure and implications of the proposed procedure for governments to submit objections based on, e.g., morality and public order grounds, should be taken into consideration. Some countries are not represented in ICANN and might not learn about problematic domain names in a timely manner to be able to object. *A. Al-Zoman (19 July 2009)*.

Running list of objections

COA is pleased that ICANN will consider and discuss with the DRSPs a process whereby by a running list of objections is published as objections are filed during the filing period. This could minimize the risk of needless duplication in objection procedures. This should be spelled out as a requirement in the final version of the applicant guidebook. *COA (20 July 2009)*.

Community Objection Procedures—consolidation of challenges

COA looks forward to how encouraging the DRSPs to allow for consolidation of challenges will be operationalized in the final version of the applicant guidebook and whether it is specified (as it should be) that this encouragement applies to consolidation of objections filed by the same party against multiple applicants for the same or highly similar character strings. *COA (20 July 2009)*.

Community objection—procedural problems not addressed

The proposed changes do not address procedural problems with the community objection process, including doing more to encourage consolidation of objections filed by the same party against multiple applicants, publishing a running list of objections received, and providing greater predictability on fees. *IPC (20 July 2009)*.

III. Analysis and Proposed Position

Comments received relating to objection procedures involve a running list of objections, consolidation, government awareness, and the costs and complexities of the objection process in general.

ICANN has sought to create an objection process that is fair and reasonable in cost, taking into account the legitimate interests and expectations of applicants, potential objectors, and other members of the community. The institution of an Independent Objector is designed, in part, to account for the anticipated reluctance of some governments to participate in the objection process.

In terms of awareness, the new gTLD program has been widely publicized, and specific publicity campaigns are planned for the actual launch of the program. Thus a government does not necessarily need to be represented in ICANN (although all participation is certainly welcome) to learn about the program. With a reasonable amount of attention, governments and other interested parties will learn about gTLD applications in a timely manner.

ICANN has agreed that it will encourage all providers to allow for consolidation of objections to the extent possible, but it will be up to the DRSPs to make the final determination. It should be recognized, however, that multiple applications for different community-based gTLDs may not present the common issues of fact and law that make consolidation appropriate.

ICANN does intend to work with the DRSPs to publish a running list of objections as they are received rather than waiting until all objections have been filed.

At this time, it is difficult to predict the actual amount of fees for community-based objections. With experience, it may be possible to provide more information and some greater degree of predictability.

COMMUNITY-BASED OBJECTIONS

I. Key Points

- Eliminating the “detriment” requirement by way of presuming it simply by the filing of an objection appears aimed at giving certain objectors with standing a veto power over applications. Such a power is not the envisioned result of the objection process.
- If an objector represents a different community than the applicant but has not applied for the gTLD, there appears no legitimate reason why that objector should be entitled to prevent an applicant that can satisfy the community standing requirements from obtaining the gTLD if no harm to the objector can be shown.

II. Summary of Comments

Community objection—changes endorsed

eNOM endorses the changes made to the community objection section in Module 3. They more clearly align this form of objection with the objective of community—i.e., to prevent the misappropriation of a string that uniquely or nearly uniquely identifies a well-established and closely connected group of people or organizations. *eNOM (21 July 2009)*.

Community Objection—detriment and level of recognized stature or weight among sources of opposition

COA reiterates its view (also supported by IPC) that when a challenger has shown that it meets the criteria of community delineation, substantial opposition and targeting, detriment should be presumed, unless the applicant can show otherwise. A legitimate community representative is in the best position to determine whether its community will be harmed by recognition of a gTLD that targets it. Regarding ICANN’s proposal to take into account the “level of recognized stature or weight among sources of opposition,” COA urges that the representative nature of community institutions be considered as a factor here (i.e., an entity authorized to speak by a large number of individuals or entities should be accorded a high “level of recognized stature or weight”). *COA (20 July 2009)*. IPC appreciates the clarification of section 3.4.4 that a “community” may be composed of legal entities (including business groups), not just individuals. One overarching problem with the objection criteria is the definition of “detriment” that an objector must show; it evidently does not include harm that may result from granting another party exclusivity in the proposed community-based gTLD string, particularly in the situation where multiple parties may be able to claim to speak for significant portions of the community. Any representative institution with sufficient standing to bring an objection should be rebuttably presumed to risk suffering detriment if the challenged TLD is awarded to the applicant. The detriment requirement should also be clarified to address cases where the objection is based either on the applicant’s lack of standing to represent the community or the legitimacy of the community definition itself. In such cases, a detriment showing should not matter because the complaint presents threshold issues that should be subject to review on a complaint from any party with a good faith belief that it would be harmed, whether or not that harm falls into the detriment categories in section 3.4.4. *IPC (20 July 2009)*.

Complete defense clarifications

IPC commends the “complete defense” clarifications in section 3.4.4, especially that the applicant has the burden of demonstrating this defense, and ensuring that it cannot be invoked by an “open TLD” applicant. However, it should be further reviewed—the rules are much too strongly biased toward granting the gTLD to the first to apply for it, a result that could end up harming the communities that the rules purport to protect. *IPC (20 July 2009)*. ICANN’s explanation of why the “complete defense” is needed does not explain why it could be invoked by an applicant even if no other community-based application for the same string had been received, or even if the challenger represents a community that is defined completely differently from the community defined by the applicant. Even in the circumstance ICANN uses to justify the need for the “complete defense,” all it does is shift the locus of judging relative legitimacy from the community objection DRSP to the “comparative evaluator” at a later stage in the process. COA urges ICANN to reconsider the “complete defense” and modify it so that proof of the applicant’s (hypothetical) standing to bring a challenge is only one factor to be considered by the DSRP in resolving a real community objection challenge. *COA (20 July 2009)*.

Community objection—standing

COA does not object to the proposal to state that determining standing will be the result of a balancing of factors (proposed amended section 3.1.2.4), but its inclusion underscores the need for greater clarity and specificity on the issue of standing in the final version of DAG v.3. It would be enlightening to all parties to provide examples of challengers who may possess or lack standing. It should be possible to provide examples that use existing strings, so as not to prejudice any future application or any challenge thereto. Established trade associations or member/affiliate organizations for a particular creative or economic sector must be assured of standing in this community objection process. COA also urges ICANN to spell out how organizations can join together to file objections and cumulate their qualifications for standing purposes. *COA (20 July 2009)*.

Unfair burden shift to communities

The new gTLD objection process shifts responsibilities from ICANN to the communities, when it is ICANN’s duty to make sure that communities are not hurt by the introduction of new gTLDs that would cause havoc. Communities will have to continuously monitor ICANN’s processes to prevent harm to a community’s values from introduction of a new gTLD. This model cannot be used to deal with many morality and public order issues across the board, and would put some communities on high alert and they might not wait for ICANN to pass a verdict on a new gTLD. *A. Al-Zoman (19 July 2009)*.

III. Analysis and Proposed Position

ICANN appreciates the time that the community has spent on reviewing the community objection process. ICANN has paid close attention to comments received and, as has been recognized, has made some significant revisions in view of many of the comments. As summarized above, the most recent comments, some of which previously have been stated, relate to detriment, available defenses, factors to consider relating to opposition, standing and burden shifting.

Proof of detriment is an essential element of the Community Objection process. Mere opposition to an applicant and its applied-for gTLD should not be a sufficient basis for presuming detriment. Thus, it is correct that detriment “does not include harm that may result from granting another party exclusivity in the proposed community-based gTLD string, particularly in

the situation where multiple parties may be able to claim to speak for significant portions of the community.” If several parties are able to claim to speak for significant portions of a community, each may be entitled to apply for a community-based gTLD, and there are procedures in the new gTLD program for determining which applicant in this situation will be successful. Eliminating the “detriment” requirement by way of presuming it simply by the filing of an objection, appears aimed at giving certain objectors with standing a veto power over applications. Such a power is not the envisioned result of the objection process. If an objector with standing can prove “detriment” and satisfy other criteria, its objection may prevail. If a party considers itself equally or more entitled to speak for a given community, that party may apply for a community-based gTLD – and eventually enter the string contention stage with another applicant, if necessary.

The complete defense is appropriate “even if no other community-based application for the same string had been received, or even if the challenger represents a community that is defined completely differently from the community defined by the applicant. If the objector represents a different community but has not applied for a gTLD, there appears no legitimate reason why that objector should be entitled to prevent an applicant that can satisfy the community applicant standing requirements, and is doing no harm, from obtaining the gTLD. The rules do favor those who apply for a new gTLD; there is a presumption that a qualified applicant will be granted the gTLD. As is typical in disputed matters, objectors bear the burden of proving why, according to certain stipulated criteria, the application should be rejected. However, the rules do not necessarily favor the first applicant to apply within a given round, which is evidenced by the string contention stage of the application process.

In terms of opposition, ICANN sees no prohibition against the DRSP panel considering “the representative nature of community institutions” (i.e., an entity authorized to speak by a large number of individuals or entities) as a factor in analyzing opposition. It seems appropriate that the “level of recognized stature or weight among sources of opposition” afforded by the panel will likely depend on the particular facts or circumstances.

ICANN has developed an objection process that is meant to be as open and transparent as possible by providing relevant factors for consideration of standing. ICANN does not think it appropriate to provide examples of what individuals or entities might have standing to object, as it should be left to the DRSP panels in light of the established criteria; the facts and circumstances are unique to each situation.

While ICANN will enforce obligations undertaken by the registry operator in its agreement with ICANN, it is not ICANN’s duty to supervise the operation of new gTLDs and to ensure that communities are not hurt by those gTLDs.

MORALITY AND PUBLIC ORDER

I. Key Points

- It would be inconsistent with the universal dimension of M&PO objections for a narrowly defined injury or potential harm, to serve as a basis for standing.
- ICANN recognizes that the dispute resolution procedure should discourage and limit objections that are manifestly unfounded and/or an abuse of the right to object and is working on developing standards to ensure such objections are dealt with quickly and efficiently.

II. Summary of Comments

Morality and Public Order Objections—frivolous complaints

ICANN needs to pursue this area with caution, especially with respect to standing requirements so as not to open up the process to challenges based on specious grounds or for purposes of harassment. Standing requirements tied to consideration of injury or potential harm to the complainant are less vulnerable to such abuse. A process for screening out frivolous objections could be indispensable. It is not clear if there is a penalty for filing a frivolous morality and public order objection that is rejected at the initial stage. ICANN should consider how to penalize complaints deemed frivolous on initial review (e.g., forfeiture of filing fee) in light of the potential for abuse and the potential chilling effect of morality and public order objections on controversial communications. *IPC (20 July 2009)*.

Morality and Public Order objection—quick look review to deter frivolous and malicious objections

The significant broadening of standing to object is likely to increase the incidence of frivolous or malicious objections. eNOM strongly endorses the idea of a “quick look” review to reduce the need for full dispute proceedings in such cases. During “quick look” the DRSP could deny an objection where the applied for TLD is very clearly not in breach of the standards in DAG section 3.4.3. An objector found to be frivolous or malicious should not have any portion of their objection fee refunded. *eNOM (21 July 2009)*.

Morality and Public Order Objection—harassment and suppression of speech; independent objector

ICANN must also recognize that non-frivolous objections may be made to harass and to suppress speech. The possibility for such abuse means that standing grounds should be defined narrowly to reduce bad faith but non-frivolous complaints to the extent practicable. The independent objector is empowered to take action against “highly objectionable” gTLD applications on morality and public order grounds, which should act as a sufficient check on obviously problematic gTLDs. *IPC (20 July 2009)*.

III. Analysis and Proposed Position

ICANN appreciates the comments and agrees that balancing needs to occur with respect to standing to file Morality and Public Order (M&PO) based objections and trying to discourage frivolous objections. As stated below, provisions will be added to the Procedure to empower the Panel to dismiss objections that are manifestly unfounded and/or an abuse of the right to object at an early stage of the proceeding (the quick look review).

The rationale for M&PO objections and the standards that will be applied in the dispute resolution process must be borne in mind when considering this proposed rule of standing. The relevant GNSO policy recommendation refers to generally accepted legal norms that are recognized under international principles of law. The specific grounds upon which an applied-for gTLD may be considered contrary to morality and public order have been identified because they are very widely accepted.

It would be inconsistent with the universal dimension of M&PO objections to narrowly define injury or potential harm, as providing a basis for standing. The harm that is done by incitement to violent lawless action; by incitement to discrimination based upon race, color, gender, ethnicity, religion or national origin; and by incitement to child pornography or other sexual abuse of children extends far beyond the direct or immediate victim of the offense.

If an applied-for gTLD were to constitute incitement to violent lawless action against some person or group of people, it is not only the victim(s) of that action who would have a legitimate interest in preventing the crime. An applied-for gTLD that incites hatred or discrimination against, say, A or B is not merely harmful to A or B. Every person is (or should be) concerned by such incitement. It would surely be inconceivable to allow only A to object to the applied-for gTLD <.killA>, and only B to object to <.killB>. Similarly, it would be difficult to defend – or even to formulate – a rule that grants standing to some and denies standing to others to object to the incitement or promotion of child pornography.

These considerations, along with other practical issues, have led to the decision to grant standing to any person to file a Morality and Public Order Objection. At the same time, ICANN recognizes that the dispute resolution procedure should discourage and limit objections that are frivolous, manifestly unfounded and/or an abuse of the right to object. ICANN points out that the New gTLD Dispute Resolution Procedure already provides that the losing party shall pay the full costs of the procedure. In addition, provisions will be added to the Procedure to empower the Panel to dismiss objections that are manifestly unfounded and/or an abuse of the right to object at an early stage of the proceeding (the quick look review).

ICANN does not consider that rules of standing are the appropriate means of screening out “bad faith but non-frivolous” objections. This is a task for the panelists, addressing the merits.

INDEPENDENT OBJECTOR

I. Key Points

- The Independent Objector seems like a sensible inclusion in the process.

II. Summary of Comments

Independent objector

The scope, methods and funding for the independent objector seem sensible. There are likely to be few, if any, cases where the independent objector initiates an objection, but it is important to have this capability in place as a contingency. *eNOM (21 July 2009)*.

III. Analysis and Proposed Position

ICANN agrees that having the Independent Objector in place is sensible. ICANN introduced the Independent Objector as an element of the dispute resolution process in draft v2 of the Applicant Guidebook, to remedy the situation that might arise where, for one reason or another, no objection is filed against a “highly objectionable” gTLD application. ICANN presented the rationale and briefly described how that person would act in an Explanatory Memorandum published for comment on 18 Feb 2009, entitled “Description of Independent Objector for the New gTLD Dispute Resolution Process.” See <http://www.icann.org/en/topics/new-gtlds/independent-objector-18feb09-en.pdf>.

Comments on this subject contained several requests for more information and definition concerning this role. The updated text below discusses the Independent Objector in greater detail.

Mandate and scope

The IO may file objections against highly objectionable gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Morality and Public Order

objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections.

The IO may file a Morality and Public Order objection against an application even if a Community objection has been filed, and vice versa. The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed. Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. ICANN will submit comments to the IO from the appropriate time period, running through the Initial Evaluation period until close of the deadline for the IO to submit an objection.

The new material also discusses rules for staffing and funding the I/O role.

POST-DELEGATION PROCESSES AND ENFORCEMENT

I. Key Points

- Community-based registry operators should be held to the restrictions they promised to apply to registrations in the gTLD
- Providing for a complaint process and administrative dispute resolution process for community members to utilize when they believe the restrictions are not being followed seems appropriate and efficient.

II. Summary of Comments

Registry restrictions DRP proposal raises questions

Providing a channel for third parties to object to the failure of a community-based registry to enforce certain of its requirements is valuable, but the proposal also raises questions. For example: Why would the procedure be restricted to community-based TLDs (e.g., what about open TLDs with registration or use rules)? Would the availability of the procedure relieve registry operators of the responsibility to enforce the stated restrictions themselves or undermine their incentive to provide customized enforcement mechanisms (e.g., registry-specific procedures to challenge registrant eligibility)? Is it appropriate for ICANN to abdicate any responsibility for enforcing the agreement it has with the registry (which contains the restrictions in question), instead turning the job over to third parties (even if the contract formally denies them any status as “beneficiaries” of the contract)? The RRDRP should not become an incentive or excuse for weak ICANN compliance and audit efforts. How would an RRDRP be integrated with other post-delegation remedies, such as the procedure proposed by the IRT for use with registries that fail to live up to other representations made in the application and/or contained in the registry contract with ICANN? *IPC (20 July 2009)*.

Post-delegation obligations

COA commends ICANN for proposing a process whereby third parties (including but not limited to members of affected communities) could instigate investigations of alleged failures of community-based registries to live up to the commitments they made in the new gTLD evaluation process and that are contained in their registry agreements with ICANN. COA agrees with IPC that the proposal for an RRDRP raises many questions. *COA (20 July 2009)*.

Post delegation dispute resolution mechanism

While it is not explicitly listed in this excerpt of the DAG, GoDaddy opposes the adoption of a new Post Delegation Dispute Resolution Mechanism as described in the IRT final report. The report advances that a mechanism for post-delegation disputes is essential for the protection of trademark holders' rights. The assertion of this need presumes that the outlined pre-delegation dispute methods, or that ICANN's ability to enforce its contracts with new gTLD registries, will be unsuccessful. GoDaddy believes that these issues are distinctly separate from the rights of trademark holders. Rather than adopt the IRT's proposal, GoDaddy urges ICANN to (1) ensure that all stakeholders have confidence in the existing dispute resolution procedures outlined in Module 3, and (2) enforce compliance of all new gTLD registry agreements. *GoDaddy (20 July 2009)*.

III. Analysis and Proposed Position

ICANN appreciates that post-delegation dispute processes need more detail and ICANN is working towards developing that detail.

The need for a Registry Restrictions Dispute Resolution Procedure (RRDRP) is based on the idea that it would not be fair to give a preference in the New gTLD allocation process (which will be provided in the community priority (comparative) evaluation stage) to an applicant based on a promising to restrict use of a TLD to a particular community, and then not require the applicant to keep its promise. Specific requirements must be satisfied in the application for a community-based TLD, and the successful applicant must undertake in the registry agreement to implement the community-based restrictions it has specified in the application. See DAG v.2, 1.2.2.1, 1.2.2.2. Such promises are not required for non-community-based gTLDs. Thus, restricting the application of the RRDRP to only those registry operators that are required to keep promises relating to community as set out in the gTLD application and registry agreements seems appropriate.

The RRDRP is not meant to be the only mechanism by which registry operators will be required to comply with registry agreements. Providing for a complaint process and administrative dispute resolution process for community members to utilize when they believe the restrictions are not being followed, however, seems appropriate and efficient. ICANN will of course continue its other compliance efforts with respect to all registry agreements, including those for new gTLDs.

With respect to a post-delegation dispute resolution mechanism for legal rights, ICANN is in the process of considering and taking consultation on the IRT's proposal and other proposals from the community. ICANN recognizes that intellectual property owners have various legal options to defend their rights. One option could be an administrative procedure through which violations of intellectual property or other legal rights concerning new gTLDs may be identified and stopped without resort to litigation.

STRING CONTENTION

Community Priority (Comparative Evaluation)

I. Key Points

- The de-aggregation of criteria as published in the excerpts is well received according to the comments. Some comments request further explanations and some also propose refinements and detailed interpretations of the expressions used in the criteria. In the next

version, staff will expand the criteria section with explanatory notes regarding the expressions used, to improve clarity and predictability.

- While some comments welcome the tentative lowering of the scoring threshold to 13 out of 16 points, others claim that this level unduly will facilitate gaming and request a return to the previous threshold, 14 out of 16. Since the addition of the explanatory notes in the next version will clarify scoring and additional testing has occurred, it is intended to set the threshold at the previous mark of 14, although still as a tentative approach awaiting consolidated views and comments on this section as expanded.
- A couple of comments suggest that an even lower threshold should be applied in case there is only one community application in a contention set. This suggestion is interesting but appears at odds with the policy objective of only awarding priority to qualified community applications, while safeguarding against gaming attempts as highlighted by other comments. The next version will accordingly keep the current approach of applying the same scoring standards and threshold regardless of the number of community applications present in a contention set.
- One comment proposes that all IDN applications should be regarded as community applications and be subject to community vetting and approval. While this suggestion would tend to hobble IDNs, it should be noted that the choice to file an application as community-based is up to the applicant and there are no provisions in the application handling process to force a change of an application in this respect. However, in the case an application is seen as violating the rights of a community, the community has the option to file a community-based objection regarding that application. No change in this respect is foreseen for the next version.

II. Summary of Comments

Comparative evaluation criteria

The disaggregation of the scoring criteria is an improvement and makes the overall process easier to understand. IPC also supports lowering the threshold that must be met (13 rather than 14 out of a possible 16 points) in order to survive the “community priority” evaluation and avoid having an auction. This relaxation is particularly needed where only one community-based TLD application is involved. It seems unjustified that ICANN still proposes to treat these cases in the same way as those in which more than one applicant within a contention set claims the backing of a community. *IPC (20 July 2009)*.

Comparative Evaluation –structure concerns

As currently structured, comparative evaluation will too often serve simply as the anteroom to an auction as a means of awarding a TLD string to one of the competing applicants. This gives insufficient weight to the goal of according preference to community-based applications as against “open” proposals. COA commends ICANN for the changes made to lower the threshold that must be met (13 rather than 14 out of a possible 16 points) in order to survive the “community priority” evaluation and avoid having an auction. But it apparently remains the case that any community application which has been the subject of a community objection by an objector with standing automatically loses 2 points even though by definition it has vanquished the objection. Once that occurs there are many pitfalls which could cause the application to lose two more points and slip below the threshold required. The high threshold for surviving comparative evaluation seems particularly unjustifiable in the circumstance in which there is only one community-based application for a particular string. ICANN has never explained why

the evaluation process must be equally rigorous in such a case, as it would be when two community-based applications are contending for a single string. While a further relaxation of the 13-point threshold ought to be considered across the board, it seems essential in this situation. *COA (20 July 2009)*.

Comparative evaluation –clarification of specific criteria is needed

For example, there are likely to be situations which fall between the only two criterion 3A provides. Criterion 2B also needs clarification; relatively few character strings (in Latin characters at least) that identify communities would not also be identical to words with completely different meanings in some language. If that counts as “other significant meaning” criterion 2B would rarely be satisfied. *COA (20 July 2009)*.

Comparative evaluation

GoDaddy generally supports the methods of evaluation described in Module 4, but has some concerns about lowering the threshold score. ICANN must ensure that only true community-based applications are granted priority, and that the system is not abused or gamed. ICANN should publish the results of the ICANN staff’s scenarios to test this scoring method for public review. *GoDaddy (20 July 2009)*.

Comparative evaluation criteria

By nature IDN is a “community-based” TLD because IDN is a localized service to serve Internet users using certain language. It is recommended that an IDN application consult the related community to avoid complications from future objections. If a language or script is shared among different nations and regions, a coordinating mechanism should be structured among these stakeholders. The opinion of the supermajority of the specific language user should be respected. Also, CNNIC recommends that ICANN fully consider the opinion of the Chinese Domain Name Consortium (CDNC) when evaluating Chinese TLD applications. The users served by members of CDNC account for over 99% of Chinese Internet users worldwide and this consortium is a legitimate representation of the Chinese domain name community. *CNNIC (21 July 2009)*.

Community priority criteria

The complex principle of community should give preference to applicants whose selected string so closely reflects the applicant group’s identity that to allow another applicant to have that string would impinge on the rights of the group. “Rights” should mean that the string is the name of the group, and has no other meanings, so in effect it “belongs” to them. Community is proper for applicants who do not have legal (e.g., trademark) rights in the string but nevertheless should not have to compete with other possible applicants for the string. *eNOM (21 July 2009)*.

Community and generic strings

Community should not be abused by applicants seeking to obtain and limit a generic string that has many uses. Such general strings should be allowed to be shared by the wider Internet community. When a legitimate community string is communicated (by itself and without other words) there should be no doubt which group of individuals or organizations the string refers to, and by definition there should be very limited or no other uses of the string outside a description of that group. *eNOM (21 July 2009)*.

Proposal to deter “gaming” of community bids

Because community bids beat open bids, there is a huge incentive for applicants to claim community and this may encourage gaming of the process, leading to disputes and potential litigation. To support legitimate community bids and reduce such gaming abuses, Section 4.2.3 should be clarified as follows:

- **Criterion 1—community establishment**—there should be clear definitions of the terms “organized”, “size”, and “longevity”. “Organized” should require documented evidence of community objectives, processes, operations and activities that were not associated purely with the pursuit of the TLD. “Size” should require tens of thousands of community members (at a minimum) and “longevity” should require that the community have been “organized” for at least two years prior to the TLD bid. In all cases the tests should be applied to the **actual community cited in the application** and not to individual members who have coalesced to form the community.
- **Criterion 4—community endorsement**—a score of 1 for support currently states: “Documented support from at least one group with relevance, but insufficient support for a score of 2.” eNOM interprets this to mean that if the string is potentially relevant to more than one possible group the evaluator will apply a score of 1 (unless all possible groups have joined to form the applying community). This interpretation is logical because to define it otherwise would guarantee a support score of 2 to any applicant. It would be useful to applicants to have a note explaining that “if the string is potentially relevant to more than one possible group the evaluator will apply a score of 1 (unless all possible groups have coalesced to form the applying community).”
- **String nexus**— this is the most important criterion and eNOM applauds the new language that brings nexus scoring more into line with a community’s “name” and “identity” as opposed to just “association” or “relevance” (as it appeared in prior drafts). An “I am a ___” test is a good indicator whether an applicant should score a 2 or more on nexus. Under this test the applicant or a member of the applicant’s community should be able to complete that sentence where the TLD string fills in the blank. If the subsequent sentence makes grammatical and logical sense we think a nexus score of 2 or more is possible. If the sentence does not make grammatical or logical sense a score of 2 or more would not be achieved.
- **Uniqueness**—eNOM supports the new uniqueness score but believes that uniqueness is so important that applicants who meet this test should get 2 points instead of the proposed 1 (i.e., there would be a 2 or 0 score for uniqueness). Such scoring would be consistent with the February 2009 Analysis of Public Comment that concluded: “There is merit in considering uniqueness in the nexus between string and community as a main factor for achieving a high score. To be an unambiguous identifier, *the ‘ideal’ string would have no other associations than to the community in question* “(emphasis added).
- **Maximum number of points**—Increasing the uniqueness component to 2 points would make a total of 5 possible points for nexus, which is appropriate given the importance of this criterion. The maximum overall points would then become 17 instead of the current 16. In conjunction with this, eNOM strongly recommends that the current 13 points to pass the threshold be returned to its previous level of 14 except that whereas previously a score of 14 out of 16 was required for community now there would be a 14 out of 17 pass threshold. Even if the total number of points is not increased from 16 to 17, eNOM strongly recommends that the point total to achieve community be changed back to 14 (as it was in

the prior DAG) so as to align community with its true objective: “to prevent the misappropriation of a string that uniquely or nearly uniquely identifies a well established and closely connected group of people or organizations.” *eNOM (21 July 2009)*.

Nexus criteria

The criteria to score 2 points are the same as to score 3 points when using “to cause to be identical to” as the definition of the word “identify.” The guidebook needs to be crisp where it can be, which assists the goal of being objective rather than subjective. Crucial words should be used in the context of their intended meaning and definition. The intention cannot be for the criteria to be the same for 3 points and 2 points. The simple remedy is to change “The string identifies the community” to “The string identifies WITH the community”. This change allows people to interpret the proper meaning and definition in the context of the criteria and understand the difference of how to score 3 points versus 2 points for Nexus. *R. Fasset (10 June 2009)*

III. Analysis and Proposed Position

The de-aggregation of criteria as published in the DAG excerpt is well received according to the comments. Some comments request further explanations of the criteria and some also propose refinements and detailed interpretations of the expressions used in the criteria. ICANN staff is grateful for these suggestions and will expand the next version of the criteria section with explanatory notes regarding the expressions used, to improve clarity and predictability.

A broad spectrum of suggestions was made to make amendments to the scoring mechanism. Some comments welcome the tentative lowering of the scoring threshold to 13 out of 16 points as essential to avoid an outcome whereby many contention sets end up in an auction. Others, however, claim that this level unduly will facilitate gaming by applicants that may construe "communities" for the purpose of getting an upper hand in a contention set. They accordingly request a return to the previous threshold, 14 out of 16. One comment proposes an alternative; raising the maximum score for "uniqueness" to 2 while setting the winning threshold at 14 out of 17. The addition of the explanatory notes in the next version is intended to provide additional clarity for applicants in determining whether the TLD they proposed is a community-based TLD in accordance with the definition in the Guidebook and the intent of the policy recommendation. The new definitions and empirical testing of the standards indicate that the score of 14 should be restored as a threshold for the next version. The threshold will remain as a tentative approach, awaiting consolidated views and comments on this section when it has been expanded with the explanatory notes.

A couple of comments suggest that an even lower threshold should be applied in case there is only one community application in a contention set. This suggestion is interesting but seemingly at odds with the objective of only awarding priority to qualified community applications above open applications, while safeguarding against gaming attempts as highlighted by other comments. The next version will accordingly keep the current approach of applying the same scoring standards and threshold regardless of the number of community applications present in a contention set.

One comment contends that a community objection by an objector with standing, even if not upheld by the DRSP, would automatically make the application lose 2 points in criterion 4B, "Opposition". On balance, however, this objection too seems to go against the thrust of the policy intent; it is less likely that the objection alone (especially when defeated) would be seen as proof of "strong and relevant" opposition, leading to a score of 0. The score of 1 for "relevant

opposition from at least one group of non-negligible size" is a plausible alternative outcome, but this too depends on the circumstances and cases must be considered individually – with no automatic determinations based upon previous processes such as the objection procedure.

A comment suggests that the tests undertaken by staff be published. It should be noted that the tests were made in an iterative way with the objective of achieving the current de-aggregation of criteria, by using successive criteria drafts together with batches of hypothetical examples (including hypothetical opposition cases) where a staff group scored the examples individually, compared notes and redrafted criteria when scoring and understanding of the criteria diverged. This "work-in-progress" succession of drafts, examples and scores is prone to misunderstanding and the examples could easily be both misinterpreted and misrepresented as well. Rather than publishing this complex set, staff believes that the publishing of the explanatory notes in the next version is a more constructive way of advancing the dialogue on Community Priority.

One comment appears to propose that all IDN applications should be regarded as community applications and be subject to a kind of community vetting and approval. It should be noted that the choice to file an application as community-based is wholly up to the applicant and that there are no provisions in the application handling process to force a change of an application in this respect. However, in the case an application is seen as violating the rights of a community, the community has the option to file a community-based objection to that application. Additionally, IDN applications should not be restricted as to business model. There are as many commercial uses for IDN TLDs as for ASCII/Latin TLDs and IDN applicants should not be restricted to a limited set of uses for their TLD. It is believed that the current community-based provision satisfies the underlying requirement in the comment for protecting a community's interest and no change is foreseen for the next version in this respect.

AUCTIONS

I. Key Points

- One comment noted there is still concern about the use of auctions to resolve contention among competing gTLD applications, including the form of organization to receive proceeds and use of funds.
- One comment suggested that ICANN lengthen the time for bidders to provide final payment to ICANN following an auction from ten days to thirty days, due to restrictions on foreign currency and money transfer.

II. Summary of Comments

Two comments related to auctions were received during the comment period on the revised excerpts: the use of auctions as a meta-question and the timing of auction payments.

Auctions

IPC reiterates its strong concerns about using auctions to award new gTLDs.

These concerns include the uses of proceeds and the effectiveness of auctions as choosing the most deserving or most appropriate applicant (to paraphrase the IPC report. The comments can be separated into two arguments: whether auctions are the most appropriate form of contention resolution and, if it is, "there is a unspoken issue hovering over the auctions ... what ICANN will do with the proceeds of any auctions it holds to allocate new TLDs"? *IPC (20 July 2009)*).

Auctions—timing of payment after winning bid

While it is expected that money should be prepared when entering into the bidding process, it still poses a challenge for some winning bidders to make the money to ICANN timely in the short timeframe of ten business days of the end of the auction. Quite a few countries impose restrictions on foreign currency and the money transfer will take a long process before it reaches ICANN's account. Given the complexity of the international financial systems, CNNIC advises that ICANN extend the timeframe from 10 days to 30 days. *CNNIC (21 July 2009)*.

III. Analysis and Proposed Position

The Intellectual Property Constituency (IPC) reiterated its previous comments about the use of auctions in the new gTLD process. ICANN sought to address these comments in its Explanatory Memo on Resolving String Contention published on 22 October 2008 (see <http://www.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf>). The current comment section makes similar arguments stating that the initial arguments were not addressed in the memorandum or subsequent analyses. These concerns include the uses of proceeds and the effectiveness of auctions as choosing the most deserving or most appropriate applicant (to paraphrase the IPC report): whether auctions are the most appropriate form of contention resolution and, if it is, “there is a unspoken issue hovering over the auctions ... what ICANN will do with the proceeds of any auctions it holds to allocate new TLDs”?

The validity of the IPC comments on this topic is recognized. The ability to pay more in an auction isn't the indicator of eventual benefits to registrants. The GNSO indicated that community representations should be a factor in determining contention cases. In response, a process has been developed to identify bona-fide community applicants and provide them with a preference in every case of contention. Other factors to give a preference have been discussed: language groups, city groups, not-for-profit organizations, applicants from least developed countries to name a few. Attempting to create a methodology for an effective sort of beauty contest is very difficult. The brightest line distinction is perhaps the community designation requested by the GNSO and that implementation has proven to be extraordinarily difficult. Other factors are susceptible to gaming and will result in vague evaluation criteria.

ICANN has taken the position that auctions are the contention resolution method of last resort – and it is thought that auctions will occur rarely. The community priority (comparative) evaluation process can be used by community-based applicants to avoid auctions with large commercial entities. The community priority evaluation criteria are written purposefully in a way that will admit and empower small community-based applicants. The score for succeeding in the community priority evaluation is high to avoid contention between large commercial entities and community applicants.

After community priority evaluation, if there is still contention, parties are encouraged to settle. This is the opposite of spectrum auctions where parties are commanded to stay apart. ICANN encourages settlement as the most economical and effective method to delegate the TLD. Agreements can be made that better meet the needs of all contending parties and potential registrants. With the economic incentive to settle, it is thought that auctions will not occur frequently.

With regard to the use of funds, ICANN has done considerable work that will be published for public comment. For example, it has been determined that ICANN's receipt of string-contention auction proceeds must not jeopardize its public charity status under IRC § 509(a)(2), and that it might consider establishing or making arrangements with separate nonprofit entity to receive

auction proceeds where ICANN's role is limited to designating conditions and restrictions necessary to ensure the funds are used for the public benefit. Potential uses of funds include: improving Internet infrastructure, capacity building in developing areas, lowering costs for applicants from developing areas, creating grants for benefit of Internet community, lowering registration fees, supporting ccTLDs of developing countries, creating a security fund, fund "insubstantial" lobbying activities in favor of global public interest, or generally promote the global public interest in DNS stability.

It is suggested that ICANN extend the period of time for winning bidders to provide payment from ten days to thirty days, as some countries impose restrictions on foreign currency transfers. ICANN will consider this suggestion as further detail is provided on the auction process for the next version of the Applicant Guidebook.

ICANN believes that, in most instances, requiring payment from winning bidders within 10 business days of the auction will not impose an undue hardship on applicants and that it will produce a fairer auction process than a longer payment period. In entering an auction, a participant is on notice that it might be obligated to disburse funds in the near future. The effective notice period then, is much longer than 10 days. The 10-day requirement in the current Guidebook is based on study of other international auction models. However, in the event that a given applicant anticipates that it would require a longer payment period due to documentable government-imposed currency restrictions, the applicant may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all applicants in the auction(s) in which the given applicant is participating.

REGISTRY AGREEMENT

I. Key Points

- Thick Whois requirement will ensure reliable access to data on registrations in new gTLDs.
- Specially-tailored Whois models will continue to be available through ICANN's "Procedure for Handling Whois Conflicts with Privacy Law."
- ICANN will investigate providing incentives for new registries that take steps to promote Whois accuracy.

II. Summary of Comments

IPC commends ICANN for requiring thick Whois registries in response to concerns of the IRT and others

This requirement will among other things greatly help in tracking down intellectual property infringement and other abuses. It is consistent with the practice of the vast majority of existing gTLD registries. Any privacy concerns are adequately addressed by existing procedures. ICANN should also take this opportunity to provide incentives for new registries to take on some of the responsibility for ensuring that the ICANN-accredited registrars which they employ to sponsor registrations live up to their obligations regarding Whois. *IPC (20 July 2009)*. COA strongly supports IPC's comments, especially support of the thick Whois requirement from all new gTLDs. To COA's knowledge, ICANN has never responded to the proposal for provisions in the draft registry agreement to obligate registries to take steps to ensure compliance with Whois-related obligations by ICANN-accredited registrars within the new TLD. There is precedent for such provisions in the .asia registry agreement. *COA (20 July 2009)*.

Thick Whois—support

INTA IC strongly supports the proposal to require all new TLD registries to implement a “thick” Whois model, and commends ICANN for adopting this recommendation in the latest proposed DAG amendments. Simplifying access to accurate and reliable contact details for the true owner of the domain name registration is necessary to prevent abuses of intellectual property and to protect the public by preventing consumer confusion and consumer fraud in the Internet marketplace. INTA supports open access to accurate ownership information for every domain name in every top-level domain registry, for addressing legal and other issues related to the registration and use of the domain name. *INTA IC (20 July 2009)*.

Telnic Model Adoption—support

It would be a giant step forward to adopt the Telnic model for all new gTLDs regardless of which jurisdiction they are under. This would allow addressing legitimate concerns of both the individuals seeking more privacy and those of LEA and others that need to access the full data. *P. Vande Walle (29 June 2009)*. See also *S. Mosenkis (19 July 2009)*.

Harmonize Whois for registries and registrars

It should also be logical to adapt the RAA to harmonize the Whois requirements for registrars to match those of registries. It would make little sense to protect the privacy of individuals at the registry level if full data is displayed by the registrar Whois anyway. We need to be consistent. *P. Vande Walle (29 June 2009)*.

Significance of thick Whois requirement for new TLDs

The IRT report stated that provision of Whois information at the registry level under the thick Whois model is essential to cost-effective protection of consumers and intellectual property owners. eNOM notes that the “com” and “net” registries, which hold 84% of all gTLD registrations, are not thick, so that the logical conclusion of the IRT report is that cost-effective trademark protection is not possible in “com” and “net”. eNOM further notes that given the new DAG version’s mandatory Thick Whois requirement for new TLDs, this must be seen as a major victory for the IRT and a significant reduction in trademark protection costs versus “com” and “net”. *eNOM (21 July 2009)*.

III. Analysis and Proposed Position

The comments on this subject generally supported the proposed changes to the registry agreement’s Specification #4 on “Registration Data Publication Services.” ICANN will adopt and maintain these changes in the next version of the Applicant Guidebook. The rationale for the changes was described in an explanatory memorandum titled “Thick vs. Thin Whois for New gTLDs” <<http://icann.org/en/topics/new-gtlds/thick-thin-whois-30may09-en.pdf>>. As described in the explanatory memorandum, not only would thick Whois ensure reliable access to data on registrations in New gTLDs, but there would also be stability benefits that could accrue to registrants.

One commenter urged the adoption of a tiered access model (from dot-tel) across all new registries and also the modification of the Whois obligations in ICANN’s registrar agreements. Another commenter recommended the adoption of features present in two existing gTLD agreements (dot-asia and dot-mobi) that indicate a role for registry enforcement of registrar Whois accuracy obligations. While such recommendations might have merit, mandating them across all new registries would not be consistent with ICANN’s goals for the New gTLD program as described in the explanatory memorandum: “Whois is the subject of continuing work within

ICANN's policy development process. In launching new gTLDs, ICANN's goal has been to maintain the status quo so as not to pre-empt or side-step the bottom-up policy development work." Such proposals could be appropriately addressed within the GNSO's continuing work on Whois and RAA changes.

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EXHIBIT C-010



The Internet Corporation for Assigned Names and Numbers

5 August 2010

Heather Dryden
 Chair of the Governmental Advisory Committee
 Senior Advisor to the Government of Canada

Dear Heather

GAC Comments on new gTLDs and Draft Applicant Guidebook version 3

Thank you for the GAC's letter of 10 March 2010, providing comments on new gTLDs and version 3 of the Draft Applicant Guidebook. I believe the Board and GAC share a similar viewpoint that it would be in the global public interest that "... the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest". The Board is pleased with the way in which the various iterations of the guidebooks are evolving, and is particularly pleased by the mechanism whereby the overarching issues are being resolved through working groups comprised of members of the ICANN community and independent experts.

I respond below to each of the areas of concern raised by the GAC.

Root scaling implications

ICANN supports the principle that the scale and rate of changes must not negatively impact the resilience, security and stability of the DNS. In February 2009, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC), and the ICANN staff (including ICANN Staff members dealing with technical issues and the IANA functions) to study the potential issues regarding the addition of IDNs, IPv6 addresses, DNSSEC and substantial numbers of new TLDs to the root zone. This study was completed in August 2009 and posted for comment at

<http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>. A complementary report

(<http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>) describes the characteristics of the quantitative model developed by TNO for dynamic analysis of root scaling issues.

In addition, and as part of ongoing efforts to ensure the stability of the DNS, ICANN contracted with the DNS Operations, Analysis and Research Center (<https://www.dns-oarc.net/>) as independent and well-respected experts to provide an analysis of the impact of adding IPv6, DNSSEC, and additional top-level domains to the ICANN-operated L root server. This study, while independent of the Root Server System

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Root Scaling study and focused specifically on the impact to the ICANN-operated L root server, has been used as input in the more comprehensive study undertaken by the Root Scaling Study Group. The final report of the DNS-OARC study was published at <http://www.icann.org/en/topics/ssr/root-zone-augmentation-analysis-17sep09-en.pdf>.

Regarding the number of strings in an application round, this was considered in the analysis and model for anticipated new gTLD delegation rates published by staff, and is available at <http://www.icann.org/en/announcements/announcement-03mar10-en.htm>. This analysis indicates that processing constraints will limit delegation rates to a steady state even in the event of extremely large numbers of applications, so that even in a scenario where there are very many applications for new gTLDs, the rate of growth of the root zone would remain linear.

The SSAC and RSSAC are considering the data and analysis in each of these reports and are expected to prepare recommendations for the Board on concrete steps (such as any limitations or emergency removal procedures) to be implemented prior to the initial gTLD application round.

Malicious conduct and abuse of the DNS

Some have made the case that the introduction of new gTLDs will result in an increase in malicious conduct. While this has not been quantitatively demonstrated, significant steps have been taken to ensure that malicious conduct is mitigated in the new environment of new gTLDs through the introduction of several protections.

These protections, described below, were the result of a study undertaken of malicious conduct as it related to the new gTLD space. During the study, ICANN staff solicited and received comments from multiple outside sources, including Intellectual Property Constituency (IPC), Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members of the banking/financial, and Internet security communities. As a result of this work, nine measures were recommended to increase the benefits to overall security and stability for registrants and trust by all users of these new gTLD zones, and each of these requirements will be implemented in the program:

- Vetted registry operators (background checks)
- Demonstrated plan for DNSSEC deployment
- Prohibition of DNS redirection or “wildcarding”
- Removal of orphan glue records to eliminate a tool of spammers and others
- Maintenance of thick WHOIS records
- Centralized method of zone-file access
- Documented registry abuse contacts and procedures



- Participation in an expedited registry security request process.

These are the recommendations of the experts in this area when asked the same question that was posed by the GAC. More detailed information about these recommendations is available in the Mitigating Malicious Conduct explanatory memorandum, available at:

<http://www.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-memo-update-28may10-en.pdf>.

Intellectual Property Rights

The GAC comments, in concert with other comments, were taken in account in version 4 of the Applicant Guidebook that, for the first time, included the set of proposed intellectual property rights protection mechanisms. In particular, ICANN has broadened the types of trademark registrations that must be honored in offering a “Sunrise” service and all new registries employing an IP Claims service must honor trademarks registered in all jurisdictions. The types of registrations offered protections have also been broadened for the Uniform Rapid Suspension Service, one of the new post-delegation rights protection mechanisms. The Post Delegation Dispute Resolution Policy has also been amended in response to specific recommendations from the ICANN community. Rather than recount all the changes here, please see the redlined proposals for:

- The Clearinghouse Procedures
(<http://www.icann.org/en/topics/new-gtlds/trademark-clearinghouse-redline-28may10-en.pdf>)
- URS Procedures
(<http://www.icann.org/en/topics/new-gtlds/draft-urs-redline-28may10-en.pdf>)
- Post Delegation Dispute Resolution Procedures
(<http://www.icann.org/en/topics/new-gtlds/pddrp-redline-28may10-en.pdf>)

Economic studies

The issues of costs and benefits to the expansion of the namespace, the possible impacts on users, the relevance of market power, and the use of defensive registrations are discussed in “An Economic Framework for the Analysis of the Expansion of Generic Top-Level Domain Names,” an independent study completed by economists Michael Katz, Gregory Rosston, and Theresa Sullivan and published by ICANN for comment in June 2010. See

<http://icann.org/en/topics/new-gtlds/economic-analysis-of-new-gtlds-16jun10-en.pdf>.

The report examines the current status of the gTLD market and surveys existing work that has been done on this set of economic issues. The report also outlines a number of potential case studies that would seek to quantify the net costs and benefits involved in the introduction of new gTLDs. Selected studies recommended in the report are now



being initiated. It is possible that these second-phase studies will recommend particular measures for the gTLD evaluation process that would minimize external costs (including, for example, the cost of defensive registrations) while allowing socially beneficial innovation. In this case, any such recommendations will be considered by ICANN and subject to public consultation before being implemented.

ICANN has published additional economic studies:

- [Report Of Dennis Carlton Regarding ICANN's Proposed Mechanism for Introducing New gTLDs](http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf)
(<http://www.icann.org/en/topics/new-gtlds/carlton-re-proposed-mechanism-05jun09-en.pdf>)
- [Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare](http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf)
(<http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf>)
- [Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries](http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf)
(<http://www.icann.org/en/topics/new-gtlds/prelim-report-registry-price-caps-04mar09-en.pdf>)
- Report from CRA International "[Revisiting Vertical Separation of Registries and Registrars](http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf)"
(<http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf>)

In addition, the GNSO considered whether new gTLDs should be introduced and the net benefits of new gTLDs in its final report on the introduction of new gTLDs (<http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>).

Country and territory names prohibited in version 4 of the Draft Applicant Guidebook

As you are aware, the treatment of country and territory names in the DAG4 Guidebook was developed specifically to adhere to paragraph 2.2 of the GAC principles on new gTLDs, i.e., the GAC view that governments should not be denied the opportunity to apply for, or support an application for, their respective country or territory name. However, the GAC's clarification of their interpretation of GAC principle 2.2¹ has resulted

¹ "The GAC interprets para 2.2 of the GAC gTLD principles that the strings that are meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other



in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the first round of the new gTLD application process.

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It seeks to remove the ambiguity created by use of the term 'meaningful representation.' Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.

The definition is objectively based on the ISO list, which is developed and maintained by a recognised international organisation.

It is acknowledged that ICANN has used the concept of 'meaningful representation' of a country or territory in the context of the IDN ccTLD Fast Track. This reflects the objective of rapid initial deployment of IDNs and the associated need to remove as many potential obstacles as possible. There have always been particular sensitivities about geographic names where non-Latin scripts and a range of languages are involved. It does not follow that these considerations should automatically apply to the broader ccTLD and gTLD spaces. It is reasonable that the criteria for including names (the Fast Track) could be different than the criteria for excluding names (gTLDs).

geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.”



The ccNSO will be undertaking policy discussions, which may result in a change in position on these two issues. In particular, defining the distinction between country code and generic names may warrant a broader cross-SO/AC policy discussion. Once policy is developed, it will be appropriate for the Board to reconsider these positions.

Definition of geographical strings insufficient and not in line with paragraphs 2.2 and 2.7 of the GAC principles regarding new gTLDs

As mentioned above, the Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to meet the Board's objectives and are also considered to address to the extent possible the GAC principles. The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

On 2 October 2008, (<http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf>) following a teleconference with the GAC on 8 September 2008, the then CEO & President, Paul Twomey, wrote to the GAC explaining proposed principles to guide a procedure for implementing elements of paragraph 2.2. Place names were split into two categories, as follows: 1) sub-national geographical identifiers such as countries, states, provinces; and, 2) city names. Regional language or people descriptions were considered difficult to develop an implementation plan for this element of paragraph 2.2, because it will be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognised established rights for such descriptions.

As described in the 2008 letter, city names were considered challenging because a city name can also be a generic term, or a brand name, and in many cases city names are not unique. Therefore, where it is clear that an applicant intends to use the gTLD for purposes associated with the city name evidence of support, or non-objection is necessary. However, provision is made in the Guidebook to protect sovereign rights by requiring government approval for capital city names in any language, of any country or territory listed in the ISO 3166-1 standard.



During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during this call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

In relation to paragraph 2.7, at the Board's request, Paul Twomey (who was ICANN's CEO and President), wrote to the GAC on 17 March 2009 (<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>), requesting the GAC's input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level. The end result of this request was a letter from the GAC to Paul Twomey, dated 26 May 2009 (<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>), which proposed a solution, that was accepted by the Board and ultimately reflected in the draft Registry Agreement developed for new gTLDs. On this basis, the Board considers that this matter has been dealt with to the satisfaction of the Board and the GAC.

Mechanisms for dealing with post-delegation deviation from conditions of government approval

The GAC's suggestion of including a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction has been adopted. The Registry Agreement has been amended accordingly.

In addition, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied for as a community-based TLD. The remedies that can be recommended to ICANN under this procedure include:

- remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- providing for the termination of a registry agreement.



Other protections have been added to ensure ongoing government approval of the delegation. Further information is available in explanatory memoranda. The following “Withdrawal of Government Support – Post delegation procedures” (<http://www.icann.org/en/topics/new-gtlds/withdrawal-government-support-28may10-en.pdf>) and “Registry Transition Procedures” (<http://www.icann.org/en/topics/new-gtlds/registry-transition-processes-28may10-en.pdf>) were posted on 31 May 2010.

Objection mechanisms should be improved

I reiterate my response of 22 September 2009, to the GAC on this issue:

“It is difficult to predict with accuracy whether the costs of the objection procedure will prove to be a barrier to legitimate objections; however, it is felt that the existence of a fee to lodge an objection is necessary as a deterrent to frivolous objections. Interested parties may pool their resources to finance an objection that they consider to be legitimate and important. The rule that the prevailing party will be fully reimbursed for the filing fee and advance payment of costs that it paid (Article 14(e)) is intended to lessen the financial burden upon parties that file a well-founded objection. Finally, it should be recalled that the Independent Objector may also file an objection where, for various reasons (including cost), no other objection had been filed.”

“Governments that are members of the GAC have a mechanism to provide advice to ICANN’s Board, in accordance with ICANN’s Bylaws; however, it is not clear that Bylaw was intended to provide an avenue for governments to provide advice on operational matters of this nature. The ICANN Board wishes to have a neutral, expert determination, based upon certain published standards, when deciding whether to accept an application for a new gTLD or if an objection should be upheld.”

Reviewing that response and the issues posed in your letter, I would add the following. ICANN (and the community) devoted substantial resources to develop the policy and implementation models to protect important interests through an objection based dispute resolution benefit. Still, specific suggestions for improvements are encouraged and I understand some Supporting Organizations and Advisory Committees are forming groups to study the issue. ICANN staff will support that work. The costs of that process are paid directly to the dispute resolution provider – no fees are added as a deterrent to potential objectors. In fact, one intended result of the process is to discourage applicants of controversial names that may infringe upon those important interests.

We note that governments pay fees for other services, enter into agreements, and pursue conflict resolution. We do not believe that governments should be afforded special consideration by exempting them from paying fees associated with filing an objection. To do so would result in an inflation of costs for other objectors to cover the costs incurred by government requests. This is different, however, from arrangements to assist impecunious governments. If the GAC is able to provide the principle on which



they base their request for exemption, it will be considered for inclusion into the procedure.

Resolution of competing string applications does not give rise to auction-derived surpluses, but is decided on the respective value of the applications for end users

The purpose of an auction is to resolve contention in a clear, objective manner as the avenue of last resort in resolving contending applications.

Possible uses of funds from this source include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission. That is, funds will be used in a manner that supports directly ICANN's Mission and Core Values and also maintains its not for profit status.

Potential benefits of categories (or track differentiation) should be fully explored.

ICANN is a strong proponent of innovative uses of new TLDs. This is especially so in cases where TLDs can be delegated to address the needs of specific communities such as intergovernmental organizations, socio-cultural groups and registered brands. Rather than having ICANN limit this type of innovation and identification with certain TLD models, more creativity might be spawned by allowing different groups to self-identify the type of TLD they purport to be and promote that model among their community. If a self-declaration program is instituted and contractual accommodations are eliminated or minimized, fees can remain constant. Socio-economic groups, brand owners and other groups all can be accommodated under the existing structure and self-identify as a particular type of TLD. Over time, the market and community interests will sort TLD types – a model preferable to having ICANN make that determination *a priori*. To reiterate, it is not for ICANN to develop these distinctions *a priori*.

It may well be that as definitive categories of applicants emerge in practice, and as ICANN and the respective communities gain further experience of possible benefits of additional gTLD categorization over time, organizational structures might be developed with ICANN to reflect these categories. That will be a consequence of bottom-up policy developments by affected participants, according to the ICANN model. Nothing in the current implementation procedures forecloses those future developments.



Significant consideration has been given to the issue of the introducing category-based TLDs in the new gTLD process. The policy recommendations of the GNSO and the GAC principles have resulted in the creation of three gTLD categories or types:

- Community-based TLDs
- Geographic Name TLDs
- Everything else (called standard or open TLDs)

Community comment suggests the creation of several TLD categories: for example, single-owner, country, intergovernmental organization, socio-cultural, community and open. Depending on the category, various accommodations are suggested: for example, no requirements for an ICANN contract, or to use accredited registrars, or to follow consensus policy, or policy provisions outlined in the GAC's ccTLD principles. Some might be restricted to not-for-profit status, be eligible for reduced fees, require registration restrictions, and have names reserved in anticipation of registration by certain parties.

Beyond the accommodations sought, many or all of the suggested categories seem to be variations of community-based TLDs. The preference for community-based TLDs in the evaluation/contention process is based on policy advice from the GNSO and is intended to ensure that community-based applicants receive the TLD string to which their community is strongly related. Perhaps the most important aspect of the suggested categories is that an applicant within these categories does, in fact, receive the string associated with its community, and that is what the existing process is designed to do.

The introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment. Additionally, there will be considerable debate and discussion in the community as to whether certain accommodations should be made. Should certain gTLDs not be required to have an agreement with ICANN or not be required to follow consensus policy? Should certain TLDs be required to maintain not-for-process status?

These discussions and debates will take considerable time and resources and may ultimately not result in consensus.

The structure of TLD categories, if granted different accommodations with differing contractual obligations, would result in significantly higher compliance costs and therefore, annual fees.

I thank the GAC for their continued effort in considering the implementation of the new gTLD program.

As the Board's resolution (<http://www.icann.org/en/minutes/resolutions-25jun10-en.htm#11>) from the Brussels meeting sets out, there will be a Board Workshop focusing on new gTLDs on 24 and 25 September 2010. The Board will use this time to consider all of the outstanding issues



The Internet Corporation for Assigned Names and Numbers

relating to the implementation of the new gTLD program. We will likely follow the Board Workshop with a Special Board Meeting focusing on the new gTLD topics.

I understand the GAC is preparing their comments on version 4 of the Draft Applicant Guidebook, and we very much look forward to the GAC's input for use in that Board Workshop.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Dengate-Thrush".

Peter Dengate-Thrush

Peter Dengate-Thrush
Chair
ICANN Board of Directors

CC: Rod Beckstrom, CEO and President, ICANN

EXHIBIT C-011



The Internet Corporation for Assigned Names and Numbers

23 November 2010

Heather Dryden
Interim Chairman of the Governmental Advisory Committee
Senior Advisor to the Government of Canada

GAC Comments on version 4 of the new gTLD Applicant Guidebook

Dear Heather

Thank you for your letter of 23 September 2010, providing GAC comments on version 4 of the Draft Applicant Guidebook. I also thank you for your letter of 4 August 2010, relating to procedures for addressing culturally objectionable and/or sensitive strings. I will respond to both letters in this communication.

As you know the Board met in Trondheim on 24 and 25 September 2010, and discussed outstanding issues relating to the implementation of the New gTLD program in order to identify potential ways forward. To the extent possible, the Board took into account the GAC's comments of 23 September 2010; however, as much of the preparation briefing had been provided to the Board well before the meeting, this was difficult to do. You will note, in the resolutions from Trondheim, that staff is directed to determine if the directions indicated by the Board are consistent with GAC comments, and recommend any appropriate further action in light of the GAC's comments.

The adopted Board resolutions from the Trondheim meeting are available at:

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>

I would encourage the GAC to read these resolutions in conjunction with the response to the GAC letter.

As you will appreciate, the development of the Applicant Guidebook and the resolution of the overarching issues identified during the process, has been a challenging task. The multi-stakeholder model under which ICANN operates means that we are responsible to a diverse range of stakeholders, and I believe that the ICANN community has done an outstanding job of considering, in many cases, diverse views on issues and finding workable solutions. That said, we do recognize that the new gTLD process cannot be all things to all people, and that some issues can be better addressed in successive rounds.

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The guiding principles in developing the Applicant Guidebook have been to: preserve DNS stability and security; provide a clear, predictable and smooth running process; and, address and mitigate risks and costs to ICANN and the global Internet community. The Applicant Guidebook was developed around the recommendations from the GNSO policy development process and one of the additional challenges for staff in this context, was to be careful not to reopen for debate issues that had been discussed and resolved during that process.

Root zone scaling

On 6 October 2010, staff published two root server scaling reports for public comment.

- The *Delegation Rate Scenarios for New gTLDs* <http://www.icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf>
- The *Summary of the Impact of Root Zone Scaling* <http://www.icann.org/en/topics/new-gtlds/summary-of-impact-root-zone-scaling-06oct10-en.pdf>

In the analysis done in the “Delegation Rate Scenarios for New gTLDs”, ICANN staff estimates that the expected rate of new TLDs entering the root will be of the order of 200 to 300. The same paper indicates that regardless of the number of applications, there will be a process-imposed limit in the addition of new TLDs of less than a maximum of 1000 new gTLDs per year. In addition, advice from the root zone operators indicates that delegation rates of up to 1000 can be accommodated.

Based on this analysis, and taking into consideration the results of the studies into the effects of scaling the root summarized in “Summary of the Impact of Root Zone Scaling,” ICANN believes that projected growth of the root zone will be well within what the root server system and the DNS as a whole can accept. However, with that said, a recommendation documented in “Summary of the Impact of Root Zone Scaling” is the establishment of a monitoring system to ensure that changes relating to scaling of the root management systems don’t go unnoticed prior to those changes becoming an issue. ICANN staff is currently evaluating the monitoring system and alerting mechanisms necessary to meet this recommendation.

Avoidance of congestion at the operational level is a requirement for moving forward with the new gTLD program; however, as documented in “*Root Zone Augmentation and Impact Analysis*”, a reasonably configured root server can easily support several orders of magnitude more IDN and generic top-level domains than are projected to be added in the foreseeable future. As discussed in the “*Summary of the Impact of Root Zone Scaling*”, scaling effects are much more likely to be felt within the context of internal ICANN systems, such as application processing, legal review, IANA processes, etc. ICANN staff will be carefully monitoring these internal systems to ensure resources are applied appropriately to meet demand.

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Market and Economic Impacts

The analysis of whether new gTLDs should be introduced into the market place, and under what circumstances, was undertaken during the policy development process by the GNSO. As the GAC is aware, the Board approved the GNSO policy recommendations in June 2008, thereby agreeing to open up the new gTLD space and tasked staff with developing an implementation plan.

A number of economic studies have been undertaken to date and these were highlighted in my correspondence of 5 August 2010 to the GAC. We await the latest of these.

The economist reports to date reflect that the benefits of innovation, or the effectiveness of trademark protection developed by the intellectual property constituencies, are too speculative to predict with accuracy. However, the Board does not agree that "... an initial 'fast track' round for a limited number of non-controversial applications which should include a representative but diverse sample of community, cultural and geographical applications, would be a preferable course for ICANN to take." The process outlined in the Applicant Guidebook already provides equity and fair play for all applicants globally. An attempt to limit the process to "non-controversial" would be by its very nature controversial, since it will provide a first movers advantage and an incentive for misuse of the process that would be difficult and expensive to manage. I note that at the time the Board was considering the Expression of Interest (EOI) proposal, which was also put forward as a proposal to assist with addressing the question of the economic impact of the introduction of new gTLDs, the GAC questioned the benefits of pursuing a separate EOI as it could distract attention and resources from finalizing the New gTLD Program.

The GAC has raised the issue of "track differentiation between categories" in their comments on versions 2 and 3 of the applicant guidebook, and while I appreciate that this is in a slightly different context, on previous occasions, I responded in essence that we are not opposed to categories, which we expect will become self-evident over time. However, the introduction of a number of new gTLD categories with a number of different accommodations will lead to a complex and difficult application, administration and evaluation process, in addition to a very complicated contractual compliance environment.

Registry-registrar separation

The Board agrees with the GAC that the registry-registrar separation issue must result in a solution that fosters competition and innovation in the DNS market. The Board notes that registries and registrars will continue to be subject to all applicable national and local laws intended to protect consumers and competition.

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The GNSO recently confirmed that its Vertical Integration Working Group has been unable to achieve consensus <<http://icann.org/en/correspondence/gomes-to-dengate-thrush-07oct10-en.pdf>> on recommending a model for addressing vertical integration of registries and registrars. As indicated at the time of the publication of version 4 of the draft Applicant Guidebook, the Board again reviewed this issue on 9 November 2010, and voted to allow new gTLD registries to own registrars, opting not to create new rules prohibiting registrars from applying for or operating new gTLD registries.

Under the Board resolution additional enforcement mechanisms have been added. New gTLD registry agreements are to include: (1) a Code of Conduct prohibiting any misuse of data or other abusive conduct arising out of registry-registrar cross-ownership; (2) robust auditing requirements; (3) graduated sanctions up to and including contractual termination and punitive damages; and (4) ICANN's right to refer competition issues to appropriate government competition authorities.

The full resolution is available at: <http://www.icann.org/en/minutes/resolutions-05nov10-en.htm>

Protection of rights owners

The Board understands the concerns expressed by the GAC regarding the potential costs of defensive registrations, and notes that the community spent a significant amount of time considering this issue, notably through the Implementation Recommendation Team and the Special Trademark Issues Working Group. The Board considered the many recommendations and supports the resulting protections now outlined in the Applicant Guidebook. These include:

- The requirement for all new registries to offer a Trademark Claims service or a sunrise period at launch.
- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for TM holders, registries, and registrars.
- The existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.
- Implementation of a Uniform Rapid Suspension (URS) system that provides a streamlined, lower-cost mechanism to suspend infringing names.
- The requirement for all new gTLD operators to provide access to “thick” Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.

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- The availability of a post-delegation dispute resolution mechanism that allows rights holders to address infringing activity by the registry operator that may be taking place after delegation.

Each of these is intended to provide a path other than defensive registration for trademark holders.

The application process itself, based on the policy advice, contains an objection-based procedure by which a rights holder may allege infringement by the TLD applicant. A successful legal rights objection prevents the new gTLD application from moving forward: a string is not delegated if an objector can demonstrate that it infringes their rights.

The application form also requires applicants to disclose and describe the implementation of their proposed rights protection mechanisms during startup and launch of the TLD. This allows ICANN to ensure that the applicant will meet the minimum requirements, as well as providing the community with knowledge about that registry's expected practices.

The Board does not concur with the GAC's recommendation that the match criteria for searches be extended to include results that combine a trademark and a generic term such as "Kodakcameras" unless of course this is a registered trademark. Instead the Board has adopted the recommendations of the intellectual property community as represented in the IRT regarding match criteria.

In addition to the outreach that has already been conducted on the new gTLD program, a comprehensive four month communication campaign will be undertaken prior to the launch of new gTLDs.

Post delegation disputes with governments

Regarding the question of whether the operations of registry operators of "geo-TLDs" should conduct business under the legal framework of the country providing the letter of support or non-objection to ICANN: the government approving the applicant can impose that requirement on the applicant as a condition of support.

While an agreement between the gTLD registry and the government or public authority, would not be enforceable by ICANN, ICANN would comply with a legally binding decision from a court of competent jurisdiction. Further, if the application is submitted as a "community-based" TLD, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are also available to governments or public authorities.

This detail is set out in the New gTD Program Explanatory Memorandum—Withdrawal of Government Support for Registry – Post delegation options

<http://www.icann.org/en/topics/new-gtlds/withdrawal-government-support-28may10-en.pdf>

Use of geographical names

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board’s objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC’s concerns.

A detailed account was provided in my letter of 5 August 2010, to the GAC.

Country and territory names

I understand that the issue of the use of country and territory names will not be part of the IDN ccPDP; however, the ccNSO is considering options available to consider this issue and the Board anticipates a policy process which provides direction on this issue. The Board will, after the first round of new gTLDs, reconsider the treatment of country and territory names in the new gTLD process.

As stated in previous communications, the Board sought to remove the ambiguity of the term ‘meaningful representation’ from the definition of country and territory names to provide greater clarity for applicants and appropriate safeguards for governments and the broad community. The current definition is objectively based on the ISO 3166-1 and other published lists to provide clarity for potential applicants and the community.

City names

It is acknowledged in the Guidebook (and in previous missives to the GAC) that city names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names can not be afforded universal protection. However, the process does provide a means for cities and applicants to work together where desired.

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Applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate.

Objection process

The criteria for community objections was created with the possible objections to place names in mind and as such the objection process “appropriately enables governments to use this.” The *New gTLD Dispute Resolution Procedure* is outlined in an Attachment to Module 3, pp P-1 to P-11 and was also developed so that it is equally accessible to those who wish to utilize the process.

The Board discussed the GAC’s position that governments should not be required to pay a fee for raising objections to new gTLD applications, and does not agree with the GAC on this point. It is the Board’s view that governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). How would the dispute resolution process be funded: a speculative increase in application fees or increased fees to gTLD registrants? Either of these cases or others seem difficult to implement and unfair.

Letter of support

While appreciating that governments need time to consult internally before deciding whether to support an application, obtaining government support or non-objection is the responsibility of the applicant and is stated in Module 2 of the Applicant Guidebook. While it has not been decided how long the application period will be open from the time of launching the new gTLD program, there is a requirement that a four month communications campaign be undertaken prior to launch.

Legal recourse for applicants

As stated earlier in this letter, one of the guiding principles in developing the Applicant Guidebook has been to address and mitigate risks and costs to ICANN and the global Internet community.

ICANN reaffirms its commitment to be accountable to the community for operating in a manner that is consistent with ICANN's Bylaws, including ICANN's Core Values such as "making decisions by applying documented policies neutrally and objectively, with integrity and fairness." The Board does not believe however that ICANN should expose itself to costly lawsuits any more than is appropriate.

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<http://icann.org>

The new gTLD process has been carefully designed over several years with multiple opportunities for public comment in order to develop a well-documented process that can be operated neutrally and objectively to the maximum extent feasible, and with integrity and fairness. Also, all of ICANN's standard accountability and review mechanisms will be available to all participants and affected parties in the new gTLD process, including ICANN's reconsideration process, independent review, and the ICANN Ombudsman.

Based on the above, in Trondheim, the Board resolved that, "The Board approves the inclusion of a broad waiver and limitation of liability in the application terms and conditions.

Addressing the needs of developing countries

The Board notes that through the IDN ccTLD Fast Track process much has been done to meet the global public interest in promoting a fully inclusive and diverse Internet community and infrastructure, at very minimal cost to applicants. The new gTLD process has been developed on a cost-recovery model, and owing to a level of uncertainty associated with the launch of new gTLDs, the fee levels currently in the Applicant Guidebook will be maintained for all applicants.

As stated in correspondence to the GAC of 22 September 2010, "... the experience gained from the initial round of applications will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds. ICANN has always stated that the idea of fee categories and lower fees will be investigated after the first round and following removal of many of the contingencies and uncertainties."

The Board supports the publication of a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, in kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together. The new gTLD Deployment Budget, available at <http://www.icann.org/en/announcements/announcement-22oct10-en.htm> contains US\$200,000 to help identify, educate, and promote the organizations willing to provide such assistance and an additional US\$100,000 has been added to the Application Processing Budget to increase Customer Support processes for all applicants.

Morality and Public Order

In accordance with the GAC request, ICANN has facilitated the cross-community discussions on the process for addressing the GNSO policy recommendation that, "[s]trings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law."

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The Board welcomes the report from the Recommendation 6 Working Group and has requested staff to undertake analysis of the report to determine how recommendations could be incorporated into the Guidebook and conduct a consultation with the Working Group before the Cartagena meeting with the aim of finding additional areas of agreement for incorporation into the Applicant Guidebook.

I wish to make a few points regarding the GAC letter of 4 August on this topic. I do not consider this to be a stability issue per se but rather a policy issue where ICANN is implementing the consensus position developed by the GNSO. There are controversial names delegated and registered now at different levels of the domain name system that do not result in security or stability issues.

Additionally, the new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

Importantly, in addition to the Morality and Public Order objection and dispute resolution processes, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

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I understand that some GAC members have expressed dissatisfaction with this process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. Advice containing thoughtful proposals for amending the treatment of this issue that maintains the integrity of the policy recommendation would be welcomed. The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of the recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.

Once again, I appreciate the GAC's commitment to the new gTLD process and hope you find this letter responsive to GAC concerns.

The proposed final version of the Applicant Guidebook has now been posted and I look forward to discussing the introduction of new gTLDs in Cartagena.

Regards,



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EXHIBIT C-012

ICANN Board-GAC Consultation: Geographic Names**EXPLANATION OF ISSUE/HISTORY**

The GAC Principles regarding New gTLDs contain two paragraphs addressing geographic names. Paragraph 2.2¹ relates to names at the top level and paragraph 2.7² relates to names at the second level. In its policy recommendations, the GNSO provided that no specific protections be put in place beyond those afforded in the objection and dispute resolution process:

- that community objection procedures provided protections the GAC sought at the top level, and
- protections at the second level should be left to individual registries.

There has been regular communication in the form of face-to-face meetings, communiqués and correspondence between the GAC, staff and the Board on the treatment of geographic names and other issues, since the Board approved the GNSO recommendations for the introduction of new gTLDs in Paris in June 2008.

Many amendments have been made to the Guidebook that incorporate GAC requests regarding the treatment of geographical names.

REMAINING AREAS OF DIFFERENCE:

1. The current Guidebook states that country and territory names will not be available in the first round. The GAC requests that Country and territory names not be available until the completion of the IDN ccPDP, and that it may be more appropriate to consider country and territory names outside the new gTLD program.
2. The current Guidebook protects country and territory names that appear on specific U.N. lists and their translations. The GAC requests that names by which countries, cities or regions are commonly known as, or abbreviations of, and which do not appear in the lists used to define geographic names in the Applicant Guidebook should also be given the same protection as names that do appear.

¹ 2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

² 2.7 Applicant registries for new gTLDs should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD

3. The current Guidebook states that applications for strings that match city names require approval of the relevant government if the applicant asserts in the application that the TLD will represent the city. The GAC requests that ICANN review applications to ensure applicants do not avoid the safeguards of government support by misstating that the intended use of the name is for non-community purpose.

With regard to issues 2. and 3. the GAC believes that prior reviews of new gTLD strings can serve as an “early warning” to applicants, providing an opportunity to amend or modify the proposed string prior to proceeding further in the application process or provide opportunities to determine whether the applicant is the sole appropriate manager or relevant authority for that particular string, or whether the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed. See Letter from GAC to ICANN, dated 22 November 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-22nov10-en.pdf>

Based on the GAC’s comments on version 4 of the Applicant Guidebook, dated 23 September 2010, <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>, and recent conversations with GAC members, the following areas, highlighted in bold, are considered outstanding. The Board position and rationale is as follows:

- **Country and territory names not be available in new gTLD rounds until the completion of the IDN ccPDP.**

In correspondence to the GAC on 5 August 2010 and in response to GAC request, the Board Chair confirmed, after advice from the GAC and comments from the ccNSO, that country and territory names would not be available to delegation in the first round of the new gTLD application process. The issue of the use of country and territory names in general is considered as out of scope of the IDN ccPDP, and therefore linking the two processes does not appear appropriate.

Prolonging the exclusion of country and territory names in further new gTLD rounds should not be decided before the process that will be used to deal with this issue is clarified. While it is not certain that the country name exclusion will be removed after the first round, the Board believes it is preferable not to prejudge that possibility at that stage.

The ccNSO is considering the options available, and will advise the Board in due course. Modalities for subsequent rounds will be determined in view of these recommendations as well as community and GAC advice.

- **Names by which countries, cities or regions are commonly known as and which do not appear in the ISO lists should also be given the same protection as names that do appear.**

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for “commonly used” interpretations of these names would multiply the number of names and the complexity of the process many-fold.

In correspondence to the GAC on 5 August 2010, the Board Chair indicated that the Board had sought to remove the ambiguity of the term ‘meaningful representation’ from the definition of country and territory names. The current definition is objectively based on the ISO 3166-1 and other published lists to provide greater clarity for applicants and appropriate safeguards for governments and the broad community.

Holland has been raised in this context as an example on a number of occasions by the GAC. However, while not appearing on the ISO 3166-1 list, Holland appears to be protected, as it the Danish translation of ‘the Netherlands’.

Language has been added to the Guidebook indicating that governments may send notifications regarding national laws directly to applicants or via public comment forum (see Applicant Guidebook, Module 1, section 1.1.2.5 <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>) once the applications are publicly posted. Such notifications are not meant to serve as formal objections or be cause for a modification to an application. It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuses.

- **ICANN to review the proposal for city names in the applicant guidebook to ensure applicants do not avoid the safeguards of government support or non-objection by stating that the intended use of the name is for non-community purposes.**

It is acknowledged in the Guidebook (and in correspondence and discussions with the GAC) that city names present challenges because city names may also be generic terms or brand names and, in many cases, no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. This makes it impracticable or impossible for evaluators to effectively check whether applications for strings are city names and would exclude thousands of legitimate uses and applications. In addition, given that many of the names of cities are duplicated across the world, it would be impracticable for the evaluators to determine which government or public authority is 'relevant' in the context of the rules of the Applicant Guidebook. Thus, all city names are not afforded the same types of protection as country and capital city names.

However, an application for a *city name*, where the applicant declares that it intends to use the gTLD for purposes associated with the city name, will require support or non-objection from the relevant government or public authority.

Applicants are required to provide a description/purpose of what the TLD will be used for, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate. The Registry Agreement has the same clause.

Language has been added to the Guidebook indicating that governments may send notifications regarding national laws directly to applicants or via public comment forum (see Applicant Guidebook, Module 1, section 1.1.2.5 <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>) once the applications are publicly posted. Such notifications are not meant to serve as formal objections or be cause for a modification to an application. It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuses.

RELEVANT GUIDEBOOK SECTIONS

1.1.2.5 *Public Comment*

...Governments may provide a notification using the public comment forum to communicate concerns relating to national laws. However, a government's notification of

concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

As noted above, applicants are encouraged to identify potential sensitivities in advance and work with the relevant parties to mitigate concerns related to the application...

2.2.1.4.1 Treatment of Country or Territory Names³

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. It is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

2.2.1.4.2 Geographic Names Requiring Government Support

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

³ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.

In this case, it is anticipated that the relevant government or public authority would be at the national level.

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and
- (b) The applied-for string is a city name as listed on official city documents.⁴

In the case of an application that meets conditions (a) and (b), documentation of support will be required only from the relevant government or public authority of the city named in the application.

3. An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.

In this case, it is anticipated that the relevant government or public authority would be at the sub-national level, such as a state, provincial or local government or authority.

4. An application for a string listed as a UNESCO region⁵ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁶

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective

⁴ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁵ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁶ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant’s responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- determine the relevant governments or public authorities; and
- identify which level of government support is required.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

REFERENCE DOCUMENTS: USE AND PROTECTION OF GEOGRAPHICAL NAMES

- **SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS**

- **CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON THE TOPICS**

SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS

Use and protection of geographical names

- The inclusion of geographic names, as defined in the Guidebook, was developed in response to GAC principle 2.2.
- The protection of government interests in geographic names is accounted for by the requirement that no application for a geographic name (as defined in the Guidebook) can be approved without documentation of the support or non-objection from the relevant government or public authority.
- Country and territory names, as defined in the Applicant Guidebook, have been excluded from the first application round of the gTLD process based on GAC advice.
- A minimum list of reserved names was added to the Registry Agreement based on GAC principle 2.7 which called for protections at the second level. Similarly, all applicants are required to describe in the application their proposed measures for ensuring the protection of geographic names at the second and other levels in the TLD. This information is posted for public information and comment, in accordance with GAC advice.
- The capacity for an objection to be filed on community grounds, where there is substantial opposition to an application from a community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not defined in the Applicant Guidebook.

THIS TABLE PROVIDES A CHRONOLOGICAL LISTING OF GAC ADVICE AND COMMENTS ON NEW GTLDS AND RESPONSES PROVIDED BY ICANN AND KEY DOCUMENTS PUBLISHED ON THE TOPICS

Use And Protection Of Geographic Names

GAC Advice and Comments	ICANN responses and key documents
<p>28 March 2007: GAC Principles regarding New gTLDs</p> <p>2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.</p> <p>2.7 Applicant registries for new gTLDs should pledge to:</p> <p>a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.</p> <p>b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.</p>	<p>ICANN mapping of GNSO Policy Recommendations</p> <p>2.2) is addressed by the GNSO Recommendation 20; “An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.” providing grounds for an objection process and subsequent dispute resolution handling, as further developed in GNSO Implementation Guideline P. The GNSO Implementation Guideline H* is also of relevance in this context. Further guidance is provided by the GNSO Reserved Names WG Recommendation 20: “There should be no geographical reserved names (i.e.,no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated. However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC principles, and the advisory role vested to it under the ICANN bylaws.</p> <p>Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN bylaws.”</p> <p>Issues regarding geographical names in relation to the introduction of new gTLDs have been discussed by other entities in the ICANN community, including the ccNSO (see</p>

<http://ccnso.icann.org/meetings/losangeles/ccnso-council-minutes-31oct07.pdf>2.

From an implementation perspective, it is foreseen that corresponding requirements regarding documentation of government ascent be clearly stated to the applicants and all relevant applications be checked for compliance as appropriate.

In the absence of a reservation approach, the gTLD application process being developed by ICANN staff proposes to integrate the above GAC principle as outlined below.

Applicants wishing to apply for a gTLD string that is a meaningful representation of the name of a country or territory listed in ISO 3166-1 (in any script), should be prepared to provide documented support or documented lack of objection from the relevant government or public authority. This would be a considered a criterion for an applicant to pass the initial evaluation stage of the process.

In the case of an application for a string that the application evaluators believe is a meaningful representation of the name of a country or territory on the ISO 3166-1 list, where the application did not include documentation of agreement by the relevant government or public authority, ICANN would require the applicant to refer the application to the government or public authority to obtain an expression of support or of "no objection." In the absence of such an expression, the application would proceed no further toward approval.

Consistent with the GNSO Reserved Names Working Group's recommendation that potential applicants should be informed of the relevant constraints, the above procedure would be fully disclosed and documented in the Request For Proposals (RFP) for new gTLDs. Applicants could choose how to proceed based on knowledge of the steps they would be required to follow.

This approach is in line with principles that have historically been applied in ccTLD delegation and redelegation processes. As noted in RFC 1591 (Domain Name System Structure and Delegation) and ICP-1, Internet Domain Name System Structure and Delegation (ccTLD Administration and Delegation):

The desires of the government of a country with regard to delegation of a ccTLD are taken very seriously. The IANA will make them a major consideration in any TLD delegation/transfer discussions. Significantly interested parties in the domain should agree that the proposed TLD manager is the appropriate party. (see <http://www.isi.edu/in-notes/rfc1591.txt>; <http://www.icann.org/icp/icp-1.htm>).

The above procedure refers to a string that is a meaningful representation of the name of a country or territory on the ISO 3166-1 list. For strings denoting other geographical identifiers (for example: landmarks, rivers, cities), the objection

mechanism would remain available to significantly interested stakeholders, including governments. Objections to geographical identifiers other than country names would trigger a dispute resolution process where these issues can be properly adjudicated based on the particular circumstances. Note that the GNSO anticipated that the implementation of the objection process that addresses recommendation 20 (described above) would be adequate to address applications for meaningful representations of country names. There is some discussion among the council that the procedure described in this implementation detail to consult with governments is not required. It is not clear though that the process of government consultation differs from the GNSO policy implementation. Consultation will continue with GAC and council to provide clear information regarding implementation.

2.7a) The GNSO Reserved Names WG considered geographical and geopolitical names without recommending that they be reserved at the outset, stating in their report: “In the case of geographical/geopolitical names and controversial names, it was very difficult if not impossible to define clear reservation requirements that could be applied for all new gTLDs”.

The GNSO Reserved Names WG report also states that: “Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations in this report are designed to ensure that registry operators comply with the national laws for which they are legally incorporated/organized.”

Further guidance is provided by the GNSO Reserved Names WG Recommendation 22: “The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws. For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly

	<p>recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.</p> <p>2.7b) The GNSO Recommendation 16 states that: “Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.” This implies that all new gTLDs would be bound by the existing Consensus Policies, including the UDRP that applies to trademark-related disputes for second level domain names. Any new Consensus Policy that may emerge for dispute resolution on the second level will likewise apply to all new gTLDs in line with the above Recommendation. Provisions to that effect will be included in the base agreement for new gTLDs.</p>
<p>31 October 2007: Communiqué Los Angeles Appreciates work done by GNSO regarding the proposal for principles, recommendations and implementation guidelines for new gTLDs. GAC draws attention to the fact that the proposal does not properly take into account paragraph 2.2 in the <i>GAC principles regarding new gTLDs</i>, in particular the avoidance of country names. In practice some countries would not be in a position to avail themselves of the proposed objection mechanism especially those not participating in ICANN activities.</p>	
<p>13 February 2008: Communiqué New Dehli On IDN gTLDs:</p> <ul style="list-style-type: none"> • <i>GAC Principles regarding new gTLDs</i> are equally relevant to IDN gTLDs. • should avoid country, territory, place names and country territory or regional language or people descriptions, unless in agreement with the govts or relevant public authorities. <p>In the event that there is any doubt regarding the status of whether an application constitutes and IDN ccTLD or IDN gTLD, ICANN should consult with the govt. or RPA of the territory concerned to determine whether there may be any potential infringement of their sovereign rights regarding their country or territory name.</p>	
<p>26 June 2008: Communiqué Paris On the introduction of the gTLDs the GAC expressed concern to Board and GNSO that the GNSO proposals do not include provisions reflecting GAC Principles regarding new gTLDs, names 2.2, 2.6 and 2.7.</p>	
	<p>2 October 2008: Letter from ICANN CEO to GAC Chair http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf Following up letter on treatment of geographic names after teleconference with</p>

	<p>the GAC. Letter outlines proposal for way forward re para 2.2:</p> <ul style="list-style-type: none">• Supporting documentation, evidence of non-objection, from the relevant government or public authority will be required for strings which represent a country or territory name. ISO 3166-1 list will be used as reference list.• Place names was considered very broad and were defined as:<ul style="list-style-type: none">○ sub-national geographic identifiers such as counties, states, provinces. The ISO 3166-2 identified as the reference list, and support documentation, evidence of non-objection required;○ city names are challenging because a city name can also be a generic term, or a brand name, and in many cases no city name is unique. Therefore, an applicant that clearly intends to use the TLD to leverage the city name, will require supporting documentation.• Regional language and people descriptions—difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognized established rights for such descriptions <p>Paragraph 2.7 (a)</p> <ul style="list-style-type: none">• ICANN would be reluctant to place blanket restrictions on the use of geo names at the second level due to anticipated mulit-national companies expected to apply for a brand name. Names with national and geographic significances difficult to define. <p>Paragraph 2.7(b)</p> <ul style="list-style-type: none">• Names with national and geographic significance are difficult to define, as is what constitutes an ‘abuse’ of a name. UDRP protects rights at the second level.
<p>5 November 2008: Communiqué Cairo Appreciates level of engagement inter-sessionally with ICANN staff which lead to better reflection of the GAC principles in New gTLDs in the DAG, particularly principles 2.2 and 2.6. As a result became more sensitive to the potential blurring of the existing distinction between the ccTLD and gTLD namespace.</p> <p>Questions related to consideration of country and territory names need to be</p>	

<p>addressed further. Will continue consideration of whether the strings being meaningful representations or abbreviations of a country or territory name in any script or language should not be allowed in the gTLD space until the related ccTLD PDP is completed.</p> <p>The procedure recommended in 2.7a of the GAC principles also needs to be further considered in the DAG.</p>	
<p>10 March 2009: Comments on V1 of Applicant Guidebook The GAC expects ICANN to apply GAC gTLD principles in respect to the handling of geographic names and in particular principles 2.2 (including place names) and 2.7 that are not comprehensively addressed in the implementation proposals.</p> <p>Strings being meaningful representations or abbreviations of a country and territory name in any script or language should not be allowed in the gTLD space until the related IDN ccTLD policy development processes have been completed.</p> <p>The proposed introduction of new gTLDs and in particular any process relating to the protection of geographic names should not result in an unreasonable administrative burden for government administrations.</p>	<p>24 October 2008: Applicant Guidebook Version 1 http://www.icann.org/en/topics/new-gtlds/draft-rfp-24oct08-en.pdf</p> <p>22 October 2008, Explanatory memo—Proposed process for geographic names applications http://www.icann.org/en/topics/new-gtlds/geographic-names-22oct08-en.pdf</p> <p>18 February 2009, version 1 Public Comments Analysis Report http://www.icann.org/en/topics/new-gtlds/agv1-analysis-public-comments-18feb09-en.pdf</p>
	<p>6 March 2009: Board meeting Mexico City Resolved (2009.03.06.07), the Board is generally in agreement with the proposed treatment of geographic names at the top-level, and staff is directed to revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard, and greater specificity in the support requirements for continent names, and post the revised position for public comment.</p> <p>Resolved (2009.03.06.08), staff is directed to send a letter to the GAC by 17 March 2009 identifying the implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution. The Board would request a preliminary response by 24 April 2009 and a final report by 25 May 2009.</p>
	<p>17 March 2009: Letter from ICANN CEO to GAC Chair http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf</p> <ul style="list-style-type: none"> • Outlines Board resolution of 6 March 2009 • Board believes treatment of geographic names at the top level provides a

	<p>workable compromise between paragraph 2.2 and the GNSO's policy recommendation 20.</p> <ul style="list-style-type: none">• Seeks the GAC's members input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level, specifically paragraph 2.7.
<p>24 April 2009: Letter from GAC Chair to ICANN CEO http://www.icann.org/correspondence/karklins-to-twomey-24apr09.pdf</p> <ul style="list-style-type: none">• Geographic Names at the top level:<ul style="list-style-type: none">○ Rights of governments or public authorities in relation to the rights of the sovereign state or territory which they represent cannot be limited or made conditional by any procedures that ICANN introduces for new gTLDs.○ It would be sensible to enable Governments (or the GAC) to object to an application for a gTLD on public interests grounds without going through the time and cost of the formal objection process.○ ccNSO approach that country and territory names on the ISO list are treated as ccTLDs seems to be a sensible approach to ensure that geographic names are afforded sufficient protection.• Geographic names at the second level:<ul style="list-style-type: none">○ Registries should be asked to indicate how they intend to incorporate GAC advice in their management of second level domains.○ .info procedure could be drawn upon as an example○ at a minimum, the names contained on three lists [ISO 3166-1; United Nations Group of Experts on Geographical Names, Part III Names of Countries of the World; and List of UN member states in 6 official UN languages prepared by the Working Group on Country Names of the United nations conference on the standardization of Geographical Names] must be reserved at the second level at no cost for the governments of all new gTLDs.• Potential misuse of respective names on the second level <p>In the event that a government notifies ICANN that there is misuse of any second level domain name, ICANN shall notify the registry and request the suspension of</p>	

<p>the said name pending the withdrawal of the objection.</p>	
<p>26 May 2009: Letter from GAC Chair to ICANN CEO http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf</p> <ul style="list-style-type: none"> Proposal in relation to geographic names at the second level is acceptable to the GNSO, and is repeated in the letter. <p>Notes that on other issues relating to geographic names at the top level and the potential misuse of the respective names on the seconds, the GNSO and GAC are not in agreement. The GAC will engage in further discussion in Sydney.</p>	
<p>24 June 2009: Communiqué Sydney The GAC discussed the Draft Applicant Guidebook version 2 and feels that it does not yet respond to all the concerns that governments have. The GAC notes that considerable work is underway seeking to address several critical yet outstanding issues but the GAC remains concerned about a number of important issues: - The need to ensure respect for national and public policy interests, in particular the need for adequate protection of geographic names (on the top and the second levels) and delegation/re-delegation procedures;</p>	
	<p>18 February 2009: Applicant Guidebook Version 2 http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-18feb09-en.pdf</p> <p>31 May 2009, Summary and analysis of public comments on version 2 http://www.icann.org/en/topics/new-gtlds/agv2-analysis-public-comments-31may09-en.pdf</p>
<p>18 August 2009: Comments on V2 of Applicant Guidebook The GAC has commented on the use of geographic names as gTLDs on various occasions. The GAC principles of 28 March 2007 emphasize that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities" (Article 2.2). In a letter dated 24 April 2009, the ICANN Board received input from the GAC regarding the issue of geographic names as new gTLDs. In this letter the GAC pointed out that the rights of relevant governments or public authorities, as representatives of the sovereign state or territory, cannot be limited as such by ICANN or by any procedures introduced by ICANN for new gTLDs.</p>	<p>Reply from ICANN Chairman 22 September 2009 http://www.icann.org/en/correspondence/dengate-thrush-to-karklins-22sep09-en.pdf</p> <p>While understanding the sentiment that a country name TLD should be treated as a ccTLD, ICANN policy constrains the way in which it is possible to provide country name TLDs to all countries and territories is under the new gTLD program at this time.¹ The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. Applications for country and territory names</p>

¹ Meaningful representations of country or territory names in non-Latin scripts will be available under the IDN Fast Track process but country and territory names in Latin scripts are available in the gTLD program only, until the ccTLD policy development is complete.

The GAC is of the opinion that the DAG2 is a substantial improvement on its predecessor, but that it does not yet fully reflect the GAC position that governments and other public authorities, as representatives of citizens of a sovereign state, territory, province or city, have a legitimate interest in the use of geographical names as new TLDs.

The GAC therefore proposes the following amendments to be incorporated in version 3 of the Draft Applicant Guidebook (further in the text - DAG3):

i. Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space

These strings represent countries or territories and the principle of sovereignty must apply. TLDs in this category should therefore be treated in the same way as ccTLDs.

The use of exhaustive listings (e.g. ISO 3166-1) will not cover all the ccTLD-like applications envisaged by the GAC and ccNSO, in particular in the following categories:

'Commonly referred to as' type strings representing a country or territory but which are not official titles, e.g. .america, .ceylon, .holland;

Common or general names that are often applied to more than one country, e.g: .guinea

will require evidence of support or non-objection from the relevant government or public authority which is consistent with GAC principle 2.2.², and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought.

Safeguards have been developed to ensure that the relevant government or public authority's sovereign rights are respected, and that the process is understood. It is ultimately the government or public authority's discretion whether to support, or not support, an application for a country name TLD, and the circumstances under which they would be willing to do so.

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "... revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition, provided in a [Geographical Names](#) excerpt of the guidebook posted on 30 May 2009, continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. While the revised criteria may have resulted in some changes to what names are afforded protection, it has not changed the original intent to protect all names listed on the ISO 3166-1 list, including the short or long form of the name. It is felt that the sovereign rights of governments continue to be adequately protected as the definition is based on a list developed and maintained by an international organisation.

In the context of the revised definition, the name America is afforded protection,

² ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities

	<p>while the names Ceylon and Holland are not. However, the objection process does provide a secondary avenue of recourse. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. With regard to the names .Guinea and .Guinea-Bissau; only the relevant government or public authority for the respective countries can agree to support, or not-object, to the use of their respective names.</p>
<p>28 October 2009: Communiqué Seoul Following discussions in Seoul however, both between GAC members and with other stakeholders, the GAC feels that many of its concerns remain outstanding, related in particular to:</p> <p>- the need to respect national public interests and sovereign rights regarding strings with geographical meaning;</p>	
	<p>4 October 2009: Applicant Guidebook Version 3 http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-04oct09-en.pdf</p> <p>15 February 2010, Summary and analysis comments version 3 http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv3-15feb10-en.pdf</p>
<p>10 March 2010: Comments on V3 of Applicant Guidebook The GAC restates the advice contained in the Chair’s letter of 18 August 2009 which states: “<i>Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space</i>”. The GAC interprets para 2.2 of the GAC gTLD principles that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.</p> <p>----</p> <p>The GAC is of the view that the definition of geographical strings continues to be insufficient and is not in line with GAC gTLD principles paras 2.2 and 2.7. For example, commonly used abbreviations or regions not listed in ISO 3166-2 should</p>	<p>Reply from ICANN Chairman 5 August 2010 http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-05aug10-en.pdf</p> <p>Country and territory names prohibited in version 4 of the Draft Applicant Guidebook As you are aware, the treatment of country and territory names in the DAG4 Guidebook was developed specifically to adhere to paragraph 2.2 of the GAC principles on new gTLDs, i.e., the GAC view that governments should not be denied the opportunity to apply for, or support an application for, their respective country or territory name. However, the GAC’s clarification of their interpretation of GAC principle 2.2³ has resulted in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the</p>

³ “The GAC interprets para 2.2 of the GAC gTLD principles that the strings that are meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP, and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.”

<p>also be considered as geographical names.</p>	<p>first round of the new gTLD application process.</p> <p>With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.</p> <p>The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It seeks to remove the ambiguity created by use of the term ‘meaningful representation.’ Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.</p> <p>While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.</p> <p>The definition is objectively based on the ISO list, which is developed and maintained by a recognised international organisation.</p> <p>It is acknowledged that ICANN has used the concept of ‘meaningful representation’ of a country or territory in the context of the IDN ccTLD Fast Track. This reflects the objective of rapid initial deployment of IDNs and the associated need to remove as many potential obstacles as possible. There have always been particular sensitivities about geographic names where non-Latin scripts and a range of languages are involved. It does not follow that these considerations should automatically apply to the broader ccTLD and gTLD spaces. It is reasonable that the criteria for including names (the Fast Track) could be different than the criteria for excluding names (gTLDs).</p> <p>The ccNSO will be undertaking policy discussions, which may result in a change in</p>
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	<p>position on these two issues. In particular, defining the distinction between country code and generic names may warrant a broader cross-SO/AC policy discussion. Once policy is developed, it will be appropriate for the Board to reconsider these positions.</p>
	<p>28 May 2010: Applicant Guidebook Version 4 http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-28may10-en.pdf</p> <p>12 November 2010: Summary and analysis of comments version 4 http://www.icann.org/en/topics/new-gtlds/summary-analysis-agv4-12nov10-en.pdf</p>
<p>23 September 2010: Comments on V4 of Applicant Guidebook</p> <p>The GAC appreciates the work undertaken by ICANN to address the GAC’s concerns relating to the use of geographical names. In particular, the GAC welcomed the addition of the clearly stated provision in version 4 of the DAG that country and territory names are to be excluded from the first application round. However, as stated in its Nairobi communiqué, the GAC underlines that this exclusion should be prolonged until the completion of the ccPDP.</p> <p>The GAC notes that the guide still does not take fully into consideration the GAC’s concerns about extending the protection of geographical names. The GAC remains of the view that the definition of geographical strings continues to be insufficient and inconsistent with GAC gTLD principles and earlier advice by the GAC. In particular, names by which countries are commonly known as and which do not appear in ISO lists should also be given the same protection as country names that do appear.</p> <p>The GAC notes that ICANN referred governments to the “secondary avenue of recourse available by way of objections” in the Chair’s letter of 5 August 2010. The GAC therefore asks ICANN to ensure that the criteria for community objections are implemented in a way that appropriately enables governments to use this instrument to protect their legitimate interests.</p> <p>Applications for gTLDs which are city names will need careful handling. The GAC considers that the provisions in version 4 of the DAG in relation to city names carry the danger that an applicant could seek to avoid the safeguards of government support or non-objection if the application simply states that the intended use of the name is for non-community purposes. The GAC asks ICANN to review the proposal in the DAG in order to ensure that this potential loophole does not arise.</p>	<p>23 November 2010: Reply from ICANN Chairman http://www.icann.org/en/correspondence/dengate-thrush-to-dryden-23nov10-en.pdf</p> <p>The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board’s objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC’s concerns.</p> <p>A detailed account was provided in my letter of 5 August 2010, to the GAC.</p> <p><i>Country and territory names</i></p> <p>I understand that the issue of the use of country and territory names will not be part of the IDN ccPDP; however, the ccNSO is considering options available to consider this issue and the Board anticipates a policy process which provides direction on this issue. The Board will, after the first round of new gTLDs, reconsider the treatment of country and territory names in the new gTLD process.</p> <p>As stated in previous communications, the Board sought to remove the ambiguity of the term ‘meaningful representation’ from the definition of country and territory names to provide greater clarity for applicants and appropriate safeguards for governments and the broad community. The current definition is objectively based</p>

<p>The GAC takes this opportunity to remind the Board that governments need time to consult internally before deciding on whether or not to deliver a letter of approval or non-objection, in particular in cases there is more than one application for a string with a geographical name. This timeline needs to be factored into the DAG advice.</p>	<p>on the ISO 3166-1 and other published lists to provide clarity for potential applicants and the community.</p> <p><i>City names</i></p> <p>It is acknowledged in the Guidebook (and in previous missives to the GAC) that city names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names can not be afforded universal protection. However, the process does provide a means for cities and applicants to work together where desired.</p> <p>Applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p> <p><i>Letter of support</i></p> <p>While appreciating that governments need time to consult internally before deciding whether to support an application, obtaining government support or non-objection is the responsibility of the applicant and is stated in Module 2 of the Applicant Guidebook. While it has not been decided how long the application period will be open from the time of launching the new gTLD program, there is a requirement that a four month communications campaign be undertaken prior to launch.</p>
	<p>25 September 2010: Board meeting in Trondheim http://www.icann.org/en/minutes/resolutions-25sep10-en.htm</p> <p>Board Briefing Materials: One [PDF, 3.23 MB] Two [PDF, 2.03 MB] Three [PDF, 816 KB] Four [PDF, 240 KB] Five [PDF, 546 KB]</p> <p>“...Whereas, on 23 September 2010, the Governmental Advisory Committee (GAC) provided comments on version 4 of the draft Applicant Guidebook. Resolved (2010.09.25.___), staff is directed to determine if the directions indicated by the Board below are consistent with GAC comments, and recommend any</p>

	<p>appropriate further action in light of the GAC's comments.”</p> <p>Geographic Names</p> <p>Sub-national place names: Geographic names protection for ISO 3166-2 names should not be expanded to include translations. Translations of ISO 3166-2 list entries can be protected through community objection process rather than as geographic labels appearing on an authoritative list.</p> <p>Continents and UN Regions: The definition of Continent or UN Regions in the Guidebook should be expanded to include UNESCO’s regional classification list which comprises: Africa, Arab States, Asia and the Pacific, Europe and North America; Latin America and the Caribbean.</p> <p>Governments that file objections should be required to cover costs of objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). Also, the Board notes that the GAC proposal for free government objections is not specific as to particular objection grounds or particular government objectors (for example whether both national and local government objectors would be covered).</p>
	<p>12 November 2010: Proposed Final Applicant Guidebook http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf</p>
<p>9 December 2010: Communiqué Cartagena That the GAC will provide the Board at the earliest opportunity with a list or "scorecard" of the issues which the GAC feels are still outstanding and require additional discussion between the Board and the GAC. These include:</p> <ul style="list-style-type: none"> • Use and protection of geographical names; 	<p>10 December 2010, Board meeting</p> <p>New gTLD Remaining Issues http://www.icann.org/en/minutes/resolutions-10dec10-en.htm#2</p> <p>Resolved (2010.12.10.21), the Board:</p> <ol style="list-style-type: none"> 1. Appreciates the GAC's acceptance of the Board's invitation for an inter-sessional meeting to address the GAC's outstanding concerns with the new gTLD process. The Board anticipates this meeting occurring in February 2011, and looks forward to planning for this meeting in consultation and cooperation with the GAC, and to hearing the GAC's specific views on each remaining issue. 2. Directs staff to make revisions to the guidebook as appropriate based on

	<p>the comments received during the public comment period on the Proposed Final Applicant Guidebook and comments on the New gTLD Economic Study Phase II Report.</p> <ol style="list-style-type: none">3. Invites the Recommendation 6 Community Working Group to provide final written proposals on the issues identified above by 7 January 2011, and directs staff to provide briefing materials to enable the Board to make a decision in relation to the working group's recommendations.4. Notes the continuing work being done by the Joint Applicant Support Working Group, and reiterates the Board's 28 October 2010 resolutions of thanks and encouragement.5. Directs staff to synthesize the results of these consultations and comments, and to prepare revisions to the guidebook to enable the Board to make a decision on the launch of the new gTLD program as soon as possible.6. Commits to provide a thorough and reasoned explanation of ICANN decisions, the rationale thereof and the sources of data and information on which ICANN relied, including providing a rationale regarding the Board's decisions in relation to economic analysis.7. Thanks the ICANN community for the tremendous patience, dedication, and commitment to resolving these difficult and complex issues.
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EXHIBIT C-013

From: On Behalf Of Peter Dengate Thrush
Sent: Saturday, March 05, 2011 12:50 PM
To: Heather Dryden
Cc: ICANN Board of Directors
Subject: [icann-board] Documenting the Board/GAC Brussels consultation

Dear Heather,

On behalf of the Board of Directors of ICANN, I would like to formally thank the ICANN's Governmental Advisory Committee for participating in the first intersessional Board/GAC meetings, held in Brussels on 28 February and 1 March 2011, regarding ICANN's proposed implementation of the new gTLD program.

We appreciate the preparatory work and time commitment of the GAC Members in participating in these discussions. We also look forward to continuing to work with you on the best ways to evaluate and implement changes to the program resulting from your advice, in the consultation scheduled to be held at the Silicon Valley ICANN Meetings to be held in San Francisco later this month. We are still holding the 17 March consultation slot open and look forward to adding the other day to these consultations following on from your recent offer to be available for this additional time.

The Board looks forward to continuing to collaborate with the GAC in order to conclude the consultation process on the new gTLD program during the Silicon Valley/San Francisco Meeting.

The Board has made a good faith effort toward narrowing the outstanding issues as evidenced by the production of Board Papers, and the subsequent use of the GAC scorecard to frame and shape the issues. The clarity gained during these efforts has significantly reduced the amount of work that needs to be done in order to reach agreement on most issues.

We have included the ICANN Board's response to the GAC scorecard entitled 'Board Notes GAC Actionable Scorecard, attached. We have provided this response, to set out information regarding the Board's evaluation of the GAC advice, which has been summarized within your scorecard. We look forward to discussing this with you further as part of the evaluation. The issues that you have raised are responded to point-by-point.

While discussion in Brussels confirmed that we would work together to clarify implementation of the issues marked as "1(b)", a narrowed focus in San Francisco on the issues that are still in contention would be a best use of the Board and GAC's time during the two days of consultations, and should represent the final stages in our required consultation. Accordingly, we propose focusing there on those items marked with a "2", in the Board's response to the Scorecard attached. Those items marked 1(b) might result in follow on discussions with the GAC regarding implementation in the time leading up to the launch of the program, but do not appear that they will require the same consultation that we have triggered on the "2"'s since we are not in fundamental disagreement on those items categorized as 1(b)'s.

ICANN Board Notes on the GAC New gTLDs Scorecard

4 March 2011

This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2":

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC in San Francisco is required.

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
1.	The objection procedures including the requirements for governments to pay fees			
1.	Delete the procedures related to "Limited Public Interest Objections" in Module 3.	1B	The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for general purposes, but the GAC (as a whole) would not be obligated to use the objection	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			process in order to give advice.	
2.	Procedures for the review of sensitive strings			
2.1.1	<p>1. String Evaluation and Objections Procedure Amend the following procedures related to the Initial Evaluation called for in Module 2 to include review by governments, via the GAC. At the beginning of the Initial Evaluation Period, ICANN will provide the GAC with a detailed summary of all new gTLD applications. Any GAC member may raise an objection to a proposed string for any reason. The GAC will consider any objection raised by a GAC member or members, and agree on advice to forward to the ICANN Board.</p>	1B	<p>A procedure for GAC review will be incorporated into the new gTLD process. The GAC may review the posted applications and provide advice to the ICANN Board. As discussed with the GAC, such advice would be provided within the 45-day period after posting of applications, with documentation according to accountability and transparency principles including whether the advice from the GAC is supported by a consensus of GAC members (which should include identification of the governments raising/supporting the objection).</p>	
2.1.2	<p>GAC advice could also suggest measures to mitigate GAC concerns. For example, the GAC</p>	2	<p>If the GAC were to provide suggested changes to mitigate</p>	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
	could advise that additional scrutiny and conditions should apply to strings that could impact on public trust (e.g. '.bank').		concerns, we are concerned that the advice would lead to ad hoc changes to the evaluation process based on subjective assessments.	
2.1.3	In the event the Board determines to take an action that is not consistent with GAC advice pursuant to Article XI Section 2.1 j and k, the Board will provide a rationale for its decision.	1A		
2.2	<p>2. Expand Categories of Community-based Strings</p> <p>Amend the provisions and procedures contained in Modules 1 and 3 to clarify the following:</p>			
2.2.1	"Community-based strings" include those that purport to represent or that embody a particular group of people or interests based on historical,	2	Any community is eligible to designate its application as community-based. Bona fide community applicants are eligible for preference in the	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan’s Position
	<p>cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive). In addition, those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse, should also be considered “community-based” strings.</p>		<p>event of contention for a string.</p> <p>Also, ICANN has provided a community objection process in the event that there is "substantial opposition to it from a significant portion of the community." (A community objection may be lodged against any application, whether or not it is designated as community-based.)</p> <p>The GAC's list of groups and sectors appears to be an example of the kinds of communities that may be able to achieve standing to raise a community objection.</p> <p>ICANN will review the standards for the community objection process to ensure that they are appropriate. Revised standards will be included in the forthcoming version of the</p>	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
2.2.2	Applicants seeking such strings should be required to affirmatively identify them as "community-based strings" and must demonstrate their affiliation with the affected community, the specific purpose of the proposed TLD, and –when opportune evidence of support or non-objection from the relevant authority/ies that the applicant is the appropriate or agreed entity for purposes of managing the TLD.	2	<p>Applicant Guidebook.</p> <p>The GAC's suggestion would require applicants to designate themselves as a community, even if they might not be.</p> <p>Strings may have many meanings, not all of which might implicate a community.</p> <p>Reducing the context for how strings may be used is contrary to an important goal of the new gTLD program, which is to help encourage competition, innovation and consumer choice.</p>	
2.2.3	In the event the proposed string is either too broad to effectively identify a single entity as the relevant authority or appropriate manager, or is sufficiently contentious that an appropriate manager cannot be identified and/or agreed, the application should be rejected.	2	<p>The community objection process is intended to deal with applications where "there is substantial opposition" to the application "from a significant portion of the community."</p> <p>This GAC advice seems to suggest that unless everyone can agree on an appropriate</p>	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			<p>applicant for a given string then the string should not be approved. Again, this seems contrary to the goal of increasing competition and providing additional choice to all consumers.</p> <p>Further, the phrase "sufficiently contentious" is vague and it is unclear who the GAC is suggesting would need to agree on an "appropriate manager." Thus, this suggestion does not seem to be workable in light of the goals of the new gTLD program.</p>	
2.2.4	The requirement that objectors must demonstrate “material detriment to the broader Internet community” should be amended to reflect simply “material detriment”, as the former represents an extremely vague standard that may prove impossible to satisfy.	1B	Staff will return with revised wording to address this concern.	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
2.2.5	Individual governments that choose to file objections to any proposed "community-based" string should not be required to pay fees.	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).	
3.	Root Zone Scaling			
3.1.1	The Board should continue implementing a monitoring and alerting system and ensure a) that ICANN can react predictably and quickly when there are indicators that new additions and changes are straining the root zone system, and	1A	<p>Root zone monitoring systems are currently in place. ICANN will work with root zone operators to identify relevant reporting metrics and establish a process to report such metrics to the GAC and the Internet community.</p> <p>Furthermore, a process will be implemented that enables the delegation of TLDs to be slowed or stopped in the event there is a strain to the root zone system.</p>	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			ICANN also commits to review the effects of the new gTLD program on the operations of the root zone system, and defer the delegations in the second round until it is determined that the delegations in the first round did not jeopardize root zone system security or stability.	
3.1.2	b) that the processes and possible resulting restorative measures that flow from its results are fully described in the Application Guidebook before the start of the first application round.		See 3.1.1 above.	
3.2	The Board commits to defer the launch of a second round or batch of applications unless an evaluation shows that there are indications from monitoring the root system etc. that a first (limited) round did not in any way jeopardize the security and stability of the root zone system.		See 3.1.1 above.	
3.3	The Board commits to make the		See 3.1.1 above.	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
	second round or batch of applications contingent on a clean sheet from full technical and administrative assessment of impact of the first round with recommendations which should go out to public comment for approval.			
3.4	The Board commits to avoid the possibility that other activities will be impacted by the possible diversion of resources to processing new gTLD applications.		ICANN commits that the operation of the IANA functions and ICANN's coordination of the root zone system will not be negatively affected.	
3.5	The Board should ensure that ICANN can effectively address the specific needs of applicants from different, perhaps non-English speaking cultures, and with different legal environments.		See note on 3.4 above.	
3.6	The Board should monitor the pace and effectiveness of	1A		

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
	ICANN's management of contract negotiations for new gTLDs in a potential situation of 200 to 300 simultaneous applications and evaluations.			
3.7	The Board is confident that all relevant actors (IANA, root server operators, etc) are sufficiently informed about what is expected from them in terms of work loadings and resources in order to fulfil their respective roles, in particular the pre delegation checking, approvals, implementation of potentially 200 to 300 root zone changes a year and expected post-delegation changes.	1A		
4.	Market and Economic Impacts			
4.1	Amend the final Draft Applicant Guidebook to incorporate the following: Criteria to facilitate the	2	It is not planned that information gathered as part of the application will be used to predict the net benefit of the prospective TLD – that would be	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
	weighing of the potential costs and benefits to the public in the evaluation and award of new gTLDs.		too speculative to be of real value. However, during the discussions between the GAC and the Board in Brussels, the GAC indicated that the weighing of costs and benefits should instead take place as part of the new gTLD program review as specified in section 9.3 of the Affirmation of Commitments.	
4.2	A requirement that new gTLD applicants provide information on the expected benefits of the proposed gTLD, as well as information and proposed operating terms to eliminate or minimize costs to registrants and consumers.	1B	As clarified through the discussions with the GAC in Brussels, ICANN will continue to explore with the GAC during the ICANN Public meeting in March 2011 what data might be included in the application to provide useful input to later economic studies and community analysis.	
4.3	Due diligence or other operating restrictions to ensure that Community-based gTLDs will in fact serve their targeted communities and will not broaden their operations in a	1A	ICANN will continue to work to ensure that post-delegation dispute mechanisms adequately address this concern.	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
	manner that makes it more likely for the registries to impose costs on existing domain owners in other TLDs.			
5.	Registry – Registrar Separation			
	Amend the proposed new registry agreement to restrict cross-ownership between registries and registrars, in those cases where it can be determined that the registry does have, or is likely to obtain, market power.	2	ICANN sought to implement a marketplace model that would enhance competition, opportunities for innovation and increase choice for consumers while preventing abuses in cases where the registry could wield market power. While lifting restrictions on cross-ownership, ICANN reserves the right to refer issues to appropriate competition authorities if there are apparent abuses of market power. As previously resolved by the Board, registry agreements will include requirements and restrictions on any inappropriate or abusive conduct arising out of registry-registrar cross ownership, including without	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			limitations provisions protecting against misuse of data or violations of a registry code of conduct.	
6.	Protection of Rights Owners and consumer protection issue			
6.1.1	<p data-bbox="394 474 909 553">1. Rights Protection: Trademark Clearing House (TC)</p> <p data-bbox="394 610 894 1279">The TC should be permitted to accept all types of intellectual property rights that are recognized under the national law of the country or countries under which the registry is organized or has its principal place of business. The only mandatory requirement for new registry operators will be to recognize national and supranational trademark registrations issued before June 26, 2008 and court-validated common law trademarks.</p>	1B	<p data-bbox="1104 474 1617 1187">ICANN will update the Applicant Guidebook to permit the Trademark Clearinghouse to include intellectual property rights for marks in addition to registered trademarks and those protected by treaty or statute. Of those marks, registry operators will be required to recognize national, supranational and marks protected by treaty and statute as eligible for their sunrise and Trademark claims services (subject to proof of use as described below relating to sunrise services).</p> <p data-bbox="1104 1243 1583 1414">The Clearinghouse must clearly note when entering the marks into the database, which marks are registered trademarks.</p>	I have no real problem with this.

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			The proposed date cut-off will not be utilized as discussed with the GAC.	
6.1.2	Sunrise services and IP claims should both be mandatory for registry operators because they serve different functions with IP claims serving a useful notice function beyond the introductory phase.	2	The IRT and STI suggested an either/or approach. Please advise reasons for advocating both.	I can't speak to the IRT, but the STI did not really discuss this. I recall that it was basically assumed that one or the other would be used. That being said, I have no problem with this.
6.1.3	IP claims services and sunrise services should go beyond exact matches to include exact match plus key terms associated with goods or services identified by the mark) e.g. "Kodakonlineshop") and typographical variations identified by the rights holder.	2	ICANN recognizes that trademark holders have an interest in receiving notification in the event that strings are registered that include their mark and a key term associated with goods or services identified by the mark. This remains an area of discussion.	The ALAC did file a minority report on this which is basically inline with the GAC position. We said: The TC should also allow the inclusion of names, for the purposes of sunrises, which would include a registered TM used in conjunction with:

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
				<p>- a dictionary word that is associated with the class of services trademarked (example: a chemical company XYZ could deposit in the TC the name "XYZ-Chemicals". This was allowed in the .asia sunrise.</p> <p>- a dictionary word that is regularly used in clear association with the TM (example: Yahoo-Finance - see http://finance.yahoo.com/). There would need to be carefully worded rules, objection processes and penalties for depositing names in the TC that do not meet the criteria (example: Yahoo-stinks, unless Yahoo starts to</p>

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
				manufacture and sell stink-bombs).
6.1.4	All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, must be eligible to participate in the pre-launch sunrise mechanisms.	1B	<p>All trademark registrations of national and supranational effect, regardless of whether examined on substantive or relative grounds, will be eligible for inclusion in the Trademark Clearinghouse and for the Sunrise/TM Claims service subject to the following.</p> <p>Registries that utilize a sunrise process must require submission of evidence of use of the mark by holders of all trademark registrations, regardless of the jurisdiction of registration.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>	I have no problem with this.

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6.1.5	Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.	1A		I have no problem with this.
6.1.6	The IP claims service should notify the potential domain name registrant of the rights holder's claim and also notify the rights holder of the registrant's application for the domain name.	1A	Agreed. Note: the notification to the rights holder will be sent promptly after the potential registrant has acknowledged the IP Claim and proceeds with the application to register the name.	No problem. I actually thought that this was in the STI.
6.1.7.1	The TC should continue after the initial launch of each gTLD.	2	The Trademark Clearinghouse will be an ongoing operation. The Sunrise and TM Claims service will operate only at launch (in accordance with the recommendations of the IRT and the STI). Trademark holders will continue to be able to subscribe to "watch" services that will be	The ALAC minority report to the STI did recommend addition investigation of this, and so I conditionally support it. The condition is that the Claims service MUST NOT delay the process of registration of a new

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			<p>able to utilize the Centralized Zone File Access system to be able to efficiently monitor registrations across multiple gTLDs.</p>	<p>domain. Giving the registrant notice that there MAY be a conflict, and providing notice to the TM owner of the registration is fine. But there should be no extra fee or any delay associated with deciding to go ahead with the registration.</p> <p>I do note that registrars and I think registries did have implementation problems with this.</p>
6.1.7.2	<p>Rights holders, registries and registrars should all contribute to the cost of the TC because they all benefit from it.</p>	1B	<p>Rights holders will pay the Trademark Clearinghouse when the rights holders register their marks, and the registry will pay when administering its sunrise/trademark claims service.</p>	<p>I support the GAC position, and I believe that we did during the STI also.</p>
6.2.1	<p>2. Rights Protection: Uniform Rapid Suspension (URS):</p>	1A		

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	Significantly reduce the timescales. See attached table for proposed changes.			
6.2.2	The complaint should be simplified by replacing the 5,000 word free text limit + unlimited attachments [para 1.2] with a simple pro forma standardised wording with the opportunity for not more than 500 words of freeform text and limit the attachments to copies of the offending website.	1A	Note: The word limit will not apply to respondents.	I support this and believe that it is in line with a formal APAC comment in reply to a recent Application Guidebook.
6.2.3	Decisions should be taken by a suitably qualified 'Examiner' and not require panel appointments.	1A	Examiners will be appointed by the URS Provider. Only one Examiner will be appointed per URS proceeding.	I believe that what the GAC is suggesting is exactly as in the STI.
6.2.4	Where the complaint is based upon a valid registration, the requirement that the jurisdiction of registration incorporate substantive examination (paras 1.2f (i) and 8.1a) should be	1B	There is no requirement that any registration of a trademark must include substantive evaluation. Each trademark registration must be supported by evidence of use	I have no problem with this.

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	removed.		<p>in order to be the basis of a URS complaint.</p> <p>Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.</p>	
6.2.5	If, as is expected in the majority of cases, there is no response from the registrant, the default should be in favour of the complainant and the website locked. The examination of possible defences in default cases according to para 8.4(2) would otherwise give an unjustified privilege to the non-cooperating defendant.	1B	An examiner will review the merits of each complaint to ensure that the standard is met, even in the event of a default. The examiner will not be required to imagine possible defenses – this provision will be removed from the Guidebook.	I support the Board position.
6.2.6	The standard of proof (para 8.2) should be lowered from “clear and convincing evidence” to a preponderance of evidence”.	2	The principle of the URS is that it should only apply to clear-cut cases of abuse.	I support the Board position on this.

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			"Clear and convincing" is the burden of proof that was recommended by the IRT and endorsed by the STI.	
6.2.7	The "bad faith" requirement in paras 1.2f), 1.2g) and 8.1c) is not acceptable. Complainants will in only rare cases prevail in URS proceedings if the standards to be fulfilled by registrants are lax. Correspondingly, the factors listed in paras 5.7a) ("bona fide") and b) "been commonly known by the domain name") can hardly allow a domain name owner to prevail over the holders of colliding trademarks.	2	The standard applied for the URS is based on the UDRP standard. Both require a finding of bad faith.	I support the Board position. We cannot presume that bad faith does not exist.
6.2.8	A 'loser pays' mechanism should be added.	2	A loser pays mechanism was investigated, but ultimately was not adopted. The UDRP does not have a loser-pays mechanism. It is unlikely that complainants would ever be able to effectively collect based on clear-cut cases of abuse, since the names in	I support the Board position.

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			question will already have been suspended. Notwithstanding, ICANN will monitor URS procedures once launched to see whether a loser pays mechanism or some other methodology to reimburse mark holders is feasible.	
6.2.9	Registrants who have lost five or more URS proceedings should be deemed to have waived the opportunity to respond to future URS complaints (this amendment corresponds to the "two strikes" provision which applies to rights holders).	2	Due process principles require that every registrant should always have the opportunity to present a defense.	I support the Board position.
6.2.10.1	However, there should be a clear rationale for appeal by the complainant.	2	The Board has asked the GAC to clarify if it intended to refer to "complainant" (as opposed to respondent) in this statement. Every appeal will be decided de novo, and therefore the appeal process does not require a separate evaluation of the rationale for filing the appeal.	I support the Board position.

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6.2.10.2	The time for filing an appeal in default cases must be reduced from 2 years to not more than 6 months.	2	The IRT originally suggested a URS without any appeal process. The STI suggested the inclusion of an appeal process (without any mention of a limitation on the ability to seek relief from a default). In response to comments, the Applicant Guidebook was revised to include a two-year limitation period on the opportunity to seek relief from a default.	I can support the GAC position. I do not believe that the STI specified a time limit.
6.2.10.3	In addition, the examination of possible defences in default cases according to para 8.4(2) means an unjustified privilege of the non-cooperating defendant.	1A		Unclear if the meaning – will look at later.
6.2.11	The URS filing fee should be US\$200-US\$300 and minor administrative deficiencies should not result in dismissal of the URS complaint.	1B	ICANN will negotiate with URS service providers for the best prices and services. The fee range mentioned will be a target.	Agree with Board position.
6.2.12	A successful complainant should have the right of first refusal for transfer of the disputed domain	1A	A successful complainant should have the right of first refusal to register the disputed domain	Agree. This was in the ALAC Minority position to the STI.

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	name after the suspension period so that the complainant is not forced to pursue a UDRP proceeding to secure a transfer.		name after the expiration of the registration period and any extension of the suspension period. This right of first refusal upon expiration will not diminish the registration period, or the period of time available for the registrant to seek relief from default, or in any other way harm the rights of any registrant.	
6.2.13	The URS should go beyond 'exact' matches and should at least include exact + goods/other generic words e.g. "Kodakonlineshop".	2	As recommended by the IRT, the URS only applies to registrations that are identical or confusingly similar to protected marks as described in the Guidebook. As noted above, the URS is only intended to apply to clear-cut cases of abuse.	The ALAC supported the concept that the TM Clearinghouse allow such extended marks. It did not support such a provision for the URS.
6.3.1	<p>3. Rights Protection: Post-delegation Dispute Resolution Procedure (PDDRP)</p> <p>The standard of proof be changed from "clear and convincing evidence" to a</p>	2	This was the standard developed by the IRT.	I am not an expert on this, but tend to support the Board position and reject that of the GAC on these items

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	"preponderance of evidence".			
6.3.2	The second level registrations that form the underlying basis of a successful PDDRP complaint should be deleted.	2	The registrants are not parties to the proceedings, thus keeping a registrant from using the domain name or stripping the name from the registrant should be effected through an alternative proceeding, such as URS or UDRP. Note that to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator, then deletion of registrations may be a recommended remedy.	
6.3.3	The requirement of "substantive examination" in para 9.2.1(i) should be deleted.	1B	<p>There is no requirement that any registration of a trademark must include substantive evaluation.</p> <p>Each trademark registration must be supported by evidence of use in order to be the basis of a PDDRP complaint.</p>	

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			Use of the trademark may be demonstrated by providing a declaration from the trademark holder along with one specimen of current use. Further discussion should take place relating to proof of use.	
6.3.4	A new para 6.1 a) be added: "being identical to the complainant's mark in relation to goods and services which are identical to those for which the complainant's mark is registered. This would not apply if the registrant has a better right to the mark. In particular the registrant will in normal circumstances have a better right if the mark has been registered prior to the registration of the complainant's mark."	(?)	(Clarification from the GAC requested.)	
6.3.5	Regarding the second level (para 6.2), the registrant operator should be liable if he/she acts in bad faith or is grossly negligent in	2	Changing the standard from requiring "affirmative conduct" to "gross negligence" would effectively create a new policy	

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	relation to the circumstances listed in para 6.a)-d).		imposing liability on registries based on actions of registrants.	
6.3.6	The requirement in para 7.2.3 lit.d) that the complainant has to notify the registry operator at least 30 days prior to filing a complaint is burdensome and should be reduced to 10 days if not deleted entirely.	2	The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry.	
6.3.7	Para 19.5 should be amended as follows: "In cases where the Expert Determination decides that a registry operator is liable under the standards of the Trademark PDDRP, ICANN will impose appropriate remedies that are in line with the Determination.	1A	ICANN agrees that it will impose appropriate remedies that are "in line" with the determination. It should be noted however that ICANN is ultimately responsible for determining the appropriate remedy.	
6.4.1	<p>4. Consumer Protection</p> <p>Amend the "Maintain an abuse point of contact" paragraph in the DAG to include government</p>	1B		I support this GAC position.

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	agencies which address consumer protection:			
6.4.2	A registry operator must assist law enforcement, government agencies and agencies endorsed by governments with their enquiries about abuse complaints concerning all names registered in the TLD, including taking timely action, as required, to resolve abuse issues.	1B	ICANN agrees that the registry operator must assist appropriately in law enforcement investigations. There might be a difference between local and International law enforcement agencies. There is a question about whether this requirement would be stronger than what is already required by law. Changes to the Guidebook will be made after consideration of those issues.	Agree with due care reply of the Board.
6.4.3	Ensure that ICANN's contract compliance function is adequately resourced to build confidence in ICANN's ability to enforce agreements between ICANN and registries and registrars.	1A	Augment ICANN's contractual compliance function with additional resources to support the program of contracts between ICANN and the registries and registrars.	How could I argue with this!
6.4.4	Vetting of certain strings gTLD strings which relate to any	2	ICANN has requested clarification from the GAC of the	I actually support the intent of the GAC

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	generally regulated industry (e.g. .bank, .dentist, .law) should be subject to more intensive vetting than other non-geographical gTLDs.		intended meaning of "generally regulated industries", but generally believes that <i>a priori</i> categorization of strings is inherently problematic.	proposal, since it has been raised repeatedly and never addressed. But I find their proposal simplistic and not implementable.
7.	Post-Delegation Disputes			
7.1	Change the wording in the sample letter of Government support in AG back to the wording in DAGv4 and keeping the new paragraph 7.13 of the new gTLD registry agreement with the changed wording from "may implement" to "will comply". E.g change the wording from "may implement" back to "will comply" with a legally binding decision in the relevant jurisdiction.	1B	ICANN will modify the suggested wording of the letter of support or non-objection, and make clear its commitments to governments in additional text of the Applicant Guidebook. However, the registry agreement will continue to indicate that ICANN "may implement" instead of "will comply" with such decisions for legal reasons. As discussed previously with the GAC, ICANN's commitment to comply with legally binding decisions is made to governments, not to registries, Therefore, it is not necessarily in the interests of ICANN, or of governments, to place that obligation in registry	

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			agreements, giving registry operators the ability, and perhaps duty, to force ICANN to implement decisions in every case. (ICANN has a mechanism to enforce its contracts with registry operators.)	
7.2	In addition describe in the AG that ICANN will comply with a legally binding decision in the relevant jurisdiction where there has been a dispute between the relevant government or public authority and registry operator.	1B	The suggestion to change "court decision" to "legally binding decision" requires further discussion as it may in some cases amount to a redelegation request. Also, there could be multiple jurisdictions that have given their support to one application (e.g., multiple "Springfield"s), thus, it may not be appropriate to implement a particular action based on one such decision.	
8.	Use of geographic names:			
8.1.1.1	1. Definition of geographic names Implement a free of charge objection mechanism would allow governments to protect	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections	

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	their interest		in some circumstances (subject to constraints imposed by budget and other considerations).	
8.1.1.2	and to define names that are to be considered geographic names.	2	The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.	
8.1.2	This implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is	1B	ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government.	

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	considered to be a name for which this country is commonly known as.		This is in the interest of providing a transparent and predictable process for all parties. (See related note above.)	
8.1.3	<p>Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise.</p> <p>Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>	2	There are post-delegation mechanisms to address this situation. In addition, the "early warning" opportunity will offer an additional means to indicate community objections.	
8.1.4	Governments should not be required to pay a fee for raising objections to new gTLD	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC	

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	<p>applications. Implement a free objection mechanism would allow governments to protect their interest.</p>		<p>members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).</p>	
8.2.1	<p>2. Further requirements regarding geographic names The GAC clarifies that it is a question of national sovereignty to decide which level of government or which administration is responsible for the filing of letters of support or non-objection. There may be countries that require that such documentation has to be filed by the central government - also for regional geoTLDs; in other countries the responsibility for filing letters of support may rest with sub-national level administrations even if the name of the capital is concerned. GAC requests some clarification on this in the next version of the</p>	1A	<p>This principle is agreed, and this can be clarified in the Guidebook. ICANN invites governments to identify appropriate points of contact on this issue.</p>	

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	Applicants Guidebook.			
8.2.2	According to the current DAG applications will be suspended (pending resolution by the applicants), if there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals. The GAC understands such a position for applications that have support of different administrations or governmental entities. In such circumstances it is not considered appropriate for ICANN to determine the most relevant governmental entity; the same applies, if one string represents different geographic regions or cities. Some governments, however, may prefer not to select amongst applicants and support every application that fulfils certain	1B	<p>ICANN will continue to suspend processing of applications with inconsistent/conflicting support, but will allow multiple applicants all endorsed by the same authority to go forward, when requested by the government.</p> <p>This area needs further discussion on the potential situations that could lead to redelegation requests.</p>	

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	<p>requirements. Such a policy may facilitate decisions in some administrations and avoid time-consuming calls for tenders. GAC encourages ICANN to process those applications as other competing applications that apply for the same string.</p>			
9.	Legal Recourse for Applications:			
9.	<p>Seek legal advice in major jurisdiction whether such a provision might cause legal conflicts – in particular but not limited to US and European competition laws. If ICANN explains that it has already examined these legal questions carefully and considering the results of these examinations still adheres to that provision, GAC will no longer insist on its position. However, the GAC expects that ICANN will continue to adhere to the rule of law and follow broad principles of natural</p>	1A	<p>As discussed with the GAC, ICANN has examined these legal questions carefully and considering the results of these examinations still adheres to this provision. ICANN will clarify in the Applicant Guidebook that: if ICANN deviates from its agreed processes in coming to a decision, ICANN's internal accountability mechanisms will allow complaints to be heard.</p>	

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	<p>justice. For example, if ICANN deviates from its agreed processes in coming to a decision, the GAC expects that ICANN will provide an appropriate mechanism for any complaints to be heard.</p>			
10.	Providing opportunities for all stakeholders including those from developing countries			
10.1	<p>Main issues</p> <p>1. Cost Considerations Set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude stakeholders from developing countries from participating in the new gTLD process.</p>	TBD	<p>ICANN's Board recognized the importance of an inclusive New gTLD Program and issued a Resolution forming a Joint Working Group (JAS WG) which is underway. ICANN would like to receive the report of the JAS WG as soon as possible. JAS WG is requested to provide a possible deadline for his work during the ICANN meeting in SFO allowing the Board to act.</p> <p>It is noted that one of the challenges in developing support mechanisms for applicants is to</p>	

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			<p>ensure that such support is actually received by those applicants with the most need, rather than being used advantageously by other participants. This issue has also been taken into account in the work of the JAS WG.</p> <p>The minimum technical requirements for operating a registry are expected to be consistent across applications.</p>	
10.2.1	<p>2. Language diversity Key documents produced by ICANN must be available in all UN languages within a reasonable period in advance of the launch of the gTLD round.</p>	1A	<p>Some documents are already available in the 6 UN languages. The Final Application Guidebook will be also in due course, and the web site will be organize to find easily all the documents available in each language.</p>	
10.2.2	<p>The GAC strongly recommends that the communications strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p>	1A		

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10.3	3. Technical and logistics support	1B	ICANN has agreed to provide certain mechanisms for technical and logistical support, such as assisting with matching needs to providers. ICANN is also considering setting up regional help desks to provide more responsive and relevant technical support to new gTLD applicants in developing countries.	
10.4	4. Outreach – as per Joint AC/SO recommendations	1A		
10.5	5. Joint AC/SO Working Group on support for new gTLD applicants. GAC urged ICANN to adopt recommendations of the Joint AC/SO Working Group.	TBD	This item from the GAC Scorecard appears to reflect the interim report of the JAS WG. ICANN is awaiting their final report. (ICANN would like to receive the report of the JAS WG as soon as possible.)	
10.6	6. Applications from Governments or National authorities (especially municipal councils and provincial	TBD	This set of issues overlaps with and is addressed in the other items in this section.	

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	<p>authorities) – special consideration for applications from developing countries</p> <p>The GAC commented that the new gTLD process should meet the global public interest consistent with the Affirmation of Commitments. It therefore urged ICANN to set technical and other requirements, including cost considerations, at a reasonable and proportionate level in order not to exclude developing country stakeholders from participating in the new gTLD-process. Key documents should be available in all UN languages. The GAC urges that the communications and outreach strategy for the new gTLD round be developed with this issue of inclusiveness as a key priority.</p> <p>ii. Nairobi Communiqué</p> <p>The GAC believed that instead of</p>			

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	<p>the then proposal of single-fee requirement, a cost-based structure of fees appropriate to each category of TLD would:</p> <ul style="list-style-type: none"> a) prevent cross subsidization and b) better reflect the project scale, <p>This would improve logistical requirements and financial position of local community and developing country stakeholders who should not be disenfranchised from the new TLD round.</p> <p>Further the board believes that :</p> <ul style="list-style-type: none"> a. New gTLD process is developed on a cost recovery model. b. Experience gained from first round will inform decisions on fee levels, and the scope for discounts and subsidies in subsequent rounds. c. Non-financial means of support are being made available 			

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	<p>to deserving cases.</p> <p>i. Proposed that the following be entertained to achieve cost reduction:</p> <ul style="list-style-type: none"> • Waiving the cost of Program Development (\$26k). • Waiving the Risk/Contingency cost (\$60k). • Lowering the application cost (\$100k) • Waiving the Registry fixed fees (\$25k per calendar year), and charge the Registry- Level Transaction Fee only (\$0.25 per domain name registration or renewal). <p>ii. Proposed that the reduced cost be paid incrementally, which will give the applicants/communities from developing countries more time to raise money, and investors will be more encouraged to fund an</p>			

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	<p>application that passes the initial evaluation.</p> <p>iii. Believe that communities from developing countries apply for new gTLDs according to an appropriate business model taking into consideration the realities of their regions. ICANN's commitment towards supporting gTLD applicants in communities from developing countries will be a milestone to the development of the overall Internet community in Africa and other developing regions.</p>			
10.7	<p>A. Other Developing world Community comments</p> <p>Rolling out new gTLD and IDNs was done in a hurry and without basis on a careful feasibility study on the impact that this rollout will have on developing countries. For some representatives, this is a massive roll out of gTLDs and IDNs that</p>	1B	<p>ICANN is investigating and intends to provide mechanisms for assisting with matching needs to providers, and will continue to investigate mechanisms for providing additional forms of support (such as providing documents in additional languages beyond the official U.N. languages).</p>	

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	will find many developing countries unprepared and unable to absorb it. There is the fear that there might be serious consequence in terms of economic impact to developing countries.			
11.	Law enforcement due diligence recommendations [to amend the Registrar Accreditation Agreement as noted in the Brussels Communiqué] (Note: ICANN will provide an update on the status of the RAA-related recommendations from law enforcement)			
11.1	Include other criminal convictions as criteria for disqualification, such as Internet-related crimes (felony or misdemeanor) or drugs.	1B	ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes however that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook consciously targets "crimes of trust".)	
11.2.1	Assign higher weight to	1B	ICANN could consider providing	

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	applicants offering the highest levels of security to minimize the potential for malicious activity, particularly for those strings that present a higher risk of serving as venues for criminal, fraudulent or illegal conduct (e.g. such as those related to children, health-care, financial services, etc.)		extra points in some aspects of the qualification evaluation scoring process. (ICANN notes however that a priori categorization of strings is inherently problematic.)	
11.3	Add domestic screening services, local to the applicant, to the international screening services.	1B	ICANN accepts the principle that screening should be as effective as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN is mindful that this particular recommendation could lead applicants to locate in certain regions in order to game the depth of domestic screening. International screening is likely to include the reports of local agencies and could therefore be duplicative.)	
11.4	Add criminal background checks to the Initial Evaluation	1B	ICANN accepts the principle that screening should be as effective	

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			as possible. ICANN is willing to meet with law enforcement and other experts to ensure that all available expertise is focused on this issue. (ICANN notes that there is no consistent definition of criminal behavior across multiple jurisdictions, and the existing proposed Applicant Guidebook already addresses serious crimes of trust.)	
11.5	Amend the statement that the results of due diligence efforts will not be posted to a positive commitment to make such results publicly available	1B	ICANN will explore possible ways to make results public, but is concerned that posting such information poses concerns about privacy that should be explored further.	
11.6	Maintain requirements that WHOIS data be accurate and publicly available.	1A	From the Affirmation of Commitments: "ICANN additionally commits to enforcing its existing policy relating to WHOIS, subject to applicable laws. Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public	

ICANN Board Notes on the GAC New gTLDs Scorecard

Item #	GAC Scorecard Actionable Item	Position	Notes	Alan's Position
			access to accurate and complete WHOIS information, including registrant, technical, billing, and administrative contact information."	
12.	The need for an early warning to applicants whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)			
12.1	Reconsider its objection to an "early warning" opportunity for governments to review potential new gTLD strings and to advise applicants whether their proposed strings would be considered controversial or to raise national sensitivities.	1B	The principle of an early warning is already included in the Guidebook. The exact process needs to be discussed further – please see the Board's notes above with respect to the GAC's advice on "Procedures for the review of sensitive strings."	

EXHIBIT C-014

NEW gTLDs APPLICANT GUIDEBOOK APRIL 2011 DISCUSSION DRAFT

PUBLIC COMMENT SUMMARY AND ANALYSIS

Sources:

Public Comment Postings (15 April 2011-15 May 2011). The full text of the comments may be found at <http://www.icann.org/en/topics/new-gtlds/comments-6-en.htm>.

GENERAL COMMENTS

Support for New gTLD Program

Key Points

- As in previous rounds, ICANN continues to listen, analyze and incorporate constructive Community feedback into this version of the Applicant Guidebook as one of the implementation steps towards launch.
- ICANN has worked hard to resolve any remaining outstanding issues and move forward with the program.
- We understand that there is a demand for the program to launch as there are opportunities for promoting competition, consumer choice, and innovation.
- While not perfect, the Applicant Guidebook is on its way to being robust enough to support the launch of the new gTLD application process

Summary of Comments

Support for current version of guidebook.

The current applicant guidebook substantially addresses most of the outstanding issues and is robust enough to support the launch of the new gTLD application process. A document of this complexity and importance can never be “perfect” or “complete” in the eyes of every stakeholder member. The guidebook will evolve over time as ICANN becomes aware of issues or difficulties arising during the application process and the launch of the first new gTLDs. *Network Solutions (12 May 2011). Minds + Machines (15 May 2011). M. Neylon (15 May 2011). Bayern Connect (15 May 2011). Demand Media (15 May 2011). AFNIC (15 May 2011). AusRegistry (16 May 2011). Domain Dimensions (16 May 2011). R. Tindal (16 May 2011).*

The ICANN Board should keep its commitment to a 20 June 2011 vote to preserve the legitimacy of the consensus-driven policy making program. We look forward to final acceptance of the AGB and launch of the new gTLD program. The AGB has evolved into a program that fully protects rights yet retains objective standards for launching new gTLDs. The potential public benefit of new TLDs has already been demonstrated by the success of the IDN Russian TLD and the recent re-launch of the .co ccTLD. The public is hungry for more domain options

and the new gTLD program answers that need while strongly protecting consumers, trademarks, and governments from bad actors. The AGB provides more protections than any other policy put into practice up to this point. Trademark holders and consumers will benefit from at least ten new protection policies that are not in place in current TLDs. *Minds + Machines (15 May 2011)*.

The AG should be approved by the ICANN Board and the communications program should start at the ICANN Singapore meeting. Innovation will result from the new gTLD program. The protections in the AG far exceed those in the existing gTLDs. Either new gTLDs will create a massive benefit which will far outweigh any harms, or we need not worry about protections. The GAC role inside of ICANN is important and should evolve separately from and not be driven by the new gTLD process. The adoption of the AG should not be contingent on “finalizing” the role of the GAC, nor should it be impacted by narrow interests lobbying national governments. The AG, hopefully approved in Singapore, is simply doing what should have been done in 1999 and what would have been done if ICANN had then been in a stronger position. It is a natural step that is twelve years too late but better late than never. *Tucows (15 May 2011)*.

We look forward to the release of the final AG on 20 June in Singapore. With regard to the latest attempts to delay the new gTLD process further based on claims that new gTLDs introduction should not be done “in a rush,” ICANN’s bottom-up multi-stakeholder model has provided over the past six years there have been thousands of opportunities for all parties to comment and participate. The nature of the bottom-up model is a compromise which naturally cannot meet everyone’s wishes. *DOTZON (15 May 2011)*.

It is time to bring the process of establishing the rules for new gTLDs to a close and commence with the opening of the application period, with additional revisions to new gTLD policy being made in the future based on actual experience rather than overhyped projections. Any continuation of this process is only likely to provide additional time for the GAC to pursue its ill-considered goal of eroding registrant rights on behalf of large corporate trademark interests. *ICA (15 May 2011)*.

“Cause-based TLDs”. Some new initiatives have designed business plans with the primary purpose of benefiting the greater and global public good—i.e., “cause-based TLDs” –which can offer benefits useful to people around the world regardless of how or if they use the internet. Time is crucial for some of these, so ICANN’s Board and the GAC are urged to avoid further delays and allow TLD innovation and the benefits of cause-based TLDs to commence by approving a 2011 application window for new TLDs and consider shortening the application window to 30 days. *DotGreen (15 May 2011)*.

Opposition to New gTLD Program

Key Points

- There are inherent risks to the program whether ICANN limits the amount of gTLDs available per round or not. Were ICANN to go ahead with limiting the number of gTLDs in a round, it could potentially still introduce new levels of risk and simultaneously lose the anticipated benefits of new gTLDs.

Summary of Comments

The new gTLD program should be stopped—the internet society is not interested in it.

ICANN has not presented evidence and convincing arguments to support the idea of introducing the new gTLD program. The internet society (legitimate owners of the internet—private users and companies owning domain names) is not interested in the new gTLD program. They are not given reasonable representation in the decision boards, so ICANN can get away with not presenting evidence to support introducing the new gTLD program. Comments and concerns, especially regarding the protection of trademark rights, are not taken into account by ICANN. Brand owners will have to fight for exactly the same domain names with the new proposed program as they are with the present system, but with much more money involved. There is nothing to be gained from the perspective of the internet users. Those who will earn money from this new, very expensive program (registrars and ICANN itself) are the ones who are interested in it. The process of introducing this expensive new gTLD program should be stopped immediately and only considered again once ICANN has produced convincing documentation that the internet society is interested in this program. The present, well-functioning and low cost set up for the internet secures freedom of speech for the many. The new gTLD program has very high costs and could evolve into a limitation of the freedom of speech for the many. *H. Lundbeck (4 May 2011).*

It is time for ICANN to go back to first principles and reboot the new TLD program in its entirety. ICANN is rushing to implement a plan that is not supported by the public. ICANN's policies do not maximize consumer welfare but rather raise consumer costs. The DOC, NTIA, DOJ and GAC should compel ICANN to go back to the drawing board. In the alternative, if ICANN does not demonstrate a willingness to do so, it is time to end the ICANN "experiment," end the outsourcing of TLD management to ICANN, and instead restore management of TLDs to the DOC/NTIA. *G. Kirikos (15 May 2011).*

ICANN should reconsider overarching issues before any new gTLDs are released.

Until the overarching issues are satisfactorily and comprehensively addressed, it is premature to proceed with the launch of the new gTLD proposal. The stated objectives of the work on new gTLDs still do not seem to be achieved with the applicant guidebook. ICANN has not shown that the new gTLDs will bring innovation, consumer choice and lower prices or that they serve any public interest. ICANN has definitely not shown that with new gTLDs "the need for brand protection and the opportunity for user confusion will be greatly diminished" (p. 2, ICANN Feb. 21, 2011, Public Comment Summary). Quite the opposite seems to be the realistic outcome of the release of the new gTLDs. *LEGO (Module 5, 12 May 2011). Arla Foods (13 May 2011). Adobe Systems (13 May 2011). CADNA (13 May 2011). IACC (15 May 2011).*

No compelling economic need.

ICANN's own economic studies indicate that there is no compelling economic need to introduce new gTLDs and that the current gTLD structure adequately accommodates Internet users' current and forecasted needs. *AIPLA (13 May 2011). Partridge (14 May 2011). INTA (14 May 2011).*

ICANN never provided proof of a demonstrable need or demand for new gTLDs or that the economic benefits will outweigh the costs. *CADNA (13 May 2011). INTA (14 May 2011). G. Kirikos (15 May 2011). DIFO (15 May 2011). MarkMonitor (16 May 2011).*

New gTLD program--getting it right.

ICANN must get the new gTLDs launch right. The success of the multistakeholder model depends on it. In recent months tremendous progress has been made on the applicant guidebook. ICANN should approve an AG only when the community supports it. We remain willing and available to provide input. *News Corporation (13 May 2011).*

ICANN should continue to refine the new gTLD program with the goal of getting it right, not just getting it done, even if it takes beyond June 20, 2011, to do so. *Time Warner (14 May 2011).* *Microsoft (15 May 2011).*

Limited launch--Pilot Program.

A wide-open new gTLDs program should not proceed until mechanisms to address IP protection and other concerns are fully developed and tested. These issues need to be addressed before the business and intellectual property community can support ICANN's new gTLD plan. If ICANN believes that further delays are unacceptable then it should proceed with a small pilot program as previously suggested by the GAC for a strictly limited number of gTLDs designed to serve linguistic, geographical, and cultural communities. The pilot could provide actual data that could be used to refine and improve the application rules for subsequent rounds. The lack of economic need for new gTLDs demonstrates that there is adequate time to test new gTLDs through a pilot program. *AIPLA (13 May 2011).* *Partridge (14 May 2011).* *Coca-Cola (15 May 2011).* *Hogan Lovells (15 May 2011).*

We are perplexed by ICANN not following the advice of its own economic studies and the GAC to do a pilot program (a limited launch) of new gTLDs. A detailed explanation for this rationale would be appreciated. *News Corporation (13 May 2011).* *INTA (14 May 2011).*

ICANN has a critical overall task of appropriately narrowing the focus of the entire new gTLD project. ICANN's refusal to re-orient the scope, pace and targeting of the new gTLD launch is profoundly disappointing and casts serious doubt on ICANN's claim to be acting in the public interest and in conformance with a consensus of stakeholders. COA urges ICANN to grasp what may be the last opportunity to re-focus the new gTLD launch on the types of applications that offer the greatest potential benefits for the public, while minimizing the costs imposed on third parties. Some proposed new gTLDs may be targeted toward enhancing the Internet experience for "the next billion Internet users," whose everyday languages are written in non-Latin scripts, or toward fulfilling clearly specified needs of limited and well-defined communities; others will add little but confusion and noise to an already chaotic online environment. As ICANN must realize by now, unless it relaxes its insistence on welcoming all these new gTLD applications without distinction, it will do nothing but buttress the position of those clamoring to call the ICANN experiment a failure and to move to an entirely different method of managing the Domain Name System. ICANN must not adhere obsessively to the arbitrary deadline set by the Board to take final action on the applicant guidebook by 20 June. ICANN must take the additional time needed to re-orient this exceptionally important initiative into a more targeted, better focused and more incremental approach. *COA (15 May 2011).* *SIIA (15 May 2011).*

The IPC joins with the GAC in urging ICANN to: (1) authorize only a discrete and limited number of new gTLDs; (2) undertake with respect to each application an evaluation of the social benefits and costs of each new gTLD application and to implement mechanisms for the denial of the application if such benefits are not clearly weighted in favor of consumer protection; and (3) implement data reporting for all approved new gTLDs on the subjects of malicious conduct, cyber squatting and other RPMs to assist ICANN in evaluating social costs of the new gTLD program. *IPC (15 May 2011).* *MarkMonitor (16 May 2011).*

DIFO is skeptical about the idea that 1,000 (or less) new TLDs will benefit the global Internet Society and would have been more confident if the new TLD introduction were limited to 50 new TLDs. *DIFO (15 May 2011)*.

The new gTLD program threatens brand integrity with attendant financial impact for brand owners and poses significant risk of consumer detriment. ICANN should not proceed with a full-scale new gTLD program until these issues have been properly addressed. *BBC (Module 5, 13 May 2011)*. *Adobe Systems (13 May 2011)*. *CADNA (13 May 2011)*. *INTA (14 May 2011)*. *MARQUES/ECTA (15 May 2011)*. *Coca-Cola (15 May 2011)*. *NCTA (Module 2, 13 May 2011)*.

Risks to ICANN with unlimited rollout. ICANN cannot avail itself of a “safe harbor.” If registries begin to fail, they will likely take more risks to stay afloat, including turning a blind eye to fraud and malicious conduct on a massive scale. Without significant compliance and enforcement monitoring, ICANN may unwittingly be subject to liability for acts of fraud or malicious conduct it should have been aware of and which were allowed to continue. ICANN’s future will be tied to the success and failure of future registries. A large number of such failures could impact its global reputation as a trusted custodian of the Internet. *MarkMonitor (16 May 2011)*.

Analysis of Comments

Throughout the development of the new gTLD program and the Applicant Guidebook, there have been discussions about limiting the number of new gTLDs in the first round and/or adding categories (i.e., beyond open and community such as brand). It is possible that such measures could mitigate some risks with new gTLDs; however, they may also introduce new and unpredictable risks, i.e., abuses. Additionally, curtailing the introduction to certain categories of TLDs will severely limit the anticipated benefits of new TLDs: innovation, choice and competition. The full discussion of these issues has taken place under separate cover, in previous comment summaries and in public meetings. Finally, while the round is not limited by category, it is limited by rounds. The GNSO policy stated that the introduction of new TLDs should take place in rounds until well tested. The round is limited by the number of applications received during the limited open window. While a second round is planned, several assessments will be done prior to the launch. So the launch is not unlimited. Rather, it is limited in a way that takes advantage of lessons learned in previous rounds, provides protections, and provides the best chance of achieving the anticipated benefits. For these reasons, the process remains as it is today, limited.

ICANN continues to execute on its mission and the bottom-up, multi-stakeholder model has provided an opportunity for all parties to participate and comment. The recent, intensive involvement of governments is one example of this collaboration, along with the extensive public comment rounds for the evolution of the Applicant Guidebook.

Based on the principles embodied in ICANN’s founding documents, it is believed that the expansion of the generic top-level domain (gTLD) space will allow for a greater degree of innovation and choice.

Implementation of this program is a complex and involved process that has required the coordination and consensus of many groups and factions.

While not perfect, the Applicant Guidebook is on its way to being robust enough to support the launch of the new gTLD application process and ICANN is committed to diligently working towards consensus on implementation and operational solutions.

ICANN PROCEDURES

Key Points

- ICANN's Governmental Advisory Committee has reiterated its intent to follow its Operational Procedures and the GAC will advise the ICANN Board on both consensus concerns and the concerns of several members as required.
- The gTLD program will remain flexible to implement changes as needed to improve the program and address community concerns on a timely basis going forward. A process to identify, prioritize, and implement necessary changes is being built into the program.

Summary of Comments

Explicit definition of "GAC Consensus" needed. The current applicant guidebook makes reference to "GAC consensus" and its ramifications for a new gTLD application. We do not see a definition for "GAC consensus" in the guidebook; this term needs to be promptly and explicitly defined. We are not confident that the ICANN community's concept and application of "consensus" matches that of the GAC. Any misunderstanding on this point will be detrimental to the new gTLD process, to potential applicants and to ICANN in general. *Network Solutions (12 May 2011).*

GAC-ICANN negotiations.

Asociacion Puntogal is comfortable with all the points that already have been agreed to in the GAC-Board negotiations to improve the applicant guidebook. Improvements made in response to GAC advice such as early warning and trademark protection measures will help achieve a more robust process. These changes are easy to implement by truly community-based cultural and linguistic TLDs or other solid and non-controversial initiatives. Asociacion Puntogal urges the Board and the GAC to find an agreement where possible on the remaining points. *Asociacion Puntogal (13 May, 2011).*

It is perhaps disappointing that it has taken a strong intervention by the GAC to ensure that the concerns of IP rights holders have been taken into account in the new gTLD program, especially when one considers the levels of participation in the public comment periods to date. Thus many do question whether commenting in such a forum is an efficient means to put forward constructive comments. *Hogan Lovells (15 May 2011).*

U.S. government restrictions. It is worrying that a new TLD applicant may not be considered due to a restriction imposed by the U.S. government (i.e. OFAC) and this could be seen as a weakness of ICANN's links to the U.S. *M. Neylon (15 May 2011).*

New gTLD Program—Ongoing Reviews.

We support the logical decision of ICANN to collect data from each launch and review systems such as the URS after a year to improve policy and procedure. *News Corporation (13 May 2011)*.

ICANN must remain flexible to future amendments as the community identifies problems during the launch of the first round of new gTLDs. ICANN should establish more concrete plans for evaluating the launch of new gTLDs and rapidly implementing modifications and enhancements to address any problems that arise. *USCIB (15 May 2011)*.

Analysis of Comments

A comment requests that GAC consensus have an explicit definition in the Guidebook to avoid potential issues with varying definitions by the GAC and the ICANN community. The GAC has stated that, “the GAC will clarify the basis on which consensus advice is developed.” In its “GAC comments on the ICANN Board’s response to the GAC Scorecard” dated 12 April 2011 (see <http://gac.icann.org/press-release/gac-comments-board-reponse-gac-scorecard-following-san-francisco-meetin>) the GAC maintains its “intention to follow its Operating Procedures when developing advice for the Board’s consideration related to objections raised by its membership.” The GAC will advise the ICANN Board on both consensus concerns and the concerns of several members as required. The GAC has expressed the intention to develop a vocabulary for use in its advice so that the meaning is clear and can be consistently understood by all parties.

A comment expresses concern about certain legal restrictions imposed by the U.S. government on ICANN (i.e., the Office of Foreign Asset Control (OFAC) requirements) The intention with inclusion of this section in the Guidebook is to be transparent about this aspect of ICANN’s current legal structure and obligations. ICANN considers it important to disclose this information to prospective applicants, as well as to detail what steps ICANN takes in handling such cases (e.g., seeking and obtaining licenses).

A few comments suggest that the gTLD program should remain flexible and establish more concrete plans to timely implement improvements or address problems identified by the community. We agree and this is already part of the gTLD program. ICANN is working to identify critical success factors and will implement a process to identify, prioritize, and implement improvements to the program based on these factors as well as lessons learned from various sources including the applicant and general community.

TIMELINE/MODELS

Key Points

- There is a plan to announce a final timeline, with appropriate caveats, once the Applicant Guidebook is approved.

Summary of Comments

Reliable timeline needed.

A reliable timeline is the only way to restore the credibility of the process. The vote scheduled is especially relevant for the viability of cultural and linguistic TLD applicants who will foster cultural diversity on the Internet. Any further delays will harm their cause. The more than 12,000 Internet users and 100 cultural organizations that have already signed up to support Asociacion Puntogal help to demonstrate that there is a real social and economic need for new gTLDs. *Asociacion Puntogal (13 May 2011)*.

What prospective applicants now need, above all, is the final timeline. *AFNIC (15 May 2011)*.

Date certain for subsequent rounds. To avoid numerous panic applicants (concerned about the risk of not applying and about a possible lengthy gap between application rounds) a date certain should be announced for the subsequent new gTLD application round. It should not be later than one year after the first round. It is no problem if there is overlap between the first and the subsequent round. The correct time to start evaluation is immediately at the moment when all strings are published. The evaluation of the first round will be meaningless if it was dominated by “panic applicants.” ICANN should therefore announce opening of the coming 60-day TLD application period for a set day in November 2011, and announce at the same time that the subsequent round will open on a set date in November 2012. *W. Staub (15 May 2011)*.

Analysis of Comments

Comments request that a definitive timeline be provided for the initial application round as well for a subsequent round. The former will help applicants with planning and the latter would help mitigate the risk that some set of applicants will simply apply to avoid the uncertainty of when the next round will launch.

The plan following the approval of the Applicant Guidebook is to announce a final timeline that is expected to cover all aspects of the application program (e.g., communication campaign, the launch date, initial evaluation). The timeline will include all appropriate dependencies. The timing of subsequent application rounds will be determined based on these factors as well as experiences gained and changes required after the initial round is completed.

COMMUNICATIONS

Key Points

- ICANN is planning a global communications campaign that will incorporate outreach activities in the five ICANN regions, including targeted outreach to developing countries.
- As part of the communications campaign, ICANN plans to continue to publish critical program documentation into the six UN languages – Arabic, Chinese, English, French, Russian and Spanish.
- The communications campaign will highlight specific areas of the program, such as timelines for submission of applications, the evaluation process, the objection process, and rights protection mechanisms.

Summary of Comments

Effective communications and outreach activities are essential to the success of gTLD expansion. ICANN's communications effort must do more than simply promote new gTLD applications. It must also fully inform user and business communities around the world of all the major changes coming with the introduction of new gTLDs. BC (15 May 2011).

Global awareness and understanding of new gTLD program. Geographic name strings raise concern given that many countries (especially developing nations) will not know when to object to them (e.g., early termination). Governments will likely end up having to go to a U.S. court and pay for associated costs, which will only make the U.S. more rich. Indonesia, in particular, has more than 200 million people, and faces a challenge in understanding all the details of the new gTLD program and the DAG (i.e. translation issue). Also, why must all parties bow to U.S. law and use a U.S. court? Why not use PNG's laws and courts, or have Indonesia host all the domain cases? Regarding the GAC's proposal to ICANN that it translate the DAG into languages for places where there are large numbers of Internet users, what about PNG, Timor Last, Fiji, and Palau, which do not use English as the mother tongue--does ICANN never count people who live there as internet users? This raises doubt about ICANN's vision to make one world, one connection. ICANN does not seem to have significant efforts to socialize the DAG all over the world and the ICANN website is not well-known. Most countries still do not understand or do not even know about the DAG. *D. Elfrida (6 May 2011).*

Publicizing Rights Protection Mechanisms (RPMs). It is incumbent on ICANN to publicize the RPMs as fully as it publicizes the overall gTLD program in the four month period between approval of the guidebook and the opening of the first window for new gTLD applications. Also, so that the public can timely determine whether to seek such protection and how to do it, ICANN needs to make available on a continuing basis into the future literature that clearly advises the general public of the existence of these RPMs and how to access and use them. *IBM (13 May 2011).*

Analysis of Comments

The goal of the planned communications campaign is to increase global awareness of the new gTLD program. This campaign will raise awareness among interested parties and applicants worldwide on the who, what, when, where and why of new gTLDs. It will address a range of audiences. The goal is to educate so that interested parties are aware of the program details and things they need to consider, whether applying for a new gTLD or not.

As part of the communications effort, ICANN translates the Applicant Guidebook into the six UN languages. Other critical material relating to the program such as the Objection Process and Rights Protection mechanisms will be adequately communicated and translated as well.

As part of our communications efforts we intend to reach as many people as possible through global outreach in each of ICANN's five regions – Africa, Asia (including the Middle East), Europe, Latin America, and North America. These outreach efforts will include informative sessions, new conferences, speeches and targeted media interviews to gain the furthest reach possible. The education process will include helping people understand both the opportunities and risks associated with applying for a new TLD as well as how this program will ultimately change the Internet.

We have and will continue to publish critical program documents in the six UN languages – Arabic, Chinese, English, French, Russian, and Spanish. Interested parties will always be provided with ways of obtaining more information either from our website or through a dedicated email address.

It is agreed that critical elements of the program such as the Objection Process and Rights Protection Mechanisms be adequately communicated so people are well informed about when and how to object and the steps they can take should they determine whether and how to seek such protections. As part of the communications plan we will call out these areas to make them more accessible to those seeking such information.

APPLICATION PROCESS

Key Points

- Further details on the GAC Early Warning and Advice processes are requested for applicants to understand potential impact and allow for appropriate action as necessary. Additional detail is provided here and in the Guidebook; and we will work to provide additional details and answers to clarifying questions.
- Clarification on a number of questions regarding the application process is being provided in the updated Guidebook. In addition, a robust customer service process will be implemented to help applicants with specific questions during the application process
- While it is virtually impossible to ensure no “bad actors” secure a Top-Level Domain, additional protective measures have been put in place such as an expanded background screening and a GAC Early Warning process. (See Malicious Conduct summary for more details.)

Summary of Comments

Support for GAC changes made by ICANN. UNINETT Norid is pleased that ICANN has listened to the Governmental Advisory Committee and included paragraphs on Early Warning in 1.1.2.4 and Receipt of GAC Advice on New gTLDs in 1.1.2.7. These changes will reduce possible conflicts and objections later on and minimize the costs for all parties. *UNINETT Norid (Module 1, 11 May 2011). DIFO (15 May 2011).*

GAC Early Warning.

CADNA is pleased with the GAC Early Warning addition to the Guidebook. This could be improved upon with stronger wording, forcing the ICANN Board to take a warning into consideration instead of being able to entirely disregard it. Governments should have more and stronger ways of raising formal complaints about a TLD application, of course without the ability to abuse the system. *CADNA (13 May 2011).*

Regarding 1.1.2.4 Early Warning, it is very important that the Early Warning Notice to the applicant be accompanied by the reason for the warning and that it identify the objecting countries with applicable points of contact; otherwise it will be difficult for the applicant to try to mitigate the concerns and/or make a timely decision about withdrawing the application. *RySG (15 May 2011).*

GAC Advice. CADNA is encouraged by the addition of GAC Advice which enables the GAC to provide public policy advice directly to the ICANN Board for consideration on any application, although this provision should be more strongly worded (e.g., it is unclear what is meant by the phrase that the Board must “strongly” consider GAC advice when deciding whether to approve an application). A measure should be put in place to show how GAC advice will be taken into account and the reasons for which the Board decides to disregard it and proceed with approving the application. *CADNA (13 May 2011).*

GAC guidelines for Early Warning and Advice. ICANN should clarify the guidelines which the GAC will refer to when making GAC Early Warnings and GAC Advice. The current explanation does not make it clear as to what kind of issues would cause a string to be considered questionable or sensitive. At the moment it seems that almost anything falls into the scope of GAC decision making. *Brights Consulting (14 May 2011).*

Eligibility –restrictions. CADNA applauds the detail added to applicant eligibility provisions. Conducting more thorough background checks and placing tougher restrictions on eligibility will hopefully ensure that there are fewer opportunities for applicants with bad intentions to proceed and that only those applicants who should be applying for new gTLDs make it through the process. *CADNA (13 May 2011).*

Dot Brand Applicants.

It will greatly benefit potential dot brand applicants if a separate application category were created for them (dot brand model is mentioned in the Registry Code of Conduct) or alternatively if such a model were to be identified in the main body of the applicant guidebook. *Brights Consulting (14 May 2011).*

It is disappointing that there is not a specific dot brand category available for essentially what may be closed or defensive registries. There should be a separate dot brand category defined and more clarification as to how businesses applying for a dot brand should structure their application. *Hogan Lovells (15 May 2011).*

Applicants for a dot brand TLD need more details in the final AGB for planning reliability on costs, requirements and processes. So far only a few details are included in the AGB like in the Registry Code of Conduct. *DOTZON (15 May 2011).*

Regulated and professional sector gTLDs. It is not just geographical designations that are sensitive in nature and in need of special protections. Special care should also be given to regulated sectors (e.g. financial) and professions as the potential for damage and harm to society is high (financial harm and loss of trust in e-commerce and the internet at large). ICANN must mitigate the risks of sensitive strings being controlled or operated through rules and safeguards and the applicant guidebook should not be approved without their inclusion:

- (1) Applicants for a regulated profession, industry or sector (e.g. .bank, .insurance) should be required to submit a written endorsement of their application by the relevant supervisory bodies or authorities (analogous to the government support requirement for geographical names) or a valid and in-force license to operate such a business, and such applications should not be admitted to delegation absent such endorsement or valid license.
- (2) Analogous to community-based applications, regulated sector applications should also be subject to certain post-delegation contractual obligations to operate the gTLD

in a manner consistent with the restrictions associated with this regulated sector designation and to take adequate measures to avoid consumer confusion and harm, including but not limited to the obligation to take action against a second level domain registrant, or suspend such registration(s) or service(s) upon intervention or complaint by a competent national regulatory or supervisory body.

- (3) As proposed by the GAC, the application evaluation process should include review by governments, via the GAC explicitly also for applications relating to sectors that are subject to national regulation (i.e., GAC Early Warning and GAC Advice should be applied to such applications). Intervention by a competent supervisory authority via the GAC would create a strong presumption for the ICANN Board that the subject application should not be approved.
- (4) The Limited Public Interest Objections should explicitly include objections based on national regulations for the protection of consumers and sector specific national regulations that are also intended as consumer protections.

Swiss Re (15 May 2011).

Updated timelines. ICANN should clarify the application process by providing a diagram with the updated timelines for each portion of the process. As of now there are some places that have confusing information. *Brights Consulting (14 May 2011).*

Section 1.1: ICANN should take into account external holiday calendar events as well as the timing of ICANN meetings, and adjust accordingly the Application Program timeline. *RySG (15 May 2011).*

Batching. ICANN should provide details in the final AG on the batching process. Details are not yet available, apart from basic information that a separate process still has to be established. *DOTZON (15 May 2011). RySG (15 May 2011). AFNIC (15 May 2011).*

The first batch should be significantly less than 500 applications in order to test the operational readiness of newly designed application processing and objection/contention systems. A significant portion of the first batch should be comprised of Community-Based applications. Subsequent application rounds should be launched as quickly as possible but only after ICANN adjusts the application process and guidebook to reflect experience learned in the initial round. *BC (15 May 2011).*

Fee reductions/package pricing for IDNs and other languages.

Applicants should be granted fee reductions for additional versions of the applied-for string in IDN scripts and other languages. This would serve as an incentive mechanism for build-out of IDNs and underserved language-script communities. If the applicant is seeking new translations of a current gTLD, then all registrants should have the option to register their second level names in all of the linguistic variations offered by that TLD. *BC (15 May 2011).*

The ICANN Board and staff should work with the community to provide an approach that enables applicants to offer multiple (“bundled”) applications that include different script versions of the same string at a lower, packaged price. Packaged pricing fits ICANN’s values by, among other things, promoting diversity; makes budget sense; and would stay within ICANN’s cost neutrality guidelines. Packaged review of related applications will lower ICANN’s review costs and lower the costs to applicants—leading to more IDN build out around the world. *R. Andruff et al. (15 May 2011). C. Roussos (16 May 2011).*

Not-for-profit pricing option (1.5.1). ICANN should provide a not-for-profit new gTLD applicant pricing option which could only be available to a subset of not-for-profits based on criteria. *NPOC (16 May 2011)*.

Legal compliance (module 1, p.23). Regarding the requirement that “ICANN must comply with all U.S. laws, regulations and rules, and prohibits offering license to the individual or entity of the U.S. Treasury SDN list,” this provision is inconsistent with ICANN’s multi-stakeholder model and bottom-up process, which makes it difficult for ICANN to be open, fair and equitable to other governments and other stakeholders. ICANN should bear in mind the development and application characteristics and trends of the Internet, having full consideration of the interests of all stakeholders and making appropriate amendments to the provisions. *Internet Society of China (27 May 2011)*.

Background screening (1.2.1). Background screening should occur at the level of the entity, named individuals, and entity affiliates and subsidiaries. When the ICANN Board eliminated any restrictions on cross ownership or vertical integration, it increased the importance of screening applicants for prior abusive conduct. Cyber squatting has been documented at affiliates and subsidiaries of the registrars and registries who are likely to be applicants for new gTLDs. ICANN should expand disqualification criteria to apply to affiliates or subsidiaries of the applicant entity. *BC (15 May 2011)*.

Modify the “three strikes” UDRP reference for applicant disqualification.

This criteria should be adjusted to take into account the size of an applicant’s domain portfolio as well as the percentage of adverse UDRP decisions rendered against them in comparison to all UDRP proceedings they have been involved with. If unchanged, ICA intends to carefully monitor the actual enforcement of this disqualification criteria for both companies and individuals and suspects that ICANN will exercise a significant degree of enforcement flexibility based upon the “exceptional circumstances” and “generally be considered” phrases in the current proposed language, rather than bar applications for new gTLDs submitted by large registrars. Any flexibility in applying this criteria should be accorded equally to both corporate and individual new gTLD applications. Individual owners of large domain portfolios, unlike corporations, cannot establish subsidiaries or affiliates of themselves, yet may otherwise be in the same position as regards their UDRP histories. *ICA (15 May 2011)*.

A hard and fast line—whether an entity or person has lost 3 or more UDRP cases—is not appropriate and will unintentionally disqualify otherwise qualified applicants. Further, the language is not clear on what constitutes cyber squatting. ICANN should revert to the DAGv4 definition of “bad faith in regard to domain name registration” and in conjunction with this definition use a definition of history or pattern of cyber squatting that does not involve a specific number but rather is closer to a “customary way of operation or behavior” and thus allows for a contextual analysis for each applicant. *Demand Media (15 May 2011)*.

“Adverse, final” in revised Sec. 1.2.1.m. New language in this section referencing “adverse, final” decisions appears to be responsive to ICA’s December 2010 comments that a UDRP loss that has been reversed on appeal should not count against an applicant and ICA thanks ICANN for that adjustment. *ICA (15 May 2011)*.

Reverse Domain Name Hijacking (RDNH)—Equivalent Treatment. New language in Section 1.2.1m that disqualifies entities who have engaged in RDNH under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation is responsive to ICA’s December

2010 comment seeking equivalent treatment and ICA thanks ICANN for that adjustment. *ICA (15 May 2011)*.

Sec. 1.1.2.3: Where clarification is sought from the applicant because consideration of the comments has impacted the scoring of the application, how will the clarification sought by the evaluators and the clarification provided be recorded and made public? This should be explained. *RySG (15 May 2011)*.

Sec. 1.2.8: This section is entitled Voluntary Designation for High Security Zones. Considering the final report of the High Security Zone TLD Advisory Group, shouldn't this section be deleted? *RySG (15 May 2011)*.

Answer length requirements. Where there are requirements for numbers of pages per answer (applies to a number of the 50 questions), ICANN should provide details regarding the necessary font size, page size and spacing between lines (correspondent with those used in TAS), or alternatively ICANN should set the length of the answers by number of words or characters. *Brights Consulting (14 May 2011)*.

More TAS information. Once the AG is approved by the ICANN Board at the 20 June 2011 meeting, it would be useful to have more information about the TAS and how it will work. A demo version or Operational Testing Environment (OTE) of the TAS should be made available as soon as possible. *AusRegistry (16 May 2011)*.

Analysis of Comments

Several comments express their appreciation and support for incorporating GAC Early Warning and Advice processes and a more comprehensive background screening check into the gTLD program.

A number of comments also request more details about the GAC Early Warning and Advice processes, such as clarification/guidance on what might raise an issue or concern, requiring that the GAC provide specific details in their Early Warnings to enable Applicants to take timely and appropriate action, and a clear process for how the Board will consider GAC Early Warnings and GAC Advice.

Note that the purpose of the Early Warning process is to provide GAC members with an opportunity to raise concerns directly with the applicant over their string(s) and/or their application(s) early in the process. While definitive guidance has not been issued, the GAC Scorecard indicated that strings that could raise concerns include those that “purport to represent or that embody a particular group of people or interests based on historical, cultural or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non exhaustive)” and “those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse.”

In the case of an Early Warning, the GAC has been requested to provide the reasons for the Early Warning and to identify the countries raising the concern in order to best inform applicants so that the applicants can make informed decisions.

Existing processes for how the Board considers GAC Advice have not changed, although the Board may now consider Early Warnings provided to the applicant as part of its review of GAC Advice received later.

A few comments continue to request the creation of a dotBrand category. While we have discussed the concerns with introducing categories in response to previous comments, the central issue appears to focus on how certain applicants can meet the requirements to secure a gTLD given their unique registry/business model. For example, an applicant might secure a TLD with the intent of having a “closed” or internal facing registry (i.e., having no intent of allowing the general public to register domains). It should be noted that the pre-establishment of special requirements in the application for such TLDs would likely not meet all possible circumstances, “dotBrand” TLDs mean different things to different parties, and does not cover the possibility that the applicant’s intended registration approach may change, especially in those cases where the applicant has not designated itself as a community-based TLD.

The application form is designed to allow evaluation of the necessary financial, technical, and operational components of the applicant’s plans. We do understand that additional guidance may be necessary for applicants in particular cases in relation to particular questions while progressing through the application process. Accordingly, we will continue to provide necessary updates and guidance on submitting an application and will implement a robust customer service program to provide clarification where necessary.

Another comment highlights the concerns associated with certain strings that may be deemed sensitive by various parties and requests that regulated sectors and professions should be given special care to minimize the potential harm and damage to the public. As discussed in response to previous comments, there are issues with introducing a new category of strings. For “sensitive” strings, there is no general agreement on what qualifies as a “sensitive” string nor has a definitive and agreed on list of such strings been provided. Concerns about particular strings may be addressed via the independent objection and dispute resolution process, or through the GAC Early Warning and GAC Advice processes.

Further comments request that background screening scope be expanded to include affiliates, subsidiaries, and other entities that have relationships with the applying entity. These comments presumably focus on preventing “bad actors” from securing certain Top-Level Domains. The potential benefits of expanding the scope of background screening for all applicants must be weighed against the costs for processing all applications and increased costs incurred in performing background screening on an extended chain of related entities. ICANN has discussed and considered the process suggested to screen applicant affiliates as well as applicants themselves. Such a step would introduce significant complications and costs to the background screening process without a balancing benefit. For example, in addition to ICANN screening the affiliate, it would also need to do so for the directors, officers, partners, etc. of the affiliate. This additional screening is cost and time prohibitive and would probably not result in many disqualifications given the level of scrutiny the applicant is subject to under the process. Affiliates are often distant and have no role in operation or conduct of a TLD to be operated by the applicant. Also, such an inquiry would lead applicants to set up new entities to provide separation between themselves and affiliates. This would not be just to mask prior bad conduct – it could simply be to avoid the expense and intrusion of background checks into their associates who will not play a role in the process.

However, while it is nearly impossible to ensure no “bad actors” secure a new Top Level

Domain ICANN has implemented several protective measures to minimize this risk. Those measures include:

- Expanding the scope of the background screening check to include additional crimes as suggested by the GAC. This also includes obtaining input from law enforcement representatives on the selection of a background screening service provider.
- Adding language to the Registry Agreement that requires Registry Operators to take reasonable steps and respond to any reports (including from law enforcement and governmental consumer protection agencies) of illegal conduct utilizing the Registry TLD. Failing to comply with this provision could lead to termination of the Registry Agreement.
- Making public the names and titles of key officers, directors, partners and controlling shareholders of each applicant to enable comment.
- Providing a GAC Early Warning process that allows members of the GAC or any individual government through the GAC to provide a notice to certain applicants.

Comments request clarity on timelines and consideration given to holidays and other meetings. Holiday periods in the various regions of the world are being taken into account in considering the possible timelines involved in launch of the program.

Comments request additional information regarding the batching process, with some suggestions for placing a limit on the first batch to test operational readiness, and for ensuring that a significant portion of the first batch be comprised of community-based applications. Additional details regarding the batching process will be provided in the event the batching process must be implemented. This allows some flexibility in processing timelines. For example, if slightly over 500 applications are submitted then a decision to extend Initial Evaluation by some amount of time to accommodate all applications may occur so long as the maximum delegation rate limits are not impacted. Also, the batch limit is dictated by processing capacity, which is based on understanding the impact to operational readiness through the build and testing of those activities. So at this point, though the small first batch is a good idea, there will not be further test operational readiness after the launch of the program. Even if the smaller batching were done, allowing one type of applications to proceed over others may provide an unfair advantage over other applicants that may be promoting to a similar group of registrants.

Comments regarding fee reductions have been addressed in previous versions of the Guidebook. The evaluation fee is revenue neutral and is based on an estimate of the costs to process applications. As this will be the first round of processing applications, there are a significant number of uncertainties that must be accounted for. Accordingly, reducing fees under any circumstance is not envisioned in the initial round. However, ICANN will conduct an analysis at the end of the initial round to determine where efficiencies can be gained and savings passed on in future rounds.

A comment requests clarification on how comments will be considered by evaluation panels and clarifications sought from applicants. Any comment directly impacting the score of a specific applicant will require clarification from the applicant before a final score is provided. An applicant may choose to provide its response within the public comment forum. However, there is an opportunity for the panel to provide questions to the applicant and the applicant can then reply. The evaluation results are publicly available after the evaluation process has been completed.

A comment asks if Section 1.2.8 – Voluntary Designation for High Security Zones should be removed from the Guidebook. The Guidebook has been updated with regard to the working group’s final report, and indicates that ICANN will support independent efforts to develop a voluntary high-security TLD designation.

Comments request additional information on the TLD Application System (TAS) including clarification of answer length requirements. A plan is in place to release additional information on TAS in relation to look and feel. However, for security reasons, a test version of the tool will not be released for public use. Finally, additional guidance on application requirements (i.e., character limits for answers) will be provided in the next version of the Guidebook.

Comments expressed support for the clarifications concerning UDRP decisions and reverse domain name hijacking. Comments also called for greater flexibility in reviewing an applicant’s history of UDRP proceedings. It is important that there be an objective standard to avoid the additional cost and potential inconsistent results of an ad hoc review, and provide greater predictability for applicants. Previous comments on this section called for additional information on what would constitute a “pattern” of behavior, with the expectation that the standard should be generally available to applicants. An objective standard has been put in place. The standard of three or more decisions with one or more occurring in the last four years accounts for both a threshold of repeated behavior and a relevant span of time. The intent of this test is to prevent those who are likely to engage in cybersquatting from obtaining a TLD. This is why the standard provides discretion: the test is stated to be a “general rule,” which can be reconsidered if warranted by exceptional circumstances. A variety of factors might influence that decision.

Finally, there is a comment regarding ICANN compliance with US national law and how that might lead to actions working contrary to the multi-stakeholder model. ICANN has little choice but to comply with US law as that is where its headquarter is located. ICANN attempts to obtain licenses in order to serve requests wherever possible.

EVALUATION

Key Points

- Comments/questions focused on clarifying the application questionnaire should be sent to newgtld@icann.org. ICANN will capture and provide a central repository of responses for all applicants going forward.
- Metrics/criteria used to facilitate the weighing of potential benefits/costs should be 1) tangible, 2) transparent, and 3) measurable.

Summary of Comments

Applicant Review Process—Governmental Entities (Cities). The City of New York seeks to be treated the same as publicly traded corporations in the ICANN applicant review process (Guidebook, section 2.1.1 at 2-2, General business diligence and criminal history). Indicating that governmental entities subject to independent audit, GAAP compliance and public integrity controls will be treated similarly to private entities would encourage responsible governments to proceed with gTLD applications directly to ICANN. This will provide diversity and local

representation to the Internet framework, which is one of the goals of the new gTLD program. *City of New York (13 May 2011).*

Post Launch Compliance. ICANN should require post-launch compliance with the policies and procedures offered by applicants during the application period. Further, ICANN should impose and enforce such requirements with the registries for the existing TLDs. *NCTA (Module 2, 13 May 2011).*

Reserved names list—Olympic and Olympiad. The terms Olympic and Olympiad should be added to the Reserved Names list, which would be consistent with the laws of the U.S. and numerous other countries around the globe, and allow the U.S. Olympic Committee to focus its limited resources on its primary mission, rather than on defensive registrations and a cumbersome process of filing formal objections against infringing gTLD applications. The RPMs in the guidebook are insufficient to protect the Olympic movement. Both the USOC and the International Olympic Committee (IOC) have repeatedly advocated that reserving the words Olympic and Olympiad in the top and second levels of all new gTLDs serves the public interests of the international community and comports with accepted principles of law. As explained in detail in past comments submitted to ICANN, more than thirty nations have enacted *sui generis* legislation reserving exclusive use of the words Olympic and Olympiad to the IOC and the National Olympic Committees. More than sixty countries have signed the Nairobi Treaty on the Protection of the Olympic Symbol, establishing special protection for the Olympic Movement as an internationally accepted principle of law. The GAC has advised the ICANN Board to approve the request to add Olympic and Olympiad to the Reserved Names list. *USOC (13 May 2011). IOC (15 May 2011).*

Reserved names (2.2.1.2)—include ccTLD regional organizations.

The names of ccTLD regional organizations must also be included on the reserved names list (e.g., CENT, APTLD, LACTLD, in the same status like LACNIC, ARIN, RIPE, Afrnic or APNIC). It is necessary to the community to feel and know that ICANN is also protecting the ccTLD communities. Note that this is the third time that this comment has been sent and that the four RO's are observed in ccNSO and are part of ccNSO committees and are recognized by all the community. *E. Iriarte Ahon (16 April 2011).*

It would be helpful to understand why ICANN has not included the regional organizations for ccTLDs on the reserved names list (e.g. CENTR). *M. Neylon (15 May 2011).*

Reserved names—remove ICANN mark. Equity and fairness dictate that the ICANN Mark should be removed from the reserved names list. ICANN should bear the same burden and expense of protecting its mark against cyber squatters as other brand owners must. *Microsoft (15 May 2011).*

Two-character labels.

The newly added reservation of “two-character labels” should be deleted from the applicant guidebook; it may cause problems and lacks a rationale. Confusion with the “two-letter codes” of ccTLDs or technical reasons are by all means not evident. Reservation of two-character labels has never been a publicly discussed point and putting it into the guidebook rules without a community discussion is outside the policy development process. Its timing is odd because at least a dozen gTLD and ccTLD registries have released “two-character labels” just recently or are planning to release them in the near future, with ICANN’s approval in the case of gTLDs. Reservation of two-character labels will create legal challenges in many new gTLDs (e.g. in Germany DENIC, the operator of the .de ccTLD was in 2010 forced by competition and

trademark laws to release all “two-character labels”). *dotBERLIN* (11 May 2011). *DOTZON* (15 May 2011). *dotKohn* (16 May 2011). *C.Roussos* (16 May 2011)

Single character IDN gTLDs.

Before it adopts any implementation models for single-character IDN gTLDs, ICANN must put those models out for a meaningful public comment period. *Microsoft* (15 May 2011).

Regarding 2.2.1.3.2, consistent with the original new gTLD Recommendations approved by the GNSO Council and the Board regarding Reserved Names and with the recent GNSO Council recommendation, the RySG strongly supports the JIG recommendation that single character IDN gTLDs be allowed as proposed by the JIG. *RySG* (15 May 2011)

Internet Society of China presented comments to ICANN on JIG single character international top-level domains on January 12, 2011, expressing its concerns about single character IDN gTLDs. Internet Society of China requests again that single character IDN TLDs be analyzed in regard to different languages on a case-by-case basis, and related policies should be considered after the IDN variant word policy solution comes out. Regarding Chinese characters, words composed of two or more characters usually have explicit meaning. But in some cases a single Chinese character has more than one meaning. Some Chinese characters represent geographical names (hereinafter referred to as or commonly known as), and the nation, the surname, etc. If these characters are used as domain names, it is easy to cause confusion and misunderstanding. *Internet Society of China* (27 May 2011).

CNNIC welcomes allowing IDN single-character TLDs into the market. The single Chinese character string often shares similar meaning with a two-character Chinese string, and some single Chinese characters are used by Chinese people as acronyms to refer to geographical names or other specific noun phrases. The guidebook might address it to avoid users’ confusion. Moreover, single Chinese characters also have variant issues. ICANN should comprehensively consider the IDN variants issue and single-character issue in the application guidebook. *CNNIC* (27 May 2011).

Chinese IDN variants—timetable concern. ICANN attaches great importance to the IDN variants issue and has instructed formation of the VIP WG to find a management mechanism; however, the timetable is unfavorable for IDN variant applicants if they want to apply for an IDN TLD in the first application round. The ICANN VIP group should expedite the process so that the variant issue can be properly addressed and the variant issue should be treated on a case-by-case basis and first come-first serve basis to meet the demand of potential applicants. Based on registry operation experience, Chinese TLD operators have developed a concrete and feasible solution to meet the needs of Chinese users worldwide. Chinese solutions have been fully tested out by the delegation and operation of Chinese IDN ccTLDs. To date, registries have not received any complaints regarding variant management and no abuse of variant domain names is reported. The Chinese Domain Name Consortium produced a detailed report on the Chinese experience last year in its letter to ICANN. CNNIC believes that the work of the Chinese community will serve as a good foundation for the VIP WG. *CNNIC* (27 May 2011).

Data gathering.

USCIB is pleased to see that the AG now requires applicants to detail the expected benefits from their TLDs as well as how the TLD operating rules will minimize “social costs.” Gathering appropriate data is key to helping identify problems during the initial rollout. USCIB supports the Economic Study’s suggestion for ICANN to gather information in order to more clearly identify the general benefits and costs of implementing new gTLDs. USCIB also recognizes

ICANN's commitment to this endeavor under Article 9.3 of the Affirmation of Commitments that requires ICANN to organize a review of the introduction or expansion of gTLDs and associated processes. *USCIB (15 May 2011). NCTA (Module 2, 13 May 2011).*

Any criteria or metrics created to facilitate weighing potential costs and benefits to the public in the evaluation and award of new gTLDs, as recommended by the GAC, should be tangible and transparent in order to evaluate the success of the program and help form recommendations for its continual improvement through future rounds and expansion. Specific applications should highlight the potential community costs and benefits of any new gTLD. Any such costs and benefits identified in an application should be: (1) measurable; (2) directly affect whether an application is approved or not; and (3) be used to hold registry operators accountable for the operation of the gTLD. *MarkMonitor (16 May 2011).*

NPOC supports the questions (2.2.2) regarding applicant intent as part of the application process and suggests that the Board consider scoring answers to those questions as part of the application review. *NPOC (16 May 2011)*

Costs and benefits review criteria (2.2). The Board should incorporate review criteria for weighing the costs and benefits to the general public for all new gTLD applications. E.g., in the not-for-profit community there is concern about strings such as .DONATE, .CHARITY, .GIVE, etc. which offer tremendous opportunity for both good and harm. Such strings should be carefully considered during the application review process without requiring a costly objection to be filed first. *NPOC (16 May 2011).*

Dot Brand Applicants. The evaluation questions should take more account of the needs of dot brand applicants. E.g. question 18, which requires applicants to state the mission/purpose of their registry, has been significantly expanded in this draft of the AG with a series of sub-questions which are not directly applicable for dot brand applicants. The application process would be improved if alternatives were provided for dot brand applicants, asking about, e.g., how a new gTLD will be used to support the strategic aims of the brand. *Valideus (13 May 2011).*

Question 11—proposed alternative address disclosure. The requirement in question 11 for directors of applicant companies to disclose their permanent place of residence raises concern. An alternative would be to ask for an address within the application company. This is more appropriate when the application is being made on behalf of the company. *Valideus (13 May 2011).*

Question 11—due diligence improvements.

COA commends ICANN for reversing at least partially its proposal to cloak in anonymity the identities of key players behind new gTLD applications (evaluation criterion 11(a)). *COA (15 May 2011).*

Regarding new criterion 11(d) dealing with applicants whose legal form lacks directors, officers, partners or shareholders, COA suggests that the individuals whose identities must be disclosed should include not only those with “direct responsibility for registry operations” but also those with legal or senior management responsibility for such operations, which is roughly equivalent to what must be disclosed by other applicants. *COA (15 May 2011).*

Criterion 11(e) appears (perhaps as a drafting error) to relieve applicants of the responsibility to disclose all felony convictions within the past ten years. For clarity and comprehensiveness the

language here should be conformed with that of section 4.3(f) of the draft Registry Agreement, which disqualifies a person convicted of “any felony” from continuing to serve as an officer or director of a registry operator. *COA (15 May 2011)*.

Question 18(c) –Domain Parking. ICANN must remove clause iv from Question 18(c) in the Attachment to Module 2. A policy that discourages a certain form of legal commercial speech at new gTLDs is a form of content regulation and is therefore unacceptable. This question is an inappropriate intrusion into a registrant’s right to utilize a domain name for a lawful purpose. It would impose pressure on applicants to impose rules that would limit parked websites at domains registered within their new gTLD, and equates domain parking with “social costs” and “negative consequences/costs.” Such derogatory association is unfounded and registry-imposed constraints are unjustified and unnecessary. A domain name registrant that has paid the registration fee for a name is entitled to engage in any legal activity with that name, or in fact to not use it at all. Display of ad links on non-infringing generic word domains is equal in legitimacy and usefulness to the paid ad links displayed by major search engines when the same word is entered into them. The suggestion that parking a name and publishing links to data and/or advertising alone is a negative or harmful practice is at best misinformed and certainly incorrect. For ICANN to suggest a role in defining legitimate or illegitimate content is extraordinarily dangerous to the interests of the entire Internet community. This new evaluation criterion is also completely at odds with recognition elsewhere in the April 2011 Discussion Draft that domain parking in and of itself is not a negative criterion under the proposed URS. WIPO has recently adopted a similar view for the guidance of examiners under the UDRP. *Oversee.net (15 May 2011). ICA (15 May 2011)*.

Question 18(c)iii –agreement term clarification. ICANN should clear up the ambiguity in question 18(c)iii and Sections 2.10(a) and (c) of the registry agreement regarding the period of contracts for domain name registrations (“permanent” or “no greater than ten years”). AusRegistry supports allowing permanent registrations, particularly in the case of single registrant, single user TLDs. *AusRegistry (16 May 2011)*.

Rapid takedown or suspension systems. The clarification of requirements necessary to obtain 2 points on questions 28 and 29 is useful, but ICANN missed a tremendous opportunity to make an important contribution to the security and stability of the Internet by failing to require that all new gTLD registry operators implement a rapid takedown or suspension system. Further, ICANN compliance must have the resources and mandate to ensure that applicants abide by the representations made in their applications on questions 28 and 29. *Microsoft (15 May 2011)*.

Question 28--Orphan glue records. Regarding the issue of management and removal of orphan glue records, SSAC offers the following comments:

- (1) Orphaned glue is an ambiguous term for which no definitive definition exists. The SSAC has prepared a definition that it recommends be included in the Applicant Guidebook.
- (2) Orphaned glue can be used for abusive purposes; however, the dominant use of orphaned glue supports the correct and ordinary operation of the DNS. Thus it is inappropriate to include the management of orphaned glue under the rubric of “abuse prevention and mitigation” and SSAC suggests that it be removed.
- (3) To mitigate the actual abuse of orphaned glue, registry operators should take action to remove these records when provided with evidence that the glue is indeed present to abet malicious conduct.

SSAC (Module 2, 13 May 2011).

Question 39 clarification.

The terms “Recovery Point Objectives” and “Recovery Time Objective” are not defined or explained and it is unclear what applicants are being asked to do. These terms should be explained in the guidebook. *RySG (15 May 2011). AFNIC (15 May 2011).*

It is unclear what “vital business functions” are in question 39. The statement should be reworded as: “Identification and definitions of vital business functions, defined as those business functions critical in supporting the delivery of Registry Services as defined in Specification 6 of the New gTLD agreement, as well as any other Services defined in the applicant’s response to Evaluation Criteria Question 23.” *AusRegistry (16 May 2011).*

Definition and consistency of terms used. Question 23 and many other areas of the guidebook use the terms “Registry Services”, “Registry Functions”, and “Registry Operations” interchangeably. Each of these terms should be defined and a consistency check and appropriate update should be performed to ensure clarity. *AusRegistry (16 May 2011).*

Mark questions 24 and 26 as non-public. Questions 24 and 26 should be marked non-public as they ask the applicant to describe the technical implementation of SRS and Whois systems respectively. Publicizing specific implementation details, such as network designs, can assist an “attacker” in planning system attacks. *AusRegistry (16 May 2011).*

Question 43—correction. Question 43 under the Scoring column—1-Meets Requirements-- appears to have an error. The second half of the sentence states that registries will offer provisioning capabilities to accept public keys from registrants, and implies registries will also provide key exchange, generation and storage. This does not match AusRegistry’s understanding of the intent of this Criteria. AusRegistry requests that “(generation, exchange and storage)” as stated at the end of the bullet point be removed. *AusRegistry (16 May 2011).*

Question 50 B (i), Letter of Credit (LOC). The current version of the guidebook states: “The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590).” According to several bank contacts, ISP 98 is not a commonly used LOC outside of the U.S. and we understand that under the current requirements Japanese banks will have difficulties obtaining such a document. *UrbanBrain (16 May 2011).*

Analysis of Comments

A comment suggests that government entities, which are subject to independent audit and other public integrity controls, be afforded the same background screening process as publicly traded organizations listed in the top 25 stock exchanges. To clarify, the approach in section 2.1.1 has been put in place to avoid duplicating the background check process on individuals that is already conducted on directors by the top 25 stock exchanges and to keep application processing economical. It is not intended to preclude ICANN from conducting a background screening if required. In addition, typically financial audits conducted by independent third party audit firms do not require extensive background checks of the key individuals responsible for the entity. Accordingly, there would be no duplication of processes or leveraging of work already done by other parties thus background checks of the individuals responsible for the registry will continue as described in the Guidebook

A comment suggests that a post-launch compliance review be conducted of policies and procedures proposed in the application. Compliance reviews are conducted against the terms of the Registry Agreement. To the extent that certain policies and procedures from the

application period are included in the Registry Agreement then those areas will be reviewed. In addition, the application requires that applicants warrant that the statements and representations contained in the application are true and accurate and complete in all material respects. Any material misstatement could cause an application to be rejected.

Commenter recommend that names such as Olympic trademarks, regional ccTLD organizations, and Red Cross names should be placed on the Top Level Reserved Names List in section 2.2.1.2.

With regard to the inclusion of specific entities' names on this reserved list, it is understood that some names have statutory protection internationally. These can be handled on an objection basis. ICANN is considering the nature of these protections, and whether they should be extended to few and certain entities.

With regard to the ccTLD organizations, this was considered; however, the top-level reserved names list is intended to be as narrow as possible, and cover only those names that have an impact on the DNS infrastructure or are part of the organizational structure of ICANN. The bodies mentioned are important DNS community members, but fall more into the category of constituencies, which are self-formed and self-governed, and it would expand the list considerably to include all of these as reserved names.

Other comments suggested that ICANN should remove its own name from the Top-Level Reserved Names List in section 2.2.1.2. This has been considered, but not adopted yet. It should be noted that ICANN was included on this list as a logical extension of being the organization responsible for operating the program rather than as a means of claiming special trademark protection. It should also be noted that "ICANN" is reserved only at the top level – there is no reservation of "ICANN" at the second level, and ICANN thus uses the same processes for addressing any problematic registrations at the second level as does any other organization.

Some comments suggested that reservation of two-character labels from registration at the second level (per Specification 5 to the Registry Agreement) should be eliminated. Although some commenters took this as a new requirement, this it has been in place since the first draft of the Guidebook and is also contained in current registry agreements. New gTLD operators will have the option to propose release of these labels based on implementation of measures to avoid confusion with the corresponding country codes. A number of existing gTLD operators have submitted and been approved for such requests.

A comment expressed support for the implementation of the Joint ccNSO-GNSO IDN Working Group (JIG) recommendations on enabling one-character IDN TLD labels, while another comment expressed a need for public comment on such provisions prior to implementation. The proposed recommendations for allowing one-character IDN TLD strings are currently under consideration. ICANN is responding to the latest, recently received JIG report with questions on implementation to ICANN's policy and technical Support Organizations and Advisory Committees.

Application Questionnaire

A number of the comments ask for clarity of certain question terms and, in some cases, have provided suggested wording changes. We thank everyone for providing these comments and request that further questions regarding clarification of terms in the questionnaire be sent to newgtld@icann.org. ICANN will capture and provide a central repository of responses for all

applicants going forward. Each of the relevant comments is addressed below and, as appropriate, will be added to this central repository.

A comment requests that the terms Registry Services, Registry Functions, and Registry Operations be used consistently throughout the application. These terms will be reviewed and the questionnaire adjusted appropriately to ensure consistency.

Question 11 – Applicant Background

Comments generally support the expanded background screening process and have included possible improvements to the process. For example, a comment suggests that legal or senior management responsible for registry operations be included especially for those entities whose legal form might lack directors, officers, partners or shareholders. Other comments express concern over the detail being requested of applicants (i.e., home address of key individuals) or the appearance of inconsistency with the draft Registry Agreement (i.e. not requiring disclosure of felony convictions beyond ten years).

The comment suggesting legal and senior management be included has merit and the Guidebook is updated. We also understand the concern with collecting private/confidential information such as a home address for a key individual. However the purpose of requesting the personal home address in Question 11 is for the requirements of the background screening process. Without this information the background screening may not be able to provide relevant, positively confirmed, information about the individual. Consequently the background screening process would be ineffective. We understand that this information is confidential and it will be kept as such as it is submitted and maintained by ICANN.

The term “felony” has been removed to expand the scope of the review to include the conviction of any crime. All criminal convictions need to be disclosed as part of question 11. The ten-year time limit in the questionnaire is for the initial background screening check only. The terms in the Registry agreement remain in place and provide notification to the registry operator that any future convictions of the crimes listed in 4.3(f) do not have a time limit.

Question 18 – Mission / Purpose

Comments generally support the inclusion of certain economic questions that will help the community understand better how the TLD will provide benefit and minimize “social costs.” Comments also request that metrics/criteria used to facilitate the weighing of potential benefits/costs should be 1) tangible, 2) transparent, and 3) measurable. In addition, some comments suggest that review criteria should be incorporated that would directly affect whether an application is approved, and be used to hold registry operators accountable for the operation of the gTLD. Finally, a comment suggests that an applicant might secure a TLD with the intent of having a “closed” or internal facing only registry (i.e., having no intent of allowing the general public to register domains) and thus the economic benefit questions under Question 18 would not apply or should be rewritten to account for this type of application.

We agree with the concept that metrics/criteria captured as part of the questionnaire be tangible, transparent, and measurable. However, as has been discussed over several versions of the Guidebook and in several economic studies, exact measurements are difficult to ascertain without first having some relevant, concrete set of data to begin development. The expectation is that data collected in this first round will be used to gauge the effectiveness of the program and will be refined as the program progresses. Relevant data gathered during this review may help inform future rounds, including possible additional criteria for determining whether an application is approved.

We appreciate the clarification sought on Question 18 for “closed” or internal facing only strings. These questions have been added at community request to help inform reviews of the effectiveness of the program. We believe these questions are applicable whether or not the applicant chooses to make the registering of names available to the public. If an applicant indicates that the question, as worded, is not applicable then they must provide rationale to this effect. Note, while these questions will not be scored they will be viewable by the public and will form the basis for future economic studies.

Some comments objected to the inclusion of a question concerning policies on domain parking or advertising in the new set of questions included to inform economic studies. It is acknowledged that these activities are not necessarily equated with negative social costs, and this question has been removed.

Another comment cited confusion on the reference to “permanent” contracts for domain names in question 18(b)(iii). The Registry Agreement requires that: “Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.” Additionally, the Registry Agreement requires advance written notice of price increases. The question essentially concerns provisions impacting registrant pricing, and the previous section referencing “permanent” contracts has been removed.

Questions 24 and 26 – SRS and Whois

A comment suggests that certain information being requested and made public for these questions could increase the potential for harm as they could be used in planning system attacks. It is important to strike a balance between transparency, particularly regarding public-facing processes, and safeguarding information that could be easily vulnerable to misuse. ICANN is considering whether there are aspects of these questions that should be withheld from public disclosure due to the significance of the risks.

Questions 28 and 29 – Abuse Prevention and Mitigation and Rights Protection Mechanisms

A comment suggests that the rapid takedown/suspension systems called for in Questions 28 and 29 should be required for all applicants and that compliance have necessary resources available to conduct reviews as required. We understand the nature of this concern; however, the same type of rapid takedown/suspension requirements may not be necessary or desirable for all types of TLDs. Future policy work within the community might yield best practices for such procedures. In the meantime, the registry has the ability to implement procedures that fit the circumstances of the particular TLD.

Some comments suggested changes to the requirement on orphan glue records in Question 28, including a definition for orphan glue records, and a requirement for a registry operator to remove such records when presented with evidence that they are being used for to abet malicious conduct. These comments have been incorporated.

Question 39 – Registry Continuity

A comment requests clarification of the terms “Recovery Point Objectives” and “Recovery Time Objectives” included in question 39. The terms are common Continuity Management (i.e. Business Continuity Planning) terms that focus on the recover of critical data and functions, as defined by the organization.

- A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption/disaster during which data may be lost and is independent of the time it takes to get a system back on-line (the Recovery Time Objective). If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.
- A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and will build continuity plans accordingly.

These definitions have been added to Question 39 as a reference for applicants.

Another comment provides additional clarity on what are “vital business functions” and includes a revised language. This language will be considered as an update to the questionnaire.

A comment suggests a clarification to specific language used in Question 43 on DNSSEC; this suggestion has been incorporated.

A comment states that the International Standby Practices (ISP 98) for a Standby Letter of Credit are not generally followed by financial institutions in some regions. The Guidebook has been updated to allow an alternative standard to be incorporated into the letter of credit, if it can be demonstrated to be reasonably equivalent.

TRADEMARK PROTECTIONS

OVERALL RIGHTS PROTECTION MECHANISMS

Key Points

- Comments from every section of the ICANN community and broader Internet community have been thoroughly considered in the development of the trademark protection mechanisms in the Applicant Guidebook.
- Discussions between the Board and the GAC led to numerous changes in and improvements to the RPMs, which were further informed by continued community consultation.
- The trademark protections in the most recent version of the Applicant Guidebook provide stronger protections than any previous version and are intended to create a balance between all interested parties.

General

Support for trademark protections in current guidebook.

Substantial trademark protections have been developed for new gTLDs. ICANN has come a long way in providing protections for trademark owners in the new gTLD process with a substantial amount of additional protections at the top and second levels compared to what is afforded today for existing gTLDs. *Neustar et al. (15 May 2011).*

Following extensive work by the ICANN Board and the GAC, we now appear to be much closer to the original IRT proposals and we applaud ICANN for making these important and welcome changes. *Hogan Lovells (15 May 2011). FICPI (Module 3, 15 May 2011).*

The RPMs are inadequate.

ICANN's plan does not meet its Affirmation of Commitment obligations (para. 9.3). To prevent abuses such as consumer fraud as well as user confusion, the plan still requires businesses to pay for defensive registrations or file IP claims in hundreds of new gTLDs at prices that are unconstrained by ICANN or other regulatory bodies. The legal expenses and other costs of defensive registrations and IP claims will not be offset by potential economic or informational value to either registrants or Internet users. *AIPLA (13 May 2011).*

The critical issue of trademark protection remains unresolved in the revised guidebook, even at this late stage. *Adobe Systems (13 May 2011). NCTA (Module 2, 13 May 2011).*

The RPMs are still substantially weaker than those recommended by the IRT. *BC (15 May 2011).*

It is frustrating and unreasonable that ICANN and its staff have failed to address numerous constructive suggestions made by the ICANN community for modifying specific RPMs on the basis that the proposals are beyond those proposed by the IRT. Regardless of that issue, much work remains to be done to implement effective RPMs consistent with those recommended by the IRT and as discussed with the GAC. *IACC (15 May 2011).*

There should be a globally protected marks list (GPML). Absent a GPML, trademark holders must pay for unwanted defensive registrations. *BC (15 May 2011). Coca-Cola (15 May 2011).*

RPMs must be cohesive, implementable and consistent with existing frameworks.

If the current RPMs are now presented as complete, their actual "design" unfortunately can seem almost random, with lobbied positions tacked on as an expedient. This not only harms the stated purpose of the RPMs, but risks a disservice to the DNS itself, missing a contractual opportunity for a forward-looking approach to the functional integration of norms. WIPO remains committed to workable IP dispute prevention and resolution solutions and is available to share its experience and expertise with ICANN. *WIPO Center (13 May 2011).*

It is paramount that the processes that ICANN sets be practical and capable of implementation in order to make the process fully reliable. *MARQUES/ECTA (15 May 2011).*

ICANN's approach to RPMs should be consistent with the principle of adhering to existing IP frameworks and not creating new law. *USCIB (15 May 2011).*

Role of WIPO. Far greater weight should be given to the views of WIPO as the leading non-profit organization with extensive experience in resolving IP disputes in the domain name space and wider. *MARQUES/ECTA (15 May 2011).*

Single registrant TLDs –RPMs. Existing RPMs (e.g. UDRP and sole remedy of transfer of a second-level registration) may not function in respect to single-registrant TLDs. In the case of a single-registrant TLD there should be an additional remedy as an alternative to transfer of the registration. It is suggested that it be allowed that the second level name is reserved and non-resolving. Single registrant TLDs should not be required to allow unaffiliated registrants to hold registrations in a single registrant TLD. Such third party registrations could cause consumer confusion and in extreme cases be a vehicle for fraud. *BC (15 May 2011).*

Analysis of Comments

Comments from every section of the ICANN community and broader Internet community have been thoroughly considered in the development of the trademark protection mechanisms in the Applicant Guidebook.

Some commenters applaud and support the most recent version of the Guidebook and the trademark protections as they have evolved. Others continue to state that the trademark protections are still not enough to protect trademark holders or minimize the need for defensive registrations (with some repeating the call for a globally protected marks list). Still others question the cohesiveness of the scheme of trademark protection mechanisms or whether they can properly be implemented.

Reflecting on the chronology of events that led to the development of the trademark protections now included in the New gTLD Program continues to be important. This historical review must be understood within the ICANN framework of a multi-stakeholder, bottom-up consensus building organization.

As most will recall, after the early versions of the Applicant Guidebook were posted, the trademark community made clear that more and specific trademark protections were needed. ICANN heeded those remarks. Accordingly, the Board resolved to establish an Implementation Recommendation Team (IRT), to help identify and propose rights protection mechanisms (RPMs) for trademark holders within the New gTLD Program (*see <http://www.icann.org/en/minutes/resolutions-06mar09.htm#07>*).

The IRT described itself as 18 people experienced in trademark protection on the Internet. The Board asked the IRT to develop a workable and acceptable set of RPMs for the New gTLD Program. The IRT engaged in intensive substantive discussion and, just as in most such ICANN processes, the public was invited to respond to ongoing IRT work.

Ultimately, the IRT developed specific recommendations reflecting the views of business and trademark interests, which included proposals for an IP or Trademark Clearinghouse (Clearinghouse), a Uniform Rapid Suspension System (URS), and a Trademark Post-delegation Dispute Resolution Procedure (PDDRP). The Clearinghouse included an IP Claims Service, a Sunrise Service, and a Globally Protected Marks List (GPML). (*<http://icann.org/en/topics/new-gtlds/irt-final-report-trademark-protection-29may09-en.pdf>*).

Concerns from the broader ICANN Community immediately emerged with respect to several

IRT recommendations. After significant public comment, through both the public comment forum and numerous face-to-face meetings, refinement of the IRT proposals were called for to balance the interests of the community as a whole, the trademark holders, and registrants with legitimate interests in registering domains that might also be the subject of a trademark. Compromises were also required in light of the implementation difficulties of some of the IRT proposals.

The next iteration of the Guidebook included nearly all of the trademark protection mechanisms suggested by the IRT, including the Clearinghouse (including IP Claims and Sunrise processes), the URS and the PDDRP. The GPML was not included in light of, among other things, the implementation difficulties with, and the significant opposition to, such a list. In 2009 the Board noted that a GPML was not adopted and noted some of the reasons:

[I]t is difficult to develop objective global standards for determining which marks would be included on such a GPML, such a list arguably would create new rights not based in law for those trademark holders, and it would create only marginal benefits because it would apply only to a small number of names and only for identical matches of those names. See <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.6>.

After further comment, discussion and revision, the Board requested the GNSO Council's view on whether the then versions of the Clearinghouse and URS proposals were consistent with the GNSO's proposed policy on the introduction of new gTLDs. The Board asked whether these RPMs were appropriate and effective for achieving the GNSO's stated principles and objectives.

In response to the Board's request, the GNSO established the Special Trademark Issues Review Team (STI), consisting of members of each Stakeholder Group, At-Large, Nominating Committee Appointees, and the GAC. The STI recommended several revisions to the Clearinghouse and the URS proposals (see <http://www.icann.org/en/announcements/announcement-2-17dec09-en.htm>), which were unanimously adopted by the GNSO.

ICANN also invited community participation in an open consultation process to discuss and propose revisions to, among other things, the PDDRP. This group was formed as the temporary drafting group (TDG).

Together, the IRT recommendations, the STI revisions, the TDG revisions, and comments from every section of the ICANN community and broader Internet community were taken into consideration in the development and iteration of the RPMs. As a result of public comment, a requirement to maintain a "tick Whois" database was added to the proposed registry agreements.

Over the past several months, the RPMs have undergone some significant further refinements in response to advice from ICANN's Governmental Advisory Committee (GAC). In its Cartagena Communiqué (http://gac.icann.org/system/files/Cartagena_Communique.pdf), the GAC identified 12 specific areas in the New gTLD Program with which it had concerns. The GAC later provided ICANN with an "Indicative Scorecard" indentifying 80 individual items for discussion (<http://www.icann.org/en/topics/new-gtlds/gac-scorecard-23feb11-en.pdf>).

The Board and GAC subsequently engaged in extensive discussions, including numerous calls with individual GAC members and Board members (topic leads), a dedicated two-day consultation between the ICANN Board and the GAC in Brussels, an exchange of follow-up written comments and responses from both the Board and the GAC, additional face-to-face

consultations between the GAC and Board in the ICANN San Francisco meeting, additional individual calls among GAC and Board topic leads, and a GAC/Board telephonic consultation on 20 May 2011.

These discussions between the Board and the GAC lead to numerous changes in and improvements to the RPMs, which were further informed by continued community consultation.

The trademark protections in the most recent version of the Applicant Guidebook provide stronger protections than any previous version and are intended to create a balance between all interested parties with a main focus of protecting consumers, including both registrants and Internet users.

The trademark protections now part of the new gTLD Program include:

- The requirement for all new registries to offer both a Trademark Claims service and a sunrise period.
- The establishment of a Trademark Clearinghouse as a central repository for rights information, creating efficiencies for trademark holders, registries, and registrars.
- Implementation of the URS that provides a streamlined, lower-cost mechanism to suspend infringing names.
- The requirement for all new gTLD operators to provide access to — thick Whois data. This access to registration data aids those seeking responsible parties as part of rights enforcement activities.
- The availability of a post-delegation dispute resolution mechanism that allows rights holders to address infringing activity by the registry operator that may be taking place after delegation.

In addition, the existing Uniform Domain Name Dispute Resolution Policy (UDRP) continues to be available where a complainant seeks transfer of names. Compliance with UDRP decisions is required in all new, as well as existing, gTLDs.

Each of the recommendations above is intended to provide paths to protect rights other than defensive registrations for trademark holders.

Further, the application process itself, based on the policy advice, contains an objection-based procedure by which a rights holder may allege infringement by the TLD applicant. A successful legal rights objection prevents the new gTLD application from moving forward: a string is not delegated if an objector can demonstrate that it infringes their rights.

One group recommends that WIPO be consulted in light of its role in trademark disputes. WIPO's contributions have been extremely valuable throughout the development of trademark protections in the New gTLD Program. WIPO has agreed to serve as the dispute resolution provider for all pre-delegation legal rights objections and was instrumental in the drafting of the standards under which such objections will be reviewed. Inputs from WIPO to all other RPMs are also important to the entire multi-stakeholder consensus process that has been at the heart of the New gTLD Program.

Finally, one group representing business interests comments on the applicability of existing trademark protection mechanisms, such as the UDRP, specifically the transfer remedy, to single

registrant or .BRAND TLDs. While this is not something relevant to the new RPMs, this is something for later consideration depending on how single-registrant TLDs evolve.

Trademark Clearinghouse (Clearinghouse)

Key Points

- The Clearinghouse is meant to be a database of intellectual property rights; its purpose is not to house data that would support blocking of domain name registrations.
- Requiring the trademark claims process to continue beyond the launch of registry operations, could potentially knock out businesses that already offer Watch services, and require development of a very different technological solution than what is planned for the Clearinghouse.
- Limiting Trademark Claims and Sunrise protection to identical match of a trademark, at least until the system can be tested in practice and reviewed, is an appropriate limitation.
- The requirement for demonstration of “use” is universal, no jurisdictions are favored over the other based on the level of review trademarks receive in that jurisdiction

General

Summary of Comments

Purpose.

The purpose of the Clearinghouse should be to list a number of different “name” rights that, depending on the jurisdiction, could be used as a basis to create an obstacle to registration of a certain domain name. A Complainant in a .eu domain name dispute can rely on, inter alia, registered national and Community trademarks and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works (Article 10(1) of the European Commission regulation 874/2004). The Clearinghouse should allow collection of such prior rights, whereas it will be up to each gTLD provider to regulate if only registered and common law trademark rights may be relied upon or whether other nationally protected name rights can form the basis of an objection as well. FICPI notes that 3.2.1’s revision to cover “nationally or multi-nationally registered word marks from all jurisdictions” is a step in the right direction—e.g. now European Community trademarks are given the same status as U.S. trademark registrations. *FICPI (Module 3, 15 May 2011).*

More details needed.

TLD applicants need more details on the Clearinghouse processes and costs for proper business planning. This information should be included in the final applicant guidebook. *dotBERLIN (11 May 2011). DOTZON (15 May 2011). dotHotel (15 May 2011). AusRegistry (16 May 2011).*

Clarification remains outstanding on such matters as the relation to trademark office determinations; fee apportionment measures; any envisaged process for Clearinghouse

removal of marks; and treatment of non-Latin script and word+design marks. *WIPO Center (13 May 2011)*.

ICANN proposes that the Clearinghouse provider may actually be two entities—the “authenticator/validator” and the “administrator,” which is confusing because only the second entity will really be “the clearinghouse.” ICANN needs to clarify what roles each entity is to play, including with respect to Sunrise Eligibility Requirement complaints. There is no information in the guidebook on what a Sunrise Dispute Resolution Policy will even look like or how it will be implemented, highlighting a further gap in the new gTLD proposal. It is also unclear how the Clearinghouse itself is supposed to provide Sunrise services, rather than simply be a repository of information that is used in support of such services. More broadly, the Clearinghouse is still full of “proposals” of what the requirements “should be” rather than proposed firm requirements. Other issues are left open, such as penalties for failure to keep information in the Clearinghouse up-to-date, which if significant enough could cripple the entire system. Neither ICANN nor the Internet community really knows what final Trademark Clearinghouse requirements are being proposed. *INTA (14 May 2011)*.

Proposal: Draft Trademark Claims Notification Process. Neustar et al. has produced a proposal to assist ICANN with the construction of the RFP for Clearinghouse Providers and to provide guidance to the new gTLD Registry applicants on how an implementation of a 60-day Trademark Claims Notification process could work. Neustar et al. recommends a flexible, yet consistent mechanism that also preserves options for a multitude of business models that may emerge for potentially hundreds of new gTLDs. Neustar et al. would like the several assumptions it makes in the proposal to be included in the final version of the AG. *Neustar et al. (15 May 2011)*.

Clearinghouse Service Provider(s). ICANN should contract with a single entity for the Clearinghouse functions, covering the validator and administrator roles. This places accountability with a single body and enables the Clearinghouse to evolve its business processes over time and without concern or conflicts with organizational boundaries between the administrator and validator roles. Contracting with two parties introduces complexity which could result in delays in implementation of the Clearinghouse and possibly also in the introduction of new gTLDs. The process to find a Clearinghouse service provider must commence without delay, and ICANN should convene a working group from the ICANN community to share ideas on the design of the Clearinghouse. (Note: For specific Module 5, section-by-section comments and suggested language edits for Trademark Clearinghouse, see EnCirca comments at pp. 2-5). *EnCirca (14 May 2011)*.

Clearinghouse relationship to other RPMs.

The Clearinghouse is only utilized during initial launch and is not integrated with other RPMs such as the URS. *Adobe Systems (13 May 2011)*.

ICANN should explain how the Clearinghouse and the URS will be linked in order to save trademark owners costs, and ultimately protect end users from fraud. *News Corporation (13 May 2011)*.

INTA continues to stress the importance of minimizing costs by integrating the Clearinghouse to support the URS, in addition to Sunrise/Claims services. Depositing a mark in the Clearinghouse should not be a prerequisite to using the URS, but the validated information in the Clearinghouse should be available to support a URS complaint, e.g. to establish ownership of a registered mark. *INTA (14 May 2011)*.

Use of Clearinghouse in UDRP. Trademark owners should be able to take advantage of using the Clearinghouse when seeking relief from abuses under the UDRP both for purposes of registrations for new gTLDs and under the existing gTLDs. *AutoTrader.com (Module 2, 13 May 2011).*

Word Choice. Section 4.3 and elsewhere in the Clearinghouse proposal refer to notice of a trademark claim being given to the “registrant” prior to the domain name being registered. Prior to registration the entity receiving the notice is only an “applicant.” Misuse of the term “registrant” invites confusion. ICANN should also make clear that the “notice” system involves two notices—one to the applicant that there is a match of the proposed domain name to a mark in the Clearinghouse, and another to the trademark owner if the applicant proceeds to register the domain name anyway. *INTA (14 May 2011).*

Name change. The name should be “IP Clearinghouse,” as recommended by the IRT. *FICPI (Module 3, 15 May 2011).*

Analysis of Comments

One commenter suggests that the Clearinghouse’s purpose should be “to list a number of different ‘name’ rights that could be used as a basis to create an obstacle to registration of a certain domain name.” It is true that the Clearinghouse is meant to be a database of intellectual property rights, but it was not established to house data that would support blocking of domain name registrations. This same commenter suggests that registries should have discretion as to what it protects in the various RPMs it must offer. Such discretion is available - after mandatory protections are provided. Registries must recognize certain trademarks, but they have discretion to recognize and protect additional intellectual property marks that are allowed in the Clearinghouse. Finally, this commenter does recognize and appreciate that registered trademarks from all jurisdictions are treated equally in terms of what must be recognized.

Some suggest that more details are needed with respect to Clearinghouse operations and others note that the development process should begin without delay, and in consultation with the community. We agree and are working to a timeline that ensures the availability of the Clearinghouse in time for the anticipated launch of the new gTLD process.

Implementation details are now in development. In particular, some community members have produced a proposal to assist with the construction of the RFP for Clearinghouse Providers and to provide guidance on implementation of a 60-day Trademark Claims Notification process. This proposal is a part of developing specific operational details for the Clearinghouse, which will evolve according to a plan in consultation with all interested community members and the selected Clearinghouse Provider(s). The selection process will also inform the decision as to whether one or two separate providers will be required.

Some commenters seek clarification on how the Clearinghouse will be integrated in relation to other RPMs. As noted in both the URS and the PDDRP, data that is housed in the Clearinghouse can be used as evidence to support standing in both RPMs. For example, proof of use of a trademark is required to support either a URS or PDDRP proceeding; the proof of use that is validated by the Clearinghouse can serve as such evidence in those RPM proceedings. How the Clearinghouse can be used to support existing RPMs such as the UDRP has not been to topic of discussion in the new gTLD Program.

One suggests that “registrant” be changed to “applicant” when discussing trademark claims process notices before the registration is actually completed. This comment is well-taken. Accordingly, “registrant” in this context will be revised to be “prospective registrant.”

No changes will be made to the name of the Trademark Clearinghouse.

Fees and Costs

Summary of Comments

Funding from multiple sources. The cost of inclusion of a mark in the clearinghouse should be kept as low as possible with funding coming equally from users of the system, e.g. trademark owners, registries, registrars and from ICANN itself. *Valideus (13 May 2011).*

Costs and operations timing. The Clearinghouse should be established well in advance of the commencement of operation of any of the new gTLDs and the cost for setting up the clearinghouse system should be fully borne by ICANN as part of the expenses of the new gTLD program. Setting it up well in advance in an open and transparent manner and providing public guidance on its operation may reassure many brand owners that they will be able to protect their trademarks. ICANN bearing the cost will advance consumer confidence in ICANN and new gTLD applicants’ shared fiscal responsibility in implementation of the new gTLD program. Brand owners have many trademark costs outside the clearinghouse (e.g., obtaining and maintaining trademark registrations to permit participation in the clearinghouse) and should only be responsible for reasonable charges for recording their trademarks in the clearinghouse. In this way trademark owners will have some reasonable assurance that the gTLD program will not significantly increase their operating costs. *IBM (13 May 2011).*

Reasonable costs. The costs related to the Clearinghouse need to be reasonable in order for it to remain an effective tool for brand owners. *MARQUES/ECTA (15 May 2011).*

Reduced fees for not-for-profit organizations (8.0). The Clearinghouse should feature reduced fees for not-for-profit organizations and ICANN’s negotiations with the Clearinghouse provider should incentivize such reduced fees. *NPOC (16 May 2011).*

Analysis of Comments

One commenter suggests that funding should come from the users of the system. That is precisely how the Clearinghouse is expected to be funded. See Section 8 of the Clearinghouse proposal: “Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.” Further, it has always been the intent the Clearinghouse costs are reasonable and that will be considered in the solicitation process.

With respect to who will fund the initial establishment of the Clearinghouse, it has always been planned that ICANN and the Clearinghouse Service Provider(s) shall bear that burden, as deemed appropriate.

At present there is no plan to make reduced Clearinghouse fees available to any particular section of the community, such as non-profit organizations. That is a possibility that can be discussed with potential Clearinghouse Service Provider(s).

Eligibility for Inclusion and Protection

Summary of Comments

Marks to be Included in Clearinghouse.

AIPLA supports the change made in the most recent version of the guidebook that any “marks which constitute intellectual property” can be included in the Clearinghouse. *AIPLA (13 May 2011). Partridge (14 May 2011). Time Warner (14 May 2011).*

INTA recommends that paragraphs 1.3 and 1.5 be revised to clarify that the data regarding other types of intellectual property is not an “ancillary service” and paragraphs 3.2.4 and 3.3.6 be revised to correctly articulate what constitutes intellectual property. *INTA (14 May 2011).*

CADNA would like more elaboration on the change made removing the language that no common law marks should be included in the Clearinghouse. CADNA is pleased with the idea of expanding the definition for inclusion in the Clearinghouse, although it seems that marks that constitute intellectual property of other types than those specifically described will be determined by the registry operator and Clearinghouse, which seems to give those two entities a significant amount of power. *CADNA (13 May 2011).*

The Clearinghouse should include common law trademarks, rather than limiting the Clearinghouse to court-validated or registered trademarks. Extending protection to common law trademarks that are substantively authenticated would streamline other RPMs, such as the UDRP (and other domain name dispute resolution policies) and the URS, which allow claims for relief based on common law rights. IACC suggests that at a minimum registry operators should be permitted to include such marks in their RPM, and in order to do so will need the data about those rights in the Clearinghouse. *IACC (15 May 2011).*

Sections 2.2.1, 3.2.1 and 3.2.3 need to be amended to include figurative registered trademarks. The developed UDRP/WIPO precedent and the clearly inclusive intention of the GAC towards both figurative trademarks and word marks leave ICANN with a clear directive to include both legally recognized forms of trademarks in the DAG and the Trademark Clearinghouse. *M. Harper (16 May 2011).*

The Clearinghouse should also be allowed to validate stylized marks that are nothing more than a word mark presented in a different font. In addition to presenting the stylized mark, certificates of registration present the mark in standard font, so the Clearinghouse would not have to exercise either discretion or subjectivity in order for stylized marks to be protected by the RPMs. *NCTA (Module 2, 13 May 2011).*

The Clearinghouse should accept marks that include a TLD. It is incorrect to state that a dot-TLD mark cannot indicate source—it depends on how it is used. Numerous marks that incorporate a TLD, many of which are well-known, are registered in the U.S. and other jurisdictions worldwide. Despite its repeated position that all registered trademarks should be treated alike, the Board has singled out this one category of marks that will be denied protection under the RPMs. It is the gTLD by itself that is generic and does not identify source. As a

practical matter there is no material difference between a mark consisting of a term followed by a TLD and the term alone. Thus either adding or deleting the TLD from a registered mark is permitted by the U.S. Patent and Trademark Office. NCTA urges ICANN to adopt the same approach—i.e., permit the validation of marks that incorporate a TLD and categorize them as the same mark without the TLD. *NCTA (Module 2, 13 May 2011). AutoTrader.com (13 May 2011).*

NCUC opposes use of the Clearinghouse in the future as a database for intellectual property rights beyond trademark—it is a mechanism for trademarks and should remain as such. To effect this, in Section 3.2.4 the phrase “but certainly not copyrights, patents, designs or any other form of intellectual property” should be added after the words “intellectual property.” The meaning of the term “other marks” in Section 3.2.4 should also be clarified by ICANN. *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

The recent creeping expansion in scope of the fee-based Clearinghouse must be viewed with caution. In determining appropriate types of identifiers, ICANN should bear in mind international and national IP norms. *WIPO Center (13 May 2011).*

Mandatory Claims Service and Sunrise Process.

AIPLA supports the change that now requires gTLD registries to provide both of these mechanisms. *AIPLA (13 May 2011).*

It is encouraging and ICANN is to be applauded that the trademark claims and sunrise registration services have been made mandatory. *CADNA (13 May 2011). Microsoft (15 May 2011). Hogan Lovells (15 May 2011). USCIB (15 May 2011). NPOC (16 May 2011). FICPI (Module 3, 15 May 2011). NCTA (Module 2, 13 May 2011).*

INTA agrees that Sunrise services should be limited to a 30-day period before the launch of a gTLD. *INTA (14 May 2011).*

Post-launch Claims.

While we are pleased that all new gTLD registries must have both a Trademark Claims Service and a Sunrise process, neither of these mechanisms have proven sufficient to hinder or reduce the number of domain names registered in bad faith. Both are for the pre-launch or initial launch period. Infringements of rights occur not just in the launch phase but more often after such a phase and for as long as the registry operator is active. The Trademark Claims Service needs to be post-launch as well to have any real value. *LEGO (Module 5, 12 May 2011). Arla Foods (13 May 2011). IPC (15 May 2011).*

The Claims Service requirement should be extended to the first 6 months to provide notice to the trademark owner and potential registrant. *NPOC (16 May 2011).*

The amount of time a registry must maintain the Claims service needs improvement. Section 6.1 implies that the registry can cease offering Trademark Claims services after sixty days, which should not be the case. Registries should be required to post Trademark Claims whenever a party attempts to register a domain which incorporates a mark on the Trademark Clearinghouse. *AIPLA (13 May 2011). Partridge (14 May 2011). BBC (Module 5, 13 May 2011). News Corporation (13 May 2011). Time Warner (14 May 2011). INTA (14 May 2011). COA (15 May 2011). SIIA (15 May 2011). UrbanBrain (16 May 2011).*

AIM recommends a change for Trademark Claims (6.1.1) that “[ne]w gTLD Registry Operators must provide Trademark Claims services AT ALL TIMES for marks in the Trademark Clearinghouse.” (Once set up, to continue to use this service will add large benefit at small cost). *AIM (Module 5, 12 May 2011)*.

The gTLD Registry Operators should offer trademark Claims Service at any time a domain name is registered. *BC (15 May 2011)*.

The Trademark Claims Service should be allowed to run in perpetuity for the life of the gTLD Registry. *Hogan Lovells (15 May 2011)*. *NCTA (Module 2, 13 May 2011)*.

The planned limitation to the proposed 60-day Trademark Claims construct invites gaming. *WIPO Center (13 May 2011)*.

There are additional costs involved with extending the trademark claims period beyond 60 days and expanding notices beyond identical matches. As a compromise, the Clearinghouse could accomplish these goals outside of the envisioned trademark claims process and thereby avoid incurring extra costs on registrars and registries and mitigating chilling effects on registrants. *EnCirca (14 May 2011)*.

Mandating that new gTLD registries implement a perpetual Trademark Claims has the potential of placing the new gTLDs at a competitive disadvantage to the incumbent TLDs who do not have to implement that RPM. If the ICANN community believes that there should be a perpetual IP Claims process required for all TLDs (both new and existing), it can decide to launch a bottom-up policy development process to require its implementation. This should only be done after we get some experience dealing with the Trademark Claims process so that the community can properly evaluate the yet untested RPM. *Neustar et al. (15 May 2011)*.

We generally object to the idea of the Trademark Claims Service to be extended 60 days after the initial launch. One would think that the Claims Service and Sunrise period services both allow the trademark community to make legitimate claims before anyone else. We cannot understand the rationale of allowing a trademark claim service after initial launch and believe it will be an administrative nightmare for registries and an additional disadvantage to registrants. Accordingly in Section 6.1.1 the following sentence should be deleted; “This launch period must occur for at least the first 60 days that registration is open for general registration.” *NCUC (Module 5, 15 May 2011)*. *A. Gakuru (Module 5, 16 May 2011)*.

Identical Match Limitation.

The Trademark Claims service needs to cover more than identical matches. Most cyber-squatting is not an identical match to the trademark being squatted but contains different generic words. Such cases of trademarks plus generic terms must also be covered by the Trademark Claims Service if ICANN intends for such a service to have any real value. *LEGO (Module 5, 12 May 2011)*. *Arla Foods (13 May 2011)*. *Adobe Systems (13 May 2011)*. *Hogan Lovells (15 May 2011)*. *SIIA (15 May 2011)*. *IPC (15 May 2011)*. *NCTA (Module 2, 13 May 2011)*.

The Clearinghouse should not be limited to identical matches. It should include trademarks paired with a descriptive term. At a minimum, a match should include plurals of and domain names containing the exact trademark. Inclusion of such provisions will help avoid expensive enforcement actions and defensive domain name registration. *IACC (15 May 2011)*. *COA (15 May 2011)*. *Coca-Cola (15 May 2011)*. *NPOC (16 May 2011)*. *FICPI (Module 3, 15 May 2011)*.

Protection needs to be wider than identical matches to include in particular plurals, “mark plus descriptive term” and “mark plus device.” Cyber squatting is not restricted to identical marks and this needs to be recognized. *BBC (Module 5, 13 May 2011)*.

IP Claims services should be expanded to cover all strings which comprise the exact match, or plurals of the exact match, or the exact match along with key terms associated with the goods or services relating to the mark (such terms being identified by the mark owner in the Clearinghouse application), or typographical variants of the mark (identified by the mark owner in the Clearinghouse application). Strings falling into these categories could be flagged by software, thus eliminating the need for the Clearinghouse to exercise discretion. *INTA (14 May 2011)*.

In the Claims Service, a notice should be sent if an application contains a character string that features in the Clearinghouse (rather than consists of a mark in the Clearinghouse). Many infringements take a trademark and add a descriptive term such as PRADA-BAGS. Such notices could help reduce conflicts. *Valideus (13 May 2011)*.

The Claims Service should apply to domain names that either consist of or contain textual elements of marks entered into the Trademark Clearinghouse. Limiting the scope to only domain names that consist of textual elements of these marks is too narrow and does not correspond to the unfortunate reality that the vast majority of abusive domain name registrations are for domain names that are MARK+word. *Microsoft (15 May 2011)*.

AIM suggests the following change because sunrise will only be effective if it matches the behavior of fraudsters: “This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match or CONFUSINGLY SIMILAR to the name to be registered during Sunrise.” *AIM (Module 5, 12 May 2011)*.

The need for an exact match is recognized in sunrise services in order to ensure that the system affords appropriate trademark holders an opportunity to register their marks early. However, the standard of “identical or confusingly similar” should be applied in the ongoing IP claims service. *News Corporation (13 May 2011)*.

The Sunrise service should be provided for marks which are an identical match or confusingly similar to the name to be registered during Sunrise. *BC (15 May 2011)*.

The planned limitation to exact matches invites gaming. *WIPO Center (13 May 2011)*.

Trademark Claims and Sunrise Services should extend beyond identical matches. If UDRP or Suspension proceedings determine that there is a “confusing similarity” between a domain name and a trademark, then the trademark owner should be able to place that second level domain name in the Clearinghouse, and refer to it in Claims and Sunrise Services. Otherwise, the same second level domain name could arise repeatedly in various new gTLDs, even after being cancelled or frozen in successful UDRP or Suspension System proceedings. *IOC (15 May 2011)*.

If ICANN considers going beyond exact matches for Trademark Claims where the added term relates to the trademark in a “significant way” (Public Comment Summary Feb. 21, 2011 at pp. 50, 62), it could limit the additional term to any goods or services identified in registrations for the mark. Limiting the number of additional entries to a particular number would be arbitrary and

would disadvantage trademark owners whose mark is used to brand numerous products. *NCTA (Module 2, 13 May 2011)*.

Proof of Use.

The guidebook should be revised to make it clear that the function of establishing use is separate from the function of validating registered marks and that owners of registered marks have the option of offering evidence of use (those that do not will only be able to utilize the Trademark Claims service). *NCTA (Module 2, 13 May 2011)*.

The declaration/proof of use (5.2, 7.2) should be submitted to the Clearinghouse for marks not protected via court, statute, or treated only periodically—perhaps every 3 years—not a requirement prior to the participation of each Sunrise period. *NPOC (16 May 2011)*.

Regarding proof of use, we agree that one party should not arbitrarily be able to stop another party from using a mark. However, in addition to dropping proof of use in trademark service claims, it should also be dropped for sunrise service, URS, and PDDRP because it makes the RPM tapestry cumbersome and complicates the process. In effect, ICANN will create separate criteria from established systems in sovereign countries. RPMs were not meant to be a substantive review system; they were meant to protect brand owners and ultimately consumers. *News Corporation (13 May 2011)*. *Microsoft (15 May 2011)*. *IPC (15 May 2011)*.

If the use requirement is maintained, there should not be a requirement for a specimen. Neither ICANN nor the Trademark Clearinghouse has the requisite expertise to evaluate the sufficiency of a specimen. A sworn declaration is all that should be required. *NCTA (Module 2, 13 May 2011)*.

The requirement of use does little to stop the ability of a registrant to “game the system.” Today, digital renderings of products and services can be easily and quickly created. Instead, the protections surrounding the “use requirement” that the Board seeks are delivered by requirements of sworn statements and the power to address fraudulent claims. *Microsoft (15 May 2011)*.

Requiring the Trademark Clearinghouse to make determinations about use threatens to add considerable and wholly unneeded complexity and cost to its function. The use requirement should be dropped. *Time Warner (14 May 2011)*. *INTA (14 May 2011)*. *IPC (15 May 2011)*.

Requiring proof of use on top of a trademark acquired in accordance with national law is potentially a denial of such a right and/or an additional cost for trademark owners to bear. *Hogan Lovells (15 May 2011)*.

Showing “proof of use” seems inconsistent with the purposes of the Trademark Clearinghouse, when the trademark systems of many nations do not require use. *SIIA (15 May 2011)*.

By insisting that use be shown in both the Clearinghouse and the URS, without specifically linking the two as recommended by the IRT, there could be two different decisions on a mark’s protectability in the new gTLD system. The use requirement should be eliminated. If it is maintained, then the Clearinghouse determination that a mark is in use should determine that issue for the purpose of a URS proceeding in which the mark is cited. *INTA (14 May 2011)*.

By eliminating the substantive review requirement for Trademark Claims, URS and the PDDRP and by expanding the role of the Clearinghouse to validating use of marks, ICANN has also

eliminated the absolute grounds evaluation requirement. Presumably this change was unintended but needs to be corrected. *NCTA (Module 2, 13 May 2011)*.

Date limitation.

The fixed date of 26 June 2008 is not appropriate as it excludes newer trademarks and goes against the spirit of innovation which is driving the new gTLD opportunity. A flexible date is preferred, such as six months before submission into the Clearinghouse which will serve the Clearinghouse going forward. *Valideus (13 May 2011)*.

Participation in Sunrise services for first round new gTLDs should be restricted to registrations that issued on or before the effective date of the relevant gTLD Registry Operator's Registry Agreement and that were applied for before ICANN announced the new gTLD applications received in the first round. This restriction will decrease gaming but is broad (and recent) enough to be appropriately inclusive. If ICANN rejects this restriction, it should eliminate the failure to meet this requirement as a ground on which a Sunrise Eligibility Dispute Procedure can be based (6.4.2). *Microsoft (15 May 2011)*.

The date 26 June 2008 has been deleted elsewhere in the April guidebook; why is this date retained for 7.2 Sunrise services? *BC (15 May 2011)*.

The 26 June 2008 should be deleted for 7.2 Sunrise Services as modified in other provisions, allowing word marks protected by future statutes and treaties the same protection. *NPOC (16 May 2011)*.

The use requirement is an additional evidence measure on the trademark owner. It must not become a deterrent measure for newly registered marks which are not in use yet. This is in favor of all kinds of enterprises, including small companies with less means. We would welcome a date being set later than 2008. *MARQUES/ECTA (15 May 2011)*.

Protection in Claims. IBM notes with appreciation the requirement that registries must recognize and honor all word marks that have been or are: (i) nationally or multi-nationally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion and that demonstration of substantial examination or use is not required. *IBM (13 May 2011)*.

Analysis of Comments

Many comment on what types of marks should be included in the Clearinghouse and some suggest additional items that should be included. In particular, commenters suggest inclusion of common law marks, stylized marks, figurative marks and marks that include a TLD label (such as icann.org). Some support the addition of "any marks which constitute intellectual property." Others seek additional clarification. Further, there are also commenters that question and caution against the expansion of the Clearinghouse data base beyond trademarks.

Except for marks with a TLD that are specifically excluded, such as icann.org, all of the other marks suggested by commenters are allowed in the Clearinghouse database. But, as one commenter suggested, protection or recognition for anything beyond what the registry operators are obligated to honor in either claims or sunrises processes, will be up to the registry. Further, how such recognition is effectuated will be up to the registry operator and the Clearinghouse to work out as part of an ancillary service.

As previously noted several times, marks with TLDs are not allowed in the Clearinghouse. The Clearinghouse is designed to be a repository for trademarks. To fulfill the objectives of the IRT and the STI, it has been decided that those marks that actually function as trademarks, i.e., indicate source, are those that will be eligible for inclusion. Many safeguards have been established to prevent abuse and to ensure neutral application of validation standards, including objectively verifiable data that the mark does serve a legitimate trademark purpose. It has been successfully argued that TLDs standing alone do not serve the trademark function of source identification. Instead of telling consumers "what" a product is or who makes it, they tell consumers where to get it. Because the TLD, standing alone, does not indicate source, and because allowing marks in the Clearinghouse that include a TLD will increase the likelihood of confusion, abuse and gaming, on balance they are excluded. This exclusion will also obviate the need for registration of defensive trademarks in this area.

Commenters universally support the recent revision making both Trademark Claims and Sunrise processes mandatory. Many suggest, however, that Trademark Claims should be required to continue beyond the initial 60-day period now called for. Some suggest it continue in perpetuity. At this juncture, but subject to review as the new gTLD program progresses, registry operators will only be required to maintain a trademark claims process for 60 days before standard registry operations begin that includes the resolution of domain names and registering names on a "real-time" basis. Requiring trademark claims to continue in perpetuity, not only could potentially knock out businesses that already offer Watch services, but from a development perspective it is a very different technological solution to build a Clearinghouse that provides IP Watch services. If the Clearinghouse wants to expand (or others want to use Clearinghouse data) beyond the mandatory time period it is free to do so, but as an ancillary service.

Another topic that has garnered significant comment is whether the Trademark Claims or Sunrise protections should extend beyond identical match to the relevant trademarks. Some suggest identical match + keywords, others suggest including plurals of trademarks and still others suggest typographical errors or all words that contain the trademark should be included.

At present there is no plan to extend mandatory protection beyond identical match. It is important to note that both the IRT and the STI recommended that such protections be limited to identical match. Further, the Clearinghouse is an automated system, and would require additional structural engineering if trademark claims went beyond identical matches. In trademark disputes, for example, there is a judge or a panel with the ability to determine if a domain is substantially similar to a trademark, but there is complex analysis going into such a determination. That is why allowing "substantially similar" to be a standard in URS and not in trademark claims is appropriate and not inconsistent. With respect to Sunrise processes, this is a very superior right (a first right to a domain name) that is not necessarily based in trademark law. Thus, limiting mandatory protection to identical match, at least until the system can be tested in practice and reviewed, is an appropriate limitation. ICANN's Governmental Advisory Committee recently stated that mandating protection beyond identical match is something that can be placed in abeyance pending review after new gTLDs have been in operation.

Comments continue relating to the proof of "use" requirement. Some still question whether proof of use is needed to support Trademark Claims – the answer is no. Proof of use of a trademark is not required in order to receive notice in a trademark claims service.

The proof of use required to receive Sunrise protection has been extensively discussed, debated and considered with the community. Everybody recognizes that it is important to

protect business interests and especially intellectual property owners. A sunrise registration opportunity, or first right to exclude all others, is creating a powerful protection mechanism. One must not be allowed, therefore, to simply register a mark without using the mark, and then be granted such powerful protection. Thus, in order to ensure that those who can exclude others from using a domain name with a trademarked term are not abusing that exclusionary ability, all trademark holders must show proof of use.

The requirement for demonstration of use is universal, no jurisdictions are favored over the other based on the level of review trademarks receive in that jurisdiction. While proof of use will not be deleted as a requirement at this stage, just as other aspects of the program, this will be reviewed after being in practice for the first round to ensure it is having the desired effect.

Some question or call for clarification as to when the date limitation of 26 June 2008 is applicable. This is the date that ICANN approved the GNSO Policy Recommendations on New gTLDs. This date limitation only applies to Sunrise protection and only to marks that have been protected by statute or treaty. Thus, all other marks that must be recognized and honored in Sunrise processes, and all marks that must be recognized and honored in Trademark Claims services, have no date limitation. There is no plan to change this limited restriction on sunrise protection, although this will be revisited to ensure the requirement is not obsolete.

Uniform Rapid Suspension System (URS)

Key Points

- Through community input including the IRT, the STI, the GAC, and the At-Large community, the URS has evolved into a rapid mechanism that will provide trademark holders a more cost-effective method for dealing with the most clear cut cases of abuse.
- Many of the protections in the URS remain substantially the same or even stronger than what was proposed by the IRT.
- All trademark holders must show proof of use before having standing to initiate a URS proceeding.
- The intent of the URS is to address the most clear-cut cases of abuse - given that directive requiring clear and convincing evidence is appropriate.

General

Summary of Comments

Support for revisions. Although it still has concerns about some of the elements of the URS, NCUC commends ICANN for many of the revisions to date—i.e. fair use provisions (5.8), appeal opportunity (12), forbidding transfer and acknowledgement of the need for review of the URS one year after its operation (14). *NCUC (Module 5, 15 May 2011).*

The URS must be rapid per se, and ICANN is proposing a more acceptable solution in our view. If the URS is not a cheap, quick alternative, brand owners will probably be forced into expensive defensive registrations. *MARQUES/ECTA (15 May 2011).*

URS is inadequate.

The URS is still much weaker than the version proposed in the IRT report. It does not seem to be more rapid or cheaper than the ordinary UDRP. *LEGO (Module 5, 12 May 2011). Arla Foods (13 May 2011).*

The URS sets the bar so high that few complainants will prevail and few trademark owners will seek to employ it. *NCTA (Module 2, 13 May 2011).*

The URS as currently proposed is still wanting in many respects (see, e.g., WIPO Center's letter of 2 December 2010, www.wipo.int/amc/en/docs/icann021210.pdf). These issues are not mere details but go to the functioning of the URS both on its own terms and in relation to the UDRP. Sensible policy choices must be made to safeguard URS stability and enforceability. *WIPO Center (13 May 2011).*

The Board should not be picking and choosing select components of the IRT/STI recommendations that it finds most favorable. If the Board wishes to rely on the stated standard of "clear and convincing evidence" then it should reinstate the URS as developed by the IRT. *IPC (15 May 2011).*

More details. The process definition of the URS is broad; further operational definition is required to ensure end users enjoy a consistent, predictable and reliable experience. *AusRegistry (16 May 2011).*

Reduced fees for not-for-profit organizations (2.1). The URS should feature reduced fees for not-for-profit organizations and ICANN's negotiations with the URS provider should incentivize such reduced fees. *NPOC (16 May 2011).*

Analysis of Comments

As an overall note, it is important to recognize the significant community efforts that went into the development and refinement of the URS. From the IRT, to the STI, to the GAC, to the At-Large, as well as overall community input, the URS has evolved into a rapid mechanism that will provide trademark holders a cost-effective method for dealing with the most clear cut cases of abuse.

Although some commend the recent revisions and improvements that have been made to the URS, others still suggest that the URS is inadequate, is weaker than what was recommended by the IRT and sets the bar too high for the URS to be effective.

Specifically, as noted in previously comment analysis, the IRT proposal was reviewed by the STI and was modified. The concept of the URS, however, has not been challenged. The proposal underwent further significant public comment, including extensive discussions with the GAC that lead to further modifications. Although some comments seem to suggest that the current proposal is much weaker as an RPM than the IRT URS proposal, many of the protections remain substantially the same or even stronger than what was proposed by the IRT. For example:

- The response time is the same - 14-days (the current version provides for a one-time extension of no more than seven days if a good faith basis exists)
- All other time frames are the same or faster than what was recommended by the IRT

- Which trademarks can be the basis of a URS claim is broader than recommended by the IRT
- The burden of proof is the same as the IRT recommendation – clear and convincing evidence
- The requirement for showing bad faith is the same as the IRT recommendation – must be registered and used in bad faith
- The fact that Examination is required even in default cases is the same as the IRT recommendation
- The time for a Panel to render a decision is limited in current URS proposal (goal of three (3) days, no later than 5 days) – there was no such limitation proposed by the IRT.
- The remedy is the same as the IRT recommendation - suspension.
- The length of suspension in the current URS proposal can be extended by a year after current registration expires – there was no such possibility of extension in the IRT proposal.
- The evil intended to be addressed is the same – clear-cut cases of abuse.

The changes that have been implemented are the result of input from numerous stakeholders and reflect an attempt to balance the rights of trademark holders with those of legitimate registrants that may happen to have registered domain names that involve a trademark from somewhere in the world.

One commenter has called for additional operational details, which are being developed as part of the call for expressions of interest for URS provider(s).

The call for reduced fees for non-profit organizations is something that the community may want to consider, but it should be recognized that the fees are already relatively low and those fees would have to be funded from some other source.

Procedures

Summary of Comments

URS Examiners.

CADNA applauds ICANN's new specification that URS Examiners must have demonstrable relevant legal background, such as in trademark law. URS proceedings are meant to be done rapidly, so it is critical that Examiners be properly trained and suited to consider URS cases in order to deliver the correct determination. *CADNA (13 May 2011). FICPI (Module 3, 15 May 2011).*

In 7.2, add the phrase “from both practice and academia” after the words “relevant legal background” and add “human rights law and competition law” after the words “trademark law.” *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

In 7.3 delete the phrase “are strongly encouraged to” and replace with “must” (“URS providers must work equally with all certified examiners...”). *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

Response Time/Word limits.

Microsoft supports the reduced word limits for both Complainants and Respondents and the shorter time periods for conducting administrative review and issuing determinations. *Microsoft (15 May 2011). Hogan Lovells (15 May 2011).*

It is disappointing that Sections 5.1 and 5.3 of the current URS draft do not respond to the request for restoring the STI-RT's recommendation for a 20-day response time or for guidance on the grounds for which a 7-day "good faith" request for response extension will be granted. At a minimum, additional guidance should be provided regarding acceptable grounds for a good faith extension. *ICA (15 May 2011).*

NCUC is concerned with the very short deadlines afforded to the respondent, which feeds substantially to the increase of default cases. The need for speed in the URS is understood, but due process should not be sacrificed. NCUC has strongly supported a model that recognizes the different Internet experience in different parts of the world and the need to respect due process for both parties. *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

Publication of proceedings. Section 9.4 should be removed—it sounds as if ICANN with the assistance of the URS providers will be blacklisting domain names that may in the future be registered for fair and legitimate purposes. Further, and for reasons of transparency, Providers, just like in the UDRP, should publish their proceedings. *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

Bar to presenting defense. The GAC request for permanently barring individuals or entities who had five URS actions from mounting any defense in future actions against them should be rejected, as no registrant should ever be barred from presenting a valid defense in a singular case. *ICA (15 May 2011).*

Bar to presenting Complaint. If there can be no "five strike" provision against repeat cyber squatters under the Suspension System based on due process principles that every registrant should always be able to present a defense, then the same principles of due process dictate that every complainant should have the opportunity to be heard. *IOC (15 May 2011).*

Disable Internet access after initial administrative review. If the point of the URS proceeding is to address blatant abuse such as a site selling counterfeits or engaging in fraudulent phishing schemes, then the domain should not be allowed to continue to resolve to the abusive website once the proceeding is initiated and passes the initial administrative review. Instead Internet access should be promptly disabled. *Coca-Cola (15 May 2011).*

Initial Review. Perhaps this is already the guidebook's intention, but the URS Examiner should receive "clear and convincing evidence" before any registrant is burdened with a claim and required to defend themselves. With the URS process so cheap to launch (\$300 USD) and the penalty for misuse so light, Examiners must be certain there is a solid case to move on before registrants are even contacted or inconvenienced in any way. *M. Menius (16 April 2011).*

Notice (4.2). Add the word "potential" before the word "effects" ("as well as the potential effects if the registrant fails to respond and defend against the Complaint.") *NCUC (Module 5, 15 May 2011). A. Gakuru (Module 5, 16 May 2011).*

Analysis of Comments

Some have commented on the nature and requirements for the URS Examiners, including the improved specifications requiring trademark experience. Others suggest adding some additional criteria and requirements. At this stage, the added requirements shall remain as is, but will certainly be looked at after the URS has been tested in practice.

Commenters appreciate the reduced time limits as well as word limitations, while others are concerned that the time limits may be too short. The very nature of the URS calls for short time limits and efficient procedures to ensure a rapid mechanism. The level of the time limitations are in line with what the IRT recommended, with consideration paid to all other community comments, including the STI.

With respect to publishing URS Determinations, it is agreed that Providers should publish their Determinations. The editorial comments in section 9.4 of the URS that the URS determinations will be published “in order to provide notice to the next potential registrant” will be deleted because it may seem like a “blacklist” as suggested by one commenter (and good practice calls for such comments to be omitted from procedural documents).

The Applicant Guidebook is in line with the comment suggesting that no bar should be set prohibiting a respondent from presenting a defense. With that, a separate commenter suggests that if respondents are not barred, then no complainant should ever be barred. There is a key distinction between two. The complainant has other avenues in which to seek redress from an alleged infringer. If a URS proceeding is initiated against a respondent, however, it must have the opportunity to respond or fear losing control of what might be a legitimate, non-infringing domain name.

One commenter suggests that simply passing the administrative review should be enough to cause the challenged domain name to be suspended. The whole purpose of the URS, however, is to have a fair evaluation on the merits, but in an expedited manner so that true cases of abuse can be brought to an end quickly. The URS should not be a mechanism where the burden of proof shifts from the complainant to the respondent at the outset.

Another commenter seems to suggest that one must actually be deemed to have submitted “clear and convincing” evidence before the respondent is even brought into the proceedings. Such a threshold requirement in a rapid, low-cost process would not be efficient. Only a URS Examiner can determine if clear and convincing evidence has been presented. The cost of the proceedings would be prohibitive if the Examiner had to separately analyze the complaint, make a determination on the existence of sufficient evidence, and then had to again examine the evidence in light of the response.

The comments suggesting that the word “potential” be added in section 4.2 (“the *potential* effects if the registrant fails to respond and defend against the Complaint) has been followed and will be included in the 30 May 2011 URS proposal.

Standards, Burden and Evaluation

Summary of Comments

Proof of use.

Proof of use should not be a requirement for participation in the URS. In a majority of countries, trademark rights arise through registration and not use. Moreover, requiring a showing of use in the URS would go well beyond the criteria purposefully mirrored from the UDRP. *INTA (14 May 2011)*.

Proof of use should not be a requirement for URS. Requiring proof of use presumes that the URS provider will be qualified to meaningfully examine that evidence of use and such a presumption is not realistic. If a complainant wanted to rely on proof of use previously submitted to and validated by the Clearinghouse, how recent must such a submission be? *Microsoft (15 May 2011)*.

Given some concern exists over the proof of use, ICANN should consider carefully whether to move forward in establishing this requirement. *USCIB (15 May 2011)*.

Burden of proof.

The URS has the same legal requirements as a UDRP but a substantially more onerous standard of proof which is inconsistent and unwarranted under the URS as currently proposed. *INTA (14 May 2011)*.

IACC supports the GAC position that the burden of proof should be “preponderance of the evidence.” *IACC (15 May 2011)*.

The GAC request to lower the standard of proof should be rejected as this would erode critical distinctions between the URS and the UDRP. *ICA (15 May 2011)*.

IPC urges stakeholders to consider the IPC’s compromise position that would properly deter registrants from cyber squatting and lower costs for rights holders: the IPC proposes shifting the burden of proof to the Respondent in a URS proceeding when the Respondent has lost 5 or more URS proceedings. *IPC (15 May 2011)*.

Bad faith.

The GAC request for removal of the requirement that a complainant establish registrant bad faith should be rejected as this would result in a URS having a critical evidentiary element that is lower than the UDRP requirements. *ICA (15 May 2011)*.

Bad faith should remain a requirement upon the same standard as set in the UDRP. *USCIB (15 May 2011)*.

ICANN has refused to change the “bad faith” standard in the URS and also added factors, not proposed by the IRT, that all but decide in favor of the respondent a substantial number of URS cases that could be brought. If the URS is supposed to be modeled on the UDRP ICANN should not adopt rules that fly in the face of decisions under the UDRP. *NCTA (Module 2, 13 May 2011)*.

Trademark + Keyword Cases

The GAC request to expand the URS to “trademark + keyword” cases should be rejected as these are not the “slam dunk” cases the URS was purportedly designed to address. *ICA (15 May 2011)*.

ICANN should either bring “exact trademark + goods/services/other generic words” within the scope of the URS or acknowledge that “exact trademark + goods/services/other generic words” domain names are confusingly similar to the trademark. *NCTA (Module 2, 13 May 2011)*.

Fair use (5.8.1). Delete “and the Registrant is making fair use of it” in this section. The phrase is not necessary—a domain name that is generic or descriptive cannot raise trademark claims whether the use is fair or not. *NCUC (Module 5, 15 May 2011)*. *A. Gakuru (Module 5, 16 May 2011)*.

Evaluation.

We support the GAC recommendation that the URS apply to registrations that are identical or confusingly similar to protected marks as well as terms associated with goods and services. *News Corporation (13 May 2011)*. *INTA (14 May 2011)*.

URS Examiner decisions should be based on the evidence actually presented only, not based on the evidence “available” to an Examiner. Examiners should not be conducting independent investigations for information that is “available” to them. *INTA (14 May 2011)*. *Microsoft (15 May 2011)*.

In 5.9.1 change the phrase from “Examiner will review each case on its merits” to “Examiner must review each case on its merits.” *NCUC (Module 5, 15 May 2011)*. *A. Gakuru (Module 5, 16 May 2011)*.

Scope. FICPI commends the revision to 1.2.6.1 accepting all officially registered trademarks. *FICPI (Module 3, 15 May 2011)*.

Analysis of Comments

Some continue to question the requirement that a trademark holder show proof of use of a trademark that is the basis of a URS proceeding. The proof of use required to be the basis for a URS proceeding (as well as for the PDDRP and protection in Sunrise procedures) has been extensively discussed, debated and considered with the community. In order to ensure that those who can exclude others from using a domain name with a trademarked term are not abusing that exclusionary ability, all trademark holders must show proof of use before having standing to initiate a URS proceeding. This requirement will not be changed at this juncture, but as other aspects of the program, this will be reviewed after being in practice for the first round to ensure it is having the desired effect. The requirement for demonstration of use is universal, no jurisdictions are favored over the other based on the level of review trademarks receive in that jurisdiction.

Commenters continue to push for lowering the burden of proof while others oppose doing so. Still another group suggests that the burden should shift to the respondent after five failed defenses to a URS proceeding. Neither the level nor the party on whom the burden rests will be changed. The intent of the URS is to address the most clear-cut cases of abuse. The IRT stated that contestable issues are not appropriate for URS resolution. (See page 34 of final IRT Report located at <http://www.icann.org/en/topics/new-glds/irt-final-report-trademark-protection-29may09-en.pdf>). Given that directive, requiring clear and convincing evidence is appropriate.

It appears that all commenters agree that the bad faith requirement in the URS should remain as is so as to ensure the URS' connection with the UDRP and not to make any decisions that fly in the face of the UDRP. Accordingly, no further analysis is required on this point.

One group notes that trademark + keyword cases should not be adopted, but another notes that it should be adopted or that ICANN should declare that a trademark + keyword is confusingly similar to the trademark alone. Trademark + keyword will not be adopted and there will be no declaration that such would be confusingly similar to the trademark at issue. However, terms that are confusingly similar to the trademark, will be afforded consideration in the URS. Each URS proceeding should be considered by an experienced and qualified Examiner whose job it will be to determine if a challenged domain name is identical or confusingly similar to the trademark at issue. ICANN is not qualified to make sure a determination.

No changes will be made in response to the comment calling for a revision to section 5.8.1 ("and the Registrant is making fair use of it"). This is merely an example of a defense and is not meant to be exhaustive or even required.

There is a comment that the URS should apply to domain names that are identical or confusingly similar to the trademark at issue - this is always how the URS has been proposed.

With respect to the evidence available to Examiners, the Examiner may look to the evidence presented by complainant as well as other evidence, if available. Although, nothing requires the Examiner to review evidence other than what is presented by the parties.

The particular suggestion for a word change: "Examiner will review each case on its merits" to "Examiner must review each case on its merits," shall be implemented.

The final comment is simply recognition and approval of revisions. Accordingly, no analysis is required in that regard.

Default and Appeals

Summary of Comments

Time to seek Relief from default.

In the newest version of the URS, a registrant will have six months to appeal a judgment after a default. A shorter time period, such as sixty to ninety days, would be more appropriate. *AIPLA (13 May 2011). Partridge (14 May 2011).*

The period should be shortened to 90 days or the expiration of the domain, whichever is shorter. Even with the latest time frame reduction, tracking and management of these default cases will be unduly burdensome for corporate legal departments and directly conflicts with the URS's intended cost-effective and expedited approach. *IACC (15 May 2011).*

The period should be no longer than 120 days given the URS *raison d'etre*. *Hogan Lovells (15 May 2011).*

We are pleased that ICANN shortened the time allotted for appeal from two years to six months. *News Corporation (13 May 2011).*

There is no justification for allowing as long as six months for a dilatory response, particularly for what is supposed to be a quick and streamlined remedy, but the reduction from two years to six months is a significant improvement. *NCTA (Module 2, 13 May 2011)*.

Respondent should not be permitted to obtain an additional 6-month extension (beyond the initial 6 months) in which to seek review of a decision in a default case. The likelihood that a respondent with legitimate rights or interests in the disputed domain name(s) actually needs more than 6 months to seek this review is virtually nonexistent. After all, a respondent with a legitimate claim to registration and use of the disputed domain name(s) will have tremendous incentive to seek review almost immediately after decision. *Microsoft (15 May 2011)*.

Even with the reduction in the time for registrant appeal in default cases, any registrant who believes he has been the victim of a wrongly decided URS should have sufficient time to obtain a de novo appeal. *ICA (15 May 2011)*.

Appeal.

INTA appreciates and supports the clarification by ICANN that appellants must identify specific grounds for appeals. *INTA (14 May 2011)*.

IPC supports the GAC's position that as every appeal will be decided de novo, that the appeal process not require a separate evaluation of the rationale. *IPC (15 May 2011)*.

USCIB agrees with the GAC on the issue of de novo review. One cannot seek de novo review from the same body that made the URS determination. Therefore, the standard for appeal in the URS should be the same as in a UDRP where an appellant seeks de novo review in court, not with the UDRP provider. If the URS carries over the criteria of the UDRP it should also use the appeal process. *USCIB (15 May 2011)*. *IPC (15 May 2011)*.

Support for removal of possible defense language. Deletion of the requirement that URS panelists consider in default cases if there was a possible defense that could have been submitted by the Respondent is a huge improvement. *Hogan Lovells (15 May 2011)*. *NCTA (Module 2, 13 May 2011)*.

Analysis of Comments

There are still comments about what many refer to as the time to appeal after default. To clarify, no matter what, the time to file an appeal is no more than 14 days after a URS Examiner's Determination is issued. What has recently been changed is the time in which a defaulting respondent can seek relief from default. This time period was decreased from the initial suggestion of two years, down to six months with an option if good cause exists to extend for an initial six months. The six-month time period is a balance between the calls for a shorter time by trademark interests and the GAC and the calls for a longer time period so that legitimate registrants will have the opportunity to respond even if they initially failed to do so. Either way, it should be noted that unless the defaulting respondent prevails after seeking relief from default, the domain name will remain in suspended status.

With respect to appeals, one commenter supports the clarification made requiring an appellant to identify the specific grounds on which an appeal is filed while others suggest that an appeal should only be made to a court and not to the URS provider. The appeal mechanism was developed and included by the STI as a check and balance of sorts to ensure that legitimate

registrants had a voice and were not improperly overshadowed by trademark holders. It will remain as part of the URS, pending a review of the URS after it has been tested.

One commenter notes the improvement resulting from the removal of the reference to a URS Examiner considering “possible defenses.” No analysis is required in response to this comment.

Remedies and Fee Shifting

Summary of Comments

Transfer/First Right of Refusal.

There should be an option in the URS for a winning challenger to obtain transfer of a domain. *Valideus (13 May 2011)*. *Adobe Systems (13 May 2011)*. *MARQUES/ECTA (15 May 2011)*. *IOC (15 May 2011)*. *IACC (15 May 2011)*. *Coca-Cola (15 May 2011)*.

If the URS determination is in favor of the complainant, the complainant should have the right of first refusal for the transfer of the disputed domain name(s) after the suspension period expires. *NPOC (16 May 2011)*.

AIPLA is concerned that a lock on the domain name is the only remedy available to a URS complainant. Greater consideration should be given to allowing the complainant the option of obtaining the domain name after the appeal period has ended. This would avoid unnecessary time and expense to seek further relief in court or via the UDRP. *AIPLA (13 May 2011)*. *Partridge (14 May 2011)*.

We are pleased that the latest version of the URS does not include a transfer option and urge that the UDRP remain the sole means by which a complainant can obtain possession of a disputed domain. If this issue should again arise ICA urges that the concerns of registrants and complainants be accommodated by the win-win approach of placing suspended domains on a permanent ineligible for re-registration list. *ICA (15 May 2011)*.

A successful URS complainant should have the right to cancel the domain or to obtain control of the domain (except in specialized gTLDs), or that the URL resolve to an error notification to avoid the possibility of causing damage to the goodwill associated with the trademark contained in the URL. ICANN’s proposal that the remedy be that the URL resolves to a website that is an informational page about URS removes control of the trademark in the URL from the trademark owner. Consumer confusion when following the URS to a site not associated with the trademark owner raises the possibility that the goodwill associated with the trademark will be damaged. *IBM (13 May 2011)*.

Support for loser pays model.

We are pleased that ICANN decided to implement a partial loser pays component. *News Corporation (13 May 2011)*. *CADNA (13 May 2011)*. *USCIB (15 May 2011)*. *FICPI (Module 3, 15 May 2011)*.

The “loser pays” model is welcome and we would have liked the model to be more widely available. *MARQUES/ECTA (15 May 2011)*.

IACC supports the GAC position on including a “loser pay” provision. *IACC (15 May 2011)*.

The limited loser pays model is to be applauded for targeting cyber squatters, but it is unclear if 25 is an appropriate number; this should be explained. *Hogan Lovells (15 May 2011)*. *UrbanBrain (16 May 2011)*.

If the limited loser pays mechanism is retained, there should be no reduction in the number of domains giving rise to the requirement. *ICA (15 May 2011)*.

There is no loser pays mechanism which would be essential in a URS, or even a fee for filing a response to a complaint. The addition of a limited “loser pays” model if the complaint lists 26 or more domain names does not make any sense. There is no justification for the number 26 and a loser pays mechanism should be a general mechanism, not one that will not realistically have any effect. *LEGO (Module 3, 12 May 2011)*. *Arla Foods (13 May 2011)*. *BBC (Module 5, 13 May 2011)*. *NCTA (Module 2, 13 May 2011)*.

The threshold for “loser pays” must be lowered to be somewhere between 5-10 domain names. If the more than 25 domain name cut off is implemented, cyber squatters will simply make registrations in batches of 25 per fictitious registrant name, enabling them to continue to profit from bad faith use of domain names until caught. *Time Warner (14 May 2011)*. *INTA (14 May 2011)*. *USCIB (15 May 2011)*.

The loser pays model should apply to any situation where the registrant has filed for 5 or more domain names, and the Response Fee must be equivalent to the filing fee charged to the Complainant. *IPC (15 May 2011)*.

The threshold should be reduced to 8 or more disputed domain names; 26 is exceptionally high for the standard of complaint set by the URS. *NPOC (16 May 2011)*.

The “loser pays” threshold should be reduced from at least 26 domain names to 10 domain names. *Microsoft (15 May 2011)*.

BC members’ real world experience suggests that a more practical figure for the “loser pays” threshold would be 15. *BC (15 May 2011)*.

The limited loser pays figure of 26 domain names is arbitrary. AIM proposes the following for 2.2: “A limited ‘loser pays’ mechanism has not been adopted for the URS. Complaints listing fifteen (15) or more disputed names will be subject to [a] Response Fee which will be refundable to the prevailing party.” *AIM (Module 5, 12 May 2011)*.

The NCUC is concerned that the limited loser pays model ICANN is proposing will feed into the existing culture of trademark bullying and will be abused by trademark owners who will seek to intimidate legitimate registrants. In addition the provision is open to interpretation (e.g. it is unclear if the 26 domain names will have to be registered by one single registrant or the Complainant will have the ability to activate this provision if he manages to identify 26 domain names incorporating his trademark which are registered by a multitude of registrants). The phrase “against the same registrant” should be added to clarify this issue. The URS lacks the checks and balances found in traditional means of adjudication that uses a loser pays model. In the URS the loser pays model will provide room for gaming of a model that is only meant to be limited to very specific cases. *NCUC (Module 5, 15 May 2011)*. *A. Gakuru (Module 5, 16 May 2011)*.

Remedies for abuse of URS process. The penalties outlined in the new gTLD guidebook are not sufficient regarding misuses of the URS process and will not deter abusive complaints. A one-year bar from URS use is monumentally inadequate, particularly in lieu of the paltry \$300 fee required for launching a URS claim. There should be a substantial financial penalty and permanent ban (on first attempt) for any complainant found to have used the URS without cause. *M. Menius (16 April 2011).*

Analysis of Comments

Several comments relating to remedies under the URS have been received. Some argue that transfer, rather than suspension, or first right of refusal after suspension period concludes, should be the ultimate remedy. While others suggest that suspension is the right remedy for the URS. This topic has been widely discussed and debated. The IRT proposed suspension, not transfer. The STI did not alter this remedy. Since the URS is intended to be a prompt mechanism dealing with clear cut cases of abuse, the remedy reflects the evil that this RPM is designed to prevent. There was significant community support for the suspension, not transfer, remedy in public discussion in the San Francisco meeting. Recall, however, that the complainant will have the right to extend the registration, and thus the suspension, for an additional year after the initial registration period expires. This extension provides an option for the domain name to be suspended even longer than the period recommended by the IRT.

Many have commented on a loser pays models. Some applaud the inclusion of the limited “loser pays” model, although some still think it needs to be further enhanced by lowering the number of domain names at issue needed in order to require a “Response Fee.” Others have commented that no changes should be made at this point while still others are concerned that any loser pays model will be manipulated by trademark holders. As is evident, there are numerous and varying views on whether a loser pays model is appropriate. In an effort to address and balance all of the competing concerns, a limited loser pays model requiring a “Response Fee” when a single complaint involves 26 or more domain names, has been adopted. Note that the Response Fee will be refundable if the respondent prevails in the URS proceedings. Further, it has been made clear that the Response Fee shall not exceed the URS Filing Fee. There are independent concerns that administration of loser pays will result in higher URS fees. That issue will be discussed with potential URS providers.

While some suggest that the number 26 or more domain names may seem somewhat arbitrary; so too would any other specific number that has been suggested. Thus, since the IRT as a self-identified group of 18 individuals representing those with trademark interests recommended 26, that is the number that has been adopted. The clarification that the 26 or more domain names must be as to the same registrant has been made as suggested.

One commenter suggests that the remedies for abuse of the process are not nearly sufficient to deter bad behavior. The remedies adopted were put in place to balance the possibility that trademark holders would use (or abuse) the URS, a relatively low cost mechanism, to constantly put legitimate domain name holders on the defensive. This is a new mechanism and any suggestion of a permanent ban, as this commenter makes, must be considered very carefully before implementing.

Notwithstanding any of the above, note that a full review of the URS, including the of the remedies adopted, is intended after the first round of new gTLDs has been completed and the URS has been tested.

Post Delegation Dispute Resolution Procedure (PDDRP)

Key Points

- Given the severe nature of the remedy in this procedure, and given that generally, registries have no privity of contract with the registrant, the burden of proof of clear and convincing evidence is appropriate.
- In order to ensure that those who can exclude others from using a domain name with a trademarked term are not abusing that ability, all trademark holders must demonstrate “use” before having standing to initiate a Trademark PDDRP proceeding.

General

Summary of Comments

Call for long-term, positive collaboration. Beyond positions already on record, little can be said about ICANN stakeholders’ reluctance to engage in constructive discussion of substantive criteria and safe harbor consideration factors. Yet, it would seem illusory to expect rights holders to continue to turn exclusively to lower-level enforcement options in a vastly expanded DNS. The WIPO Center is pleased that ICANN has taken up its suggestion for establishing a PDDRP in the first place. However, intermediary financial gain from registration activities that infringe third party rights comes with appropriate responsibility. This should be a time for positive collaboration in a longer-term view. *WIPO Center (13 May 2011).*

PDDRP is too weak.

The PDDRP continues to contain a number of provisions that severely and perhaps fatally weaken its effectiveness to potential complainants, raising concern that unless changes are made potential complainants will elect to forego the PDDRP entirely and pursue their grievances in civil courts. This would defeat the point of creating the PDDRP. *INTA (14 May 2011).*

The PDDRP has been revised so extensively and in accordance with the wishes of the Registry Stakeholder Group that Microsoft questions its utility as an RPM. ICANN should implement the PDDRP format as outlined in the IRT Final Report. *Microsoft (15 May 2011).*

Standards and Burden

Willful Blindness.

The PDDRP still fails to capture recurring circumstances of willful blindness. To limit the scope to affirmative conduct and to exclude willful blindness will considerably reduce the benefit of the PDDRP and encourage situations where a party sticks its head in the sand to seek to avoid liability, as is too often the case. *Hogan Lovells (15 May 2011). NCTA (Module 2, 13 May 2011).*

Burden of proof.

While IACC supports the majority of Trademark PDDRP provisions, it shares the GAC's concerns regarding the requirement that Complainants prove systematic infringement or improper conduct by clear and convincing evidence. ICANN should reconsider this and lower the standard to preponderance of the evidence. The Trademark PDDRP can be likened to a civil action for contributory trademark infringement or unfair competition, under which a plaintiff need only prove wrongdoing by a preponderance of the evidence. Requiring a PDDRP complainant to meet the lower standard is sufficient to meet the goals of the Trademark PDDRP and will not unfairly prejudice a registry operator. *IACC (15 May 2011).*

To balance the generally watered down RPMs adopted by ICANN in the current version of the applicant guidebook, the PDDRP standard of proof in Section 6 should be "preponderance of the evidence." *IPC (15 May 2011). NCTA (Module 2, 13 May 2011).*

The PDDRP contains unrealistically high burdens of proof at both the first and second level. The levels of proof exceed showing bad faith (must show "specific bad faith") and a pattern or practice of bad faith (must prove "substantial pattern and practice" by clear and convincing evidence. Even if a complainant wins, there are no sanctions against a registry and no corresponding duty by ICANN to investigate or sanction the registry. *BC (15 May 2011).*

Proof of use.

Proof of use should not be required. *IPC (15 May 2011).*

FICPI positively notes with respect to clause 9, "Threshold Review", that all registered trademarks, independent of the national or regional registration system, are accepted, and therefore FICPI can accept the new regulation that the trademarks have to be in "current use." *FICPI (Module 3, 15 May 2011).*

Vertical integration. Further clarification is still required—section 6 should be revised to provide that vertically integrated registries may not attempt to shift blame for second-level bad faith actions to the registrar. *IPC (15 May 2011).*

Support for revisions. *FICPI* supports the revisions made to Sections 6.1(a) and 6.1(b), as well as 6.2(b) (ii) and (iii) deleting the words "unjustifiably" and "impermissible," therewith creating stronger trademark owner protection. *FICPI (Module 3, 15 May 2011). NCTA (Module 2, 13 May 2011).*

Procedures

Notice. The section 7.2.3(d) requirement that the complainant must notify the registry operator at least 30 days prior to filing a complaint is unduly burdensome; the notice period should be reduced to 10 days. A registry operator does not need 30 days for an investigation and it seems more likely than not that the registry operator would use the extra 20 days to initiate preemptive litigation. *IPC (15 May 2011).*

Filing fee—registry operator. ICANN should reinstate in Section 10 the requirement that the registry operator pay a filing fee when submitting its response so that the complainant and registry operator share costs during the proceeding, maintaining the practice of refunding the costs paid by the prevailing party at the end of the proceeding. Without a mechanism for both

parties to pay up front in place, the process of refunding fees to the prevailing party will be hampered. *IPC (15 May 2011)*.

Define fees and costs. Fees and cost ranges in Section 14 should be defined more clearly no later than the release of the final applicant guidebook to assist with budgeting for the possibility of a PDDRP complaint. *IPC (15 May 2011)*.

Remedies

ICANN discretion. CADNA would like more clarification on the implication that ICANN is allowed to impose a remedy other than what was recommended by the expert panel and in what cases. CADNA also seeks clarification on what qualifies as the “extraordinary circumstances” that enable ICANN to impose a remedy not in line with what is recommended by the expert panel and what such remedies would entail. *CADNA (13 May 2011)*.

Section 18.1 clarification. This section should be clarified regarding exactly how suggested remedies may differ if the registrant is found to be under the ultimate control of the registry operator, i.e., whether in this case the second-level domain name registrations may be recovered by the PDDRP complainant or disabled. *IPC (15 May 2011)*.

Registry operator challenge to remedy under arbitration provision. Section 21.4 should be revised to provide explicit assurance that ICANN may implement the remedy once arbitration has been concluded if the PDDRP has been upheld. Without such assurance, a registry operator may be able to bypass any unfavorable decision recommending a remedy by initiating arbitration, thus drastically limiting the PDDRP’s usefulness. *IPC (15 May 2011)*.

Analysis of Comments

As noted in prior comment analysis, not all suggested revisions have or could have been included in the PDDRP as some were either not implementable or were directly at odds with each other, thereby requiring some balancing of interests. All comments have all been carefully considered in the development of the implementation details of the PDDRP, even if not implemented.

One commenter calls for long-term collaboration on the PDDRP while others question its effectiveness as currently drafted. Community-wide collaboration has been part of the entire development process. Furthermore, ongoing collaboration is contemplated and will be welcomed as the implementation of the new gTLD program and its dispute resolution mechanisms are developed and reviewed after the first round of applications. Ongoing enhancement and improvement of the PDDRP is certainly contemplated and will, as always, be based on overall community input.

One commenter continues to call for inclusion of willful blindness as a standard for finding registry liability while others continue to suggest that the burden of proof be lowered. As set out in the latest version of the Trademark PDDRP proposal and set forth in the last version of the PDDRP Comment Summary and Analysis, willful blindness is not and properly should not be included as part of the standard under which the registries will be reviewed. The portion of the trademark PDDRP that can hold a registry liable for infringement at the second level is a large step in providing trademark protections. It must be done carefully. Registries do not have a

direct interface to customers; that happens at the registrar level. Registries maintain the database. In any large registry there might be a relatively large number of infringers even if the registry is fulfilling all its duties; the registry may be aware of some of them but will also be unaware of others. To hold registries accountable for all instances of infringement would have unknown effects on the ability of the registry to conduct business.

The registry should, however, be liable for its affirmative conduct resulting in infringement of trademarks; the standards for the PDDRP are crafted to achieve that goal. Accordingly, while some may still think that the standard should include willful blindness, or some derivative of willful blindness, or that the burden of proof should be lowered, there is no plan to make those changes. There are many other avenues that can be employed to pursue registrants that are infringing trademarks.

Given the nature of liability on a registry, that generally has no privity of contract with the registrant, the burden of proof of clear and convincing evidence is appropriate.

One group representing intellectual property interests still suggests that proof of use should not be required, while another group representing intellectual property interests now accepts this proof of use requirement given that trademarks from all jurisdictions are treated equally. The proof of use required in a PDDRP proceeding (as well as for the URS and protection in Sunrise processes) has been extensively discussed, debated and considered with the community. In order to ensure that those who can exclude others from using a domain name with a trademarked term are not abusing that ability, all trademark holders must show proof of use before having standing to initiate a Trademark PDDRP proceeding. This requirement will not be changed at this juncture, but as other aspects of the program, this will be reviewed after being in practice for the first round to ensure it is having the desired effect. The requirement for demonstration of use is universal; no jurisdictions are favored over another based on the level of review trademarks receive in that jurisdiction.

One commenter suggests that section 6 needs revision to ensure that vertically integrated registries may not attempt to shift blame for second-level bad faith actions to the registrar. The definition of registry operator in section 6 does just that:

For purposes of these standards, registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

No further revisions are necessary at this time.

One group suggests that requiring 30 days advance notice to the registry operator before bringing a PDDRP is unduly burdensome. The current requirement is in place to provide the registry with a reasonable amount of time to investigate and take appropriate action if a trademark holder notifies the registry that there may be infringing names in the registry. This notice requirement was further discussed with the GAC, which has now accepted this requirement. In light of all of the community discussions on this topic, the timing of this notice requirement will not be revised.

With respect to fees, one group comments that the registry operators should be required to pay PDDRP fees up front, noting that without a mechanism in place for both parties to pay up front, the process of refunding fees to the prevailing party will be hampered. However, registry operators will be required to comply with the PDDRP, including the prevailing party determination. Failure to comply, including reimbursing a successful PDDRP complainant for all provider and panel fees, will be deemed a breach of the registry agreement. Thus, the registry operator will be subject to all available remedies under the agreement for breach, up to and including termination. Accordingly, there appears no need to revise the fee provisions. This same commenter requests that additional detail be provided relating to the amount of fees for budgeting purposes. Such details will be forthcoming as the PDDRP mechanism is tested. As noted in the Applicant Guidebook, such fees are intended to be reasonable, and will of course be subject to review after being in practice to ensure the fees are not prohibitive. One reminder, however, the prevailing party will get its money back.

Some seek clarification with respect to remedies, and when they might deviate from those recommended by the Expert Panel. As suggested by the GAC, the PDDRP has been revised to note that “[i]mposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.” Any deviation will be based on ICANN’s understanding of the particular circumstances, but with the ultimate goal of protecting registrants. To the extent a recommended remedy may provide risk to innocent registrants, ICANN must take that into consideration when imposing any such a remedy.

In that same vein, section 18.1 of the Trademark PDDRP notes that a recommended remedy may not call for deletion, transfer or suspension of a domain name, unless “registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator.” If the PDDRP Panel finds such connection, then it is free to recommend such remedies relating to the domain name, a recommendation that ICANN will then have the discretion to consider.

Finally, one commenter suggests that section 21.4 of the Trademark PDDRP be revised to provide assurance that ICANN may implement the remedy once arbitration challenging a ICANN remedy has been concluded if presumably found in favor of ICANN. Such clarification, however, is already found in section 21.3:

[ICANN], will not seek to implement the remedy for violation of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator’s lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

Accordingly, while this comment did lead to a couple of minor clarifying revisions, no additional revisions are required to address the overall comment.

REGISTRY RESTRICTION DISPUTE RESOLUTION PROCEDURE (RRDRP)

Key Points

- If a registry is affirmatively participating in infringing conduct, the PPDRP is the proper dispute resolution mechanism to use. If there are simply names in a registry that violate the restrictions of the registry agreement, whether infringing or not, then the RRDRP is the proper mechanism to invoke.

Summary of Comments

RRDRP is ineffective and biased toward registry operators. Potential complainants must not be required to first file a claim through the Registry Restriction Problem Report System. The WPDRS, on which the RRPRS is clearly based, has not historically been effective. There is no reason to think that such a system will be effective here. It is arbitrary and unfair to prohibit RRDRP complainants from filing PDDRP complaints relating to the same facts or circumstances. Each DRP is intended to deal with different harms, but ICANN's tying them together in this matter bears the imprimatur of the Registry Stakeholder Group which has succeeded in rendering both DRPs ineffectual. In their current form neither the RRDRP nor the PDDRP is properly balanced and both clearly favor registry operators. *Microsoft (15 May 2011).*

Analysis of Comments

One commenter objects to a prerequisite of submitting a Registry Restriction Problem Report before an RRDRP claim can be filed. This was made a prerequisite, however, to help avoid, if possible, the more costly and time-consuming mechanism of the RRDRP. The idea was to provide registry operators, who have agreed via contract to certain registry restrictions, the opportunity to cure possible breaches simply by providing them with information about potentially violating names in the registry.

This same commenter questions the prohibition on the use of both RRDRP and PPDRP simultaneously. But, if a registry is affirmatively participating in infringing conduct, the PPDRP is the proper dispute resolution mechanism to use. If, on the other hand, there are simply names in a registry that violate the restrictions of the registry agreement, whether infringing or not, then the RRDRP is the proper mechanism to invoke. Further, for those infringing names simply in a registry, the UDRP and now the URS will be available as alternate dispute resolution mechanisms for trademark holders.

PRE-DELEGATION OBJECTION PROCEDURES

Key Points

- ICANN funded objections: beyond one funded objection per government, each request for funding will be analyzed on a case-by-case basis depending on the particular facts and circumstances.
- The time limitations set out in the Applicant Guidebook for GAC Advice are meant merely to clarify that "for the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the

Objection Filing Period.”

Summary of Comments

Fees.

Applicants should not be required to pay a Response Filing Fee in order to defend the rationale already included in their original application. *BC (15 May 2011)*.

The description of the process and the objection filing fee is not very accurate in the Discussion Draft, so it becomes uncertain what the costs of objections are. The amounts shown in table 7 of the explanatory memo “Discussion Draft: Exemptions to Objection Fees for Governments” shows an estimated total cost of US\$58K for “community” objection and US\$124K for “limited public interest” objection. These sums are prohibitive for most organizations or communities. It is very important to have a well described, low-cost possibility to file an objection, especially as a community. *DIFO (15 May 2011)*.

ICANN’s guarantee of funding for advance payment of costs and for a minimum of one objection per government will relieve concerns of some smaller governments who might have expressed concerns about the cost of objection filing fees. CADNA would like more information on what will happen for subsequent objections and in which cases ICANN would be willing to provide the funds for other objection filing fees. *CADNA (13 May 2011)*.

Protection of all geographic names should be the first priority. The GAC early warning does not meet our demand. Geographic names are important public property. Governments will have to file objections to prevent misuse and abuse of them. There should be an exemption from objection fees for governments regardless of the number of objections that a government files. *Tokyo Metropolitan Government (13 May 2011)*.

GAC Advice.

(3.1)--RySG supports the fact that the process of considering GAC Advice is planned to happen without causing delays to the evaluation process. What happens if the GAC reaches consensus to oppose a string without a sound global public policy basis? (item 5) Is it correct to conclude that if GAC consensus opposes a string and there is no remediation of the opposition then a string will be denied automatically? (item 8) What does “[t]he receipt of GAC advice will not toll the processing of any application” mean? Does it mean that the GAC will not be charged a fee for objecting? RySG is concerned that the GAC’s definition of consensus could lead to a single country having de facto veto power over new TLDs. If GAC consensus is defined, at a minimum, as only one country opposing where no other country objects to that opposition, it appears that it could in practice be a unilateral veto. *RySG (15 May 2011)*.

(3.2)-Regarding the statement that the independent dispute resolution process does not apply in cases of GAC advice, does this mean that the GAC may submit advice on any topic and is not restricted to the four enumerated grounds in Section 3.2 (i.e., string confusion, rights protection, limited public interest, community)? Or does it mean that the GAC does not have to follow the procedures for dispute processes for any of the four areas? It is assumed that it is the former, but this should be clarified. *RySG (15 May 2011)*.

Independent Objector (3.2.5).

Is it correct that the Independent Objector (IO) may not consider comments received after the comment period? *RySG (15 May 2011)*.

ICANN should provide additional information regarding the role of the IO regarding IO selection, support, application review and the decision whether or not to object. *NPOC (16 May 2011)*.

Expert Panel.

If at least one of the parties to a dispute is willing to pay for a 3-member panel, they should be given that option. *RySG (15 May 2011)*.

If a decision is not posted in full, will the parties to the dispute be given the full documentation of the decision? (see also Attachment to Module 3, New gTLD Dispute Resolution Procedures, Article 21(g)). *RySG (15 May 2011)*.

Dispute resolution provider—ICC. According to page 8 in Module 3, the ICC still serves as the dispute resolution service provider (DRSP) for the limited public interest and community objections in the guidebook. Grounds for these objections include “incitement to or promotion of violent lawless action...discrimination based up on race, color, gender, ethnicity, religion or national origin...child pornography” etc. These areas are obviously out of the scope and expertise of the ICC. The ICC’s neutrality and global representativeness as a public interest DRSP or community DRSP would be questionable. More representative and more neutral authorities should be introduced to take on the duty of DRSP for public interest and community objections. *Internet Society of China (27 May 2011)*.

Limited public interest objection--International law. In module 3, section 3.5.3, one of the limited public interest objection adjudication criteria is to “determine the applied-for gTLD string be contrary to specific principles of international law as reflected in relevant international instruments of law.” For historical reasons, countries around the globe have different laws and legal definitions of various matters (e.g. pornography). If the limited public interest objection is judged only by international law principles, it is very likely to approve some gTLDs while conflicting with the laws of some countries, which is obviously inappropriate. It is suggested that compliance with the limited public interest objection principles be determined according to both the principles of international law and the laws of each nation-state. *Internet Society of China (27 May 2011)*.

Publication of objections. Microsoft supports the planned publication of all filed objections. *Microsoft (15 May 2011)*.

English language requirement. The requirement in Module 3, page 11 to use English for the text of submitted objections disparages non-English-speaking communities in use of their own languages following objection proceedings to defend their interests and is inconsistent with ICANN’s commitment to multi-lingual process and procedure. As one of the world’s most widely used languages and as an official U.N. language, Chinese should also be a language for the text of objection. *Internet Society of China (27 May 2011)*.

Community Objection.

Microsoft supports the revision to the community objection standard. *Microsoft (15 May 2011)*.

The revised standard in the discussion draft in section 3.5.4 is much more appropriate and realistic. *COA (15 May 2011)*.

Remove cumbersome, unnecessary requirements. Module 3, page 23 requires the party who raises the objection to prove that a considerable number of community members have objection views. In China, a permanent community organization has its own operational rules and procedures. While the permanent organization is established for community service, the views represent the views of all community members. It is recommended to reduce the relevant aspects of community opposition procedures which are cumbersome and unnecessary requirements. *Internet Society of China (27 May 2011)*.

Analysis of Comments

Several comments about fees have been received. These comments include: a suggestion that response filing fees should not be required; a request for more clarity as to fees: a recognition that ICANN's funding for at least one argument per government addresses some concern but lacks clarity on what happens after one objection; and one comment suggesting that ICANN should fund an unlimited number of objections by individual governments related to geographic names.

A response fee will be required as it is meant to cover the administrative fees, which are incurred as a result of both the complainant and the respondent in the dispute. With respect to more clarity, certain pre-delegation objections will be based on the hourly rate for panelists, along with additional administrative work. The dispute resolution service providers (DRSP) and the individual panels with which they work establish the fees. Absent a specific allowance for funding by ICANN, all parties will be required to pay the fees as they are established by the independent DRSPs. With respect to ICANN funded objections beyond the one per government, each request for additional funding will be analyzed on a case-by-case basis depending on the particular facts and circumstances. Circumstances might include availability of funds and objection history of parties.

The protection for geographic names has undergone extensive discussion, review, and refinement throughout the entire development process of the new gTLD program. At present, country names will not be delegated at the top or second level. (At the second level, country names can be registered via a ".INFO-like" process.) In addition to the GAC Early Warning, there is also the GAC Advice process that may be used for the protection of geographical names. GAC advice can raise a strong presumption that the application should be rejected by the ICANN Board. As mentioned above, ICANN will fund the provider and panel fees for at least one objection per national government. Committing to an unlimited number of ICANN funded objections for individual governments, without some type of check and balance, is not workable – there is not sufficiently available funds (and those funds are essentially provided by registrants) and such a process can be subject to abuse.

One group has submitted several questions about the GAC Advice process. At bottom, the GAC Advice process is nothing different than what is already called for in the ICANN Bylaws. The GAC is entitled to provide the ICANN Board with advice on public policy matters, which the Board is required to consider. There is no automatic veto, although as always, GAC advice will be given the weight and consideration that GAC advice should be given under the circumstances, the strength of the stated advice, and ICANN's Bylaws requirements. The time limitations set out in the Applicant Guidebook for GAC Advice are meant merely to clarify that "for the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period." See Applicant Guidebook, section 3.1 at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution->

[procedures-redline-15apr11-en.pdf](#). Additionally, GAC advice stated in a certain way will raise a strong presumption that the Board should reject the application.

With respect to the question about whether the GAC will be charged a fee to provide an Early Warning or Advice, the answer is no. As written, it is contemplated that the GAC will not be filing an “objection” with an independent DRSP, but rather, submitting advice to the ICANN Board. Since dispute resolution fees are paid directly to the service provider, there would be no fees as the GAC is sending advice directly to the Board.

Some have commented on the Independent Objector (IO) and asked what the IO may consider. The IO can file objections based on limited public interest or community grounds only. The IO will not be prohibited from considering comments received at any time. It is contemplated that the IO will use the application comment forum or alternative comment forum, if one is established for the IO, as a source for comments. In terms of additional detail relating to the IO function, it will be published as the selection process is executed.

In terms of Expert panels, some pre-delegation dispute resolution processes call for 3-member panels and some call for one panelist. The number of panelists were chosen based on the complexity of issues addressed and other considerations. These options will not be revised at this stage, but will be reviewed, along with all other processes, as the first round of the new gTLD Program progresses. With respect to panel decisions, it is anticipated that the parties, which will be subject to the DRSPs confidentiality requirements, will receive the full text of an Expert Determination even if some parts are redacted before posting.

One commenter has questioned whether the ICC is the appropriate DRSP to administer the limited public interest and community objections. It should be recalled that in this context, the ICC International Centre for Expertise will administer the dispute resolution procedure; it will not adjudicate the dispute. Rather, the expert panel that is to simply be selected by the ICC will hear and issue a determination on the dispute. ICANN considers that the ICC’s International Centre of Expertise, with its extensive experience in administering various types of international disputes is well qualified to act as a DRSP. The rules of the International Centre for Expertise are available at: <http://www.iccwbo.org/court/expertise/id4379/index.html>.

A question has been posed about one of the criterion for limited public interest objections and its reference to principles of international law. This particular criteria has been to topic of several community-wide discussions and extensive debate, which resulted in the way this criterion presently reads. Further, this reference to internal law principles was part of the original GNSO policy and thus will remain as stated.

With respect to posting objections as they are filed the only comment received is supportive of the current stated position and thus does not require analysis.

One commenter questions the English language requirement with respect to the objection procedures. ICANN carefully considered this requirement, particularly in light of its commitment to operating as a multi-lingual organization. While it is true that at least for the first round the authoritative language will be in English, a party is permitted to “submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.” It is also expected that the dispute resolution service providers, and the panels, will use some discretion during the proceedings to ensure that they are fair to all parties, including as it relates to native languages. Requiring English to be the .authoritative language

for objection proceedings will certainly be reviewed after the first round.

In terms of community objections, one commenter suggests that requiring objectors to show that a considerable number of community members have objection (in other words - substantial opposition) is cumbersome. The requirement to show substantial opposition is part of the actual policy recommendation and thus will not be changed (see GNSO Policy Recommendation 20 on new gTLDs: "An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted").

Other commenters are supportive of the recent revisions to the community objection standards.

MALICIOUS CONDUCT

Key Points

- A requirement for applicants to disclose their affiliates to enable ICANN to disqualify applicants based on affiliates' conduct would not be effective and make the background screening unmanageable.
- Limiting the number of new gTLDs in the round by introducing new categories of TLDs would introduce new levels of risk and eliminate the benefits of the new gTLD program.
- ICANN has carefully considered comments from governments and the intellectual property community and introduced a number of mechanisms to protect users where TLDs are targeted to a population or industry that is vulnerable to online fraud or abuse.
- The GAC approach, calling for enhanced protections in proposed new gTLDs that "refer to particular sectors, such as those subject to national regulation," has not been addressed by creating new categories, but has been addressed in an alternate way.

Summary of Comments

Vetted registry operators. ICANN's broadening of the scope of offenses that render an applicant or entity ineligible to operate a new gTLD is commendable, but in light of the Board's elimination of the vertical separation requirement, ICANN should require applicants to disclose their affiliates (defined in Sec. 2.9(c) of the new gTLD Agreement) and ICANN should be permitted to disqualify applicants based on affiliates' conduct. This is particularly true where numerous affiliates of likely applicants have been found to have engaged in cyber squatting in UDRP proceedings. *Microsoft (15 May 2011).*

Prevention and protection measures need to go further.

COA commends the security improvements made in the discussion draft (e.g., evaluation criterion 30, enabling public comment and evaluation of the adequacy of security measures contemplated, as well as the recognition that this requirement is not limited to financial services-oriented TLDs but also applies to "other strings with exceptional potential to cause harm to consumers"); however, COA urges that ICANN go further to reduce the risks of opening up an unlimited range of new gTLDs. *COA (15 May 2011).*

COA supports the GAC approach which unfortunately so far the ICANN Board has rejected. The GAC proposal calls for enhanced protections in proposed new gTLDs that “refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse.” This formulation would clearly signal that ICANN would provide more rigorous scrutiny for any proposed new gTLD string targeted to sectors such as music, movies, or videogames, in order to guard against the risk that the new gTLD would be infested with copyright infringement. Regardless, COA believes that new gTLDs targeted to copyright industry sectors clearly fit the “exceptional potential to cause harm” criterion in the current draft applicant guidebook. COA requests confirmation from ICANN of this interpretation, such as by specifying that any gTLD targeted to a population or industry that is especially vulnerable to online fraud or abuse is also a string with exceptional potential to cause harm to consumers. *COA (15 May 2011).*

Regarding evaluation criterion 35, COA commends ICANN for providing incentives to applicants to commit themselves to mechanisms for preventing and remedying abusive or malicious behavior and to safeguard against domain name hijacking through requirements such as multi-factor authentication to process update or delete requests. ICANN should incorporate these mechanisms into the minimum requirements for “abuse prevention and mitigation” so that applicants failing to commit to them will receive a failing score of zero on this criterion. *COA (15 May 2011).*

Analysis of Comments

The new gTLD process seeks to protect registrants and users against malicious conduct. One solution is to conduct background checks on those applying for a new TLD. ICANN has discussed and considered the process suggested to screen applicant affiliates as well as applicants themselves. Such a step would introduce significant complications and costs to the background screening process without a balancing benefit. For example, in addition to ICANN screening the affiliate, it would also need to do so for the directors, officers, partners, etc. of the affiliate. This additional screening is cost and time prohibitive and would probably not result in many disqualifications given the level of scrutiny the applicant is subject to under the process. Affiliates are often distant and have no role in operation or conduct of a TLD to be operated by the applicant. Also, such an inquiry would lead applicants to set up new entities to provide separation between themselves and affiliates. This would not be just to mask prior bad conduct – it could simply be to avoid the expense and intrusion of background checks into their associates who will not play a role in the process.

Throughout the development of the new gTLD program and the Applicant Guidebook, there have been numerous discussions about limiting the number of new gTLDs in the first round and/or adding categories (i.e., beyond open and community such as geo, brand, etc.). It is possible these additional measures may mitigate some risks with new gTLDs, and they may also introduce new and unpredictable risks (i.e., abuses to the process). Some of these risks include: applicants registering to file an application to secure their place in a limited round and subsequently attempting to sell that slot to the highest bidder, underserved communities that may be disadvantaged and lose their opportunity in the round to large, well-funded entities who are capable of assembling their application quickly and inexpensively, and entities may be formed exclusively to qualify for a new category of TLD though they may have intentions of altering the purpose of the TLD after-the-fact and this could disadvantage another entity for the same string that did not prevail in a contention resolution proceeding. Also, limiting rounds

would also severely limit the anticipated benefits accruing from increased competition, choice and innovation. For these reasons and others, the process remains as it is today.

The GAC approach, calling for enhanced protections in proposed new gTLDs that “refer to particular sectors such as those subject to national regulation,” has not been addressed by creating new categories, but has been addressed in an alternate way. Long discussions of TLD categories in previous comment fora led to a conclusion that creating additional categories of TLDs were problematic. However, ICANN sought to address the GAC issue through the implementation of GAC Early Warning and GAC Advice processes. In that way, the GAC request that sensitive strings such as those purporting to address the needs of certain industry sectors can be reviewed, and if appropriate, objections can be lodged or the GAC can give public policy advice on these applications directly to the ICANN Board.

ICANN has listened to and responded with changes to the concerns of governments and the intellectual property community about the need to add enhanced measures to protect new gTLDs that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse. To address these concerns, numerous protection mechanisms have been added to the new gTLD Applicant Guidebook including: the GAC Early Warning and Notice processes, the Trademark Claims Service (during Sunrise and at least the first 60 days of general registration), the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP), the Registration Restrictions Dispute Resolution Procedure (RRDRP), and the Uniform Rapid Suspensions System (URS).

In the recent version of the evaluation criteria in the Applicant Guidebook, ICANN provided a scoring incentive (i.e., two points vs. one) for applicants that committed to taking extra measures for example to prevent and mitigate abuse. This is a strong incentive. Applicants must score more than “1” on some questions in order to pass the evaluation. This opportunity to obtain the extra point is clear – it was purposely made so in the anticipation that nearly all applicants will take advantage and describe additional mitigation measures. Some in the community have suggested that these extra measures should be incorporated to the minimum requirements for abuse prevention and that failure to do so should result in a failing score of zero. A difficulty is that we don’t know exactly what these “extra measures” might be – taking much objectivity out of the scoring is a score of “1” is based on some unknown increment to the standard. The existing mitigation measures are those recommended by the working group considered to be experts in this area. Therefore, it is thought a score of one in this area is acceptable and applicants that agree to take on the extra operational and technical costs associated with implementing additional measures should be rewarded for doing so. In contrast, some applicants may exceed the requirements in the other evaluation criteria and in doing so may find it unnecessary, for the purpose of their TLD, to score a two in the abuse prevention and mitigation category. It would be unfair to issue a failing score of zero in this area if the applicant has proposed a plan, a plan that may only require a score of one, that meets the proposed needs of their TLD.

ROOT ZONE SCALING

Key Points

- ICANN, its advisory committees, the root server operators, and others have taken numerous steps involving thorough study and analysis to ensure ongoing stability of the root zone.
- Given the published limits on delegation rates, there is agreement in the technical community that the delegation on new TLDs will not be a danger to root zone stability.
- ICANN has committed to reviewing the effects of the new gTLD program on operations of the root zone system and to deferring second-round delegations until it is clear that root zone system security was not jeopardized by new gTLD delegations from the first application round.

Summary of Comments

Subsequent application rounds--security and stability studies.

ICANN should not be reviewing the effects of the new gTLD program for security and stability after the first round; it should be conducting those types of studies before it even thinks about launching potentially hundreds of new TLDs and compromising the safety of businesses and consumers around the world. This point is an acknowledgement that ICANN knows that there is a danger associated with new TLDs. CADNA would like more details on how ICANN plans to conduct such studies, considering the controversy that surrounded its earlier economic studies. *CADNA (13 May 2011).*

Microsoft supports ICANN's commitment to reviewing the effects of the new gTLD program on operations of the root zone system and to defer second-round delegations until it is clear that root zone system security was not jeopardized by first-round new gTLD delegations and its decision to publish the names and positions of individuals associated with a new gTLD application. *Microsoft (15 May 2011).*

Analysis of Comments

Investigation undertaken by ICANN to study and understand the effects of new TLD delegations on root zone performance has included:

- commissioning an independent report, which indicated that the root zone might be most affected by rate of delegation rather than the overall number of delegations,
- performing delegation rate studies that resulted in caps to delegation rates,
- informing every root zone operator of those limits, with confirmation from every root zone operator that those delegation rates would not negatively affect the performance of their root server, and
- conducting an in-depth study of the ICANN-operated L-root that determined that many multiples of anticipated delegations would not affect L-root performance.

Most of the most recent work has involved root-zone provisioning: ensuring that the administrative infrastructure can accommodate delegation work.. Bolstering the IANA function to accommodate root management services for new registries is to be taken seriously, but is not an overly difficult undertaking. Currently ICANN receives, on average, one root management request per day (for approximately 272 TLD registries). The new TLD round may double or triple that number. Instead of processing one request per day, the IANA function might process two or

three. According to documentation published separately, this will result in two or three additional staff members. Continuation of IANA function services at the same level of excellence offered today is an extremely serious consideration, but it is expected that the new demands can be readily accommodated according to the plans in place

To expand slightly another comment made, ICANN will collaborate with root server operators and others in the technical community to measure any effects of the first round delegations on root zone stability. This will include the root zone administrative provisioning system of delegations into the root zone and providing root zone management services to the new TLDs. There will be no second round delegations until those effects are measured.

Finally, beyond the responses to these comments, it should be noted that ICANN, through its recent consultations with the GAC, has committed to several actions to ensure ongoing stability of root zone operations and provisioning.

STRING SIMILARITY AND STRING CONTENTION RESOLUTION

Key Points

- For the initial evaluation, the proposed position is to keep the similarity assessment restricted to visual similarity only, especially in view of the complexities involved with assessing for example aural similarity, which can be invoked in the subsequent string similarity objection process. Final decisions on similarity will be made by a panel, as string similarity algorithm outcomes are only indicative, not authoritative. Community discussions have made it clear that human assessment is a necessity.
- Allowing for agreements between applicants to have confusingly similar strings coexist as TLDs would imply risks for registrants and end users and can only be considered when policy has been developed on provisions and procedures to reduce or eliminate such risks. Similar concerns may relate to linguistic variations of a string from a single applicant, while also noting that there are special provisions in the current approach for variant handling for IDN strings.
- The community views remain diverged on the Community Priority Evaluation threshold and the proposed position is to keep this value at 14 points.
- The wording in the AG will be clarified to explain why a certain flexibility regarding the contract establishment deadline must be kept to allow for differences in complexity, rather than giving a runner-up in a contention resolution an automatic right to proceed if the winner fails to meet the deadline.
- Auction proceeds will be kept separate and only used for purposes agreed to by the community, for example to reduce fees as suggested, provided this meets with community approval.

- The risk that an applicant in a contention set may cause intentional delays is minimized by the fact that the application completeness check has a time limit for the applicant to provide any missing material.

Summary of Comments

Visual similarity (Module 2, Section 2.2.1.13).

Similarity should be limited to “visual.” “Aural and meaning similarity” should be removed. If not, then in the case of IDNs an incumbent ASCII registry will be practically entitled to have or block all TLDs equivalent in meaning or sound to the current ASCII TLD, and in all languages. If phonetic and meaning similarities are to be considered, then a current gTLD registry that is based on a generic word is granted the right for that word and concept in all languages and all scripts. This is not only unjustifiable from a cultural and social point of view (leading to the best IDN gTLD concepts in any script to be owned and operated by large Western ASCII-oriented corporations as opposed to poorer, native in-IDN country players), but it is not clear that it is even legal. *Y. Keren (Module 2, 16 May 2011). I. Genov (Module 2, 16 May 2011). S. Subbiah (Module 2, 16 May 2011). P. Kolev (Module 2, 16 May 2011).*

When deciding the issue of “confusingly similar”, not just visual, but audible/phonetic must be considered too. Future technologies that rely on speech recognition or for the disadvantaged such as sight impairment must be protected. Those who argue for “visual” only do so because they are operating an alternate root that includes many of the IDN gTLDs likely to be applied for. Alternate roots promote user confusion and should be outlawed and eradicated. *F. Ulosov (16 May 2011).*

“Meaning similarity” should not be considered because it can ban every IDN TLD that will come into the field in the future, harming the interests of non-English speaking countries in IDNs and resulting in a monopoly for the current TLD holders. *S. Soboutipour (16 May 2011).*

String Similarity—Proposal for Avoiding Contention Sets. To avoid creation of a contention set (and possible auction) in some cases caused by the application of the similarity assessment tool (e.g., hypothetically, “.bbc” and “.abc” applications from two well known companies, where both strings are used in the “.com domain” without any problems but the similarity assessment tool result is 92%, showing high similarity/high probability of user confusion), a small addition should be made to the chapter called “Similarity to Other Applied-for gTLD Strings (String Contention Sets)” on page 2-5 of the Guidebook: i.e., when ICANN notifies the applicants who are part of a contention set, it would give the applicants a fixed period of time to submit written statements that they do not object to the other applications in the set, This would reverse the contention set and allow the applications to proceed. This suggestion may offer a solution to many potential applicants who now see big hurdles in the area of string similarity and may decide not to apply because of the high risk of failure. *T. Mustala (Module 2, 12 May 2011).*

Co-existence recognition. The AG does not take into account co-existence agreements or natural co-existence between trade mark owners with similar marks (e.g., currently a successful application from NBC in round one would preclude ABC or BBC or NBA in future years. DHL could preclude the NHL, despite that these organizations co-exist in the real world.) ICANN should not be creating conflicts where they do not exist. There should be a mechanism so that trade mark owners that co-exist in the real world without causing consumers any confusion can co-exist at the top level of the DNS. *Valideus (13 May 2011). MARQUES/ECTA (15 May 2011).*

The string contention provisions should be modified to accommodate consent and co-existence agreements. Where all non-identical applications in a contention set consist of brands registered in at least ten national or supra-national trademark registries, the contention set should be dissolved if all the applicants inform ICANN that they believe the TLDs can co-exist without significant risk of consumer confusion. Such a mechanism would encourage brand owners to participate in the new gTLD process rather than resolving these issues through litigation (which could involve ICANN). *IPC (15 May 2011)*.

Contention sets—linguistic variations. String similarity contention sets should not include similar strings requested by an applicant seeking linguistic variations of the applicant's other applied-for string. *BC (15 May 2011)*.

Community priority should be given to applicants scoring at least 13 points, not 14. The intention of Community Priority will not be realized if Community applicants cannot reasonably reach the 14 point threshold. E.g., just two objection filings would make it impossible for an applicant to achieve the required 14 points. The BC remains unconvinced that staff has adequately analyzed the possibility and probabilities of applicants reaching 14 points. Other stakeholders have supported a 13 point minimum score (e.g., COA, IPC). *BC (15 May 2011)*.

Runner-up applicant. In 4.4, why shouldn't the runner-up applicant have the right to proceed and why should it be at ICANN's option? Without reasonable justification, these provisions seem to be unsatisfactory. *RySG (15 May 2011)*.

Use of auction proceeds.

ICANN still has not provided detail on potential uses of funds generated by auctions to resolve string contention between competing new gTLD applicants. If skeptics prove correct, auctions could generate considerable revenue to ICANN. The interests of accountability and transparency call for ICANN to present a more specific plan for use of these proceeds for consideration by the community well before the new gTLD round launches. *COA (15 May 2011)*.

Proposal for use of auction proceeds. Discussion of the issue of the use of auction funds is still open and subject to resolution before the release of the final guidebook (see footnote from section 4.3 of April 2011 draft applicant guidebook). The comments of A. Doria propose a process by which these funds can be allocated to resolve some of the pending issues involved in fee reduction --to address the GAC concern for inclusiveness and fair access to the application process—for applicants who meet the JAS WG's eligibility criteria. *A. Doria (Module 4, 16 May 2011)*.

Section 1.1.2.10 revision. We expect this section can be used in competing applications (contention sets) to take speculative advantage of intentionally caused delays by delaying the said completion of all aspects of evaluation. The following sentence should therefore be added: "Applicants should be given a limited time of not more than 4 weeks to submit missing parts of their applications." *dotHotel (15 May 2011)*.

Analysis of Comments

The comments regarding the scope of the similarity assessment are well taken. As has been stated in relation to previous public comment periods, the string similarity assessment in the initial evaluation is solely focused on visual similarity. The support from many for that approach is noted, as is the diverging view that aural similarity be considered, an approach that is controversial in principle and very difficult to perform in practice, while such similarity can indeed

be invoked in a subsequent string similarity objection process. The proposed position is to keep the established approach unchanged. One comment suggests that, “Aural and meaning similarity” should not be considered at all. As reinforced by community discussion, possible examination for these types of similarity was included in the policy recommendations of the GNSO that was approved by the Board. The idea is that user confusion should not be likely to occur – no matter what the cause of that confusion, Therefore, absent other policy advice, the current objection model that includes all types of confusion will remain in place, although the similarity assessment during initial evaluation will be limited to visual similarity.

Regarding suggestions that applicants can agree on coexistence for confusingly similar strings, it has repeatedly been clarified in responses to previous public comment periods that a finding of confusing similarity cannot as such be resolved thru mutual agreement by the involved applicants. Such an approach would not make the strings appear less confusingly similar to the internet user, which is the fundamental aspect to consider, especially given the considerable security risks for registrants and end user that such similarities can entail over the whole lifespan of the involved TLDs. A policy basis for agreement provisions and safeguards to eliminate such risks must be developed before such an approach can be considered. This matter has already been addressed in previous public comment analyses and the proposed position is not to change the current approach in the Applicant Guidebook in this regard.

Regarding the noted high similarity scores provided by the algorithm for strings that arguably can coexist, given that they have coexisted on the second level under .com without causing problems, it must be emphasized that the algorithm score is only one input to be considered by the string similarity panel and not authoritative in any way regarding findings of similarity. Community discussions have made it clear that confusion is a human reaction and that consideration by humans is indispensable for truly assessing similarity, which will thus be the task of a panel. It is the intention to refine the algorithm in view of the panel's findings and thereby improve it for future rounds, but the algorithm outcomes will be considered as solely indicative for now. No change in that approach is foreseen for the first round.

For the claim that “linguistic variations” of a string from a single applicant should not be put in a contention set, one has to distinguish between a couple of different cases. If the intended meaning is “variant TLD strings” declared by an applicant as described in the Guidebook (see separate section), thus occurring within a single IDN gTLD application, they will be handled according to those rules and not be put in a contention set based on the applicants declaration of variants, while still being considered as a basis for assessing similarities with other applied-for strings. If the intended meaning is translations/transliterations/transcriptions, the strings would appear in separate applications and be assessed for visual similarity and may indeed be found to be confusingly similar, for example in the case of an ASCII string and a Cyrillic string. Such strings will not be permitted to coexist as gTLDs in the DNS, regardless of whether they are put forward by the same applicant. Future policy development may potentially change this approach, provided sufficient safeguards can be identified, but for the first New gTLD application round no change in this approach is foreseen.

As noted in previous analyses of public comments regarding the threshold for winning in Community Priority Evaluation, community views on the required score diverge, with strong arguments put forward for either 13 or 14 points as the most appropriate value. Regarding the example given in the comment, implying that two groups’ opposition would make the applicant lose two points and likely score overall below the threshold, this will be the case if the opposition is duly reasoned and comes from sizeable groups within the addressed community - arguably a sign that the support is undermined. However, as explained in the definitions and guidelines for

criterion 4, the standards are set high for any opposition to be taken into account as relevant in order to prevent that spurious or obstructionist opposition would affect the score. The definitions and guidelines for the criteria are as important as the criteria themselves for the scoring and have been gradually developed in the light of comments like the one provided here. In fact, the same comment on risks with opposition scoring for community applicants was submitted for an earlier AG and prompted in depth consideration and refinement of the guidelines for criterion 4. The proposed position is not to change the wording of the guidelines.

The comment on the rights of a runner-up relates to the text in section 4.4 that “If a winner of the contention resolution procedure has not executed a contract within 90 days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN’s option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time.” The reason why this is at ICANN’s option only is in order to provide appropriate flexibility for a process that, as experience has shown, may justify extensions of the 90-day period in complex cases. The comment is appreciated as the current text lacks this explanation and clarifying language will be inserted.

Regarding the comments about potential auction proceeds, it has repeatedly been stated by ICANN that those will be kept separate from ICANN’s normal budget and used in ways agreed to by the community. To use such proceeds for fee reductions for needy applicants, as suggested by one comment, is indeed an option, provided it meets with community agreement.

The Guidebook (recently revised) states:

The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN’s Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN’s security and stability mission.

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This

process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

Concerning the comment about applicants causing intentional delays for a full contention set, it must be noted that any delays for any application in a contention set, due to for example extended evaluation or objections, will indeed delay the ultimate resolution of the contention set. Contention resolution cannot take place until every involved application have passed the preceding steps or been eliminated in them. First at that point will the configuration be clear of the final contention set to resolve, as applications rejected in the previous steps may change the configuration in important ways and potentially even eliminate the need for contention resolution. However, the risk that any applicant will cause intentional delays by not providing missing parts of its application is limited as the applicant, after the initial completeness check has identified deficiencies in the application, must complete its application within a required timeframe or face rejection.

GEOGRAPHICAL NAMES

Key Points

- Additional protections for geographical names are available through new GAC Early Warning and GAC Advice procedures.
- Protections for capital city names are available for multiple representations of that name, as described in the Guidebook.
- Regional and continent names identified in specific list will require approval of super-majority of governments for reasons stated.
- Processes exist for release of geographic second-level names that rely on approval of ICANN, GAC or governments. They will be clarified in Guidebook.

Summary of Comments

Protect all geographical names. Non-capital city names should be protected to the same degree as capital city names. All geographical names (regardless of existence in the ISO 3166 list) which the national government specified per the right of the national government should be protected to the same degree as capital city names. These protected names would be listed by each government and pre-registered with ICANN. *Tokyo Metropolitan Government (13 May 2011).*

Protect variations of capital city names. Variations of capital city names (in any language) should be protected by requesting documentation of support from the relevant governments (e.g., “Tokyo” and “Tokyo-to” both represent the capital city of Japan). *Tokyo Metropolitan Government (13 May 2011).*

Sufficiency of implementation schedule. Given procedures for government or public authority letters of support, public objection and dispute, as well as the fact that several important items have not yet been mutually agreed upon by ICANN and the GAC, the entire process must allow sufficient implementation time from final approval of the DAG to the beginning of the new gTLD program and deadline of application. It is requested also that ICANN immediately present a new

schedule that includes the timeline of acceptance and evaluation, etc. *Tokyo Metropolitan Government (13 May 2011)*.

IDN gTLDs. Introduction of IDN gTLDs is especially important for the Internet community in Asia. With the introduction of IDN ccTLDs, users increasingly expect IDN gTLDs to be accessible. *DotAsia (Module 2, 3 May 2011)*.

Support for government/public authority procedures. UNINETT Norid is pleased that the post delegation procedure for geographical names now seems to be in place. The wording in both text of the guidebook, 2.2.1.4.3 Documentation Requirements and in the attachment to Module 2—Sample Letter of Government Support (“ICANN will comply with a legally binding order from a court in the jurisdiction of government/public authority”)—will together with the changed wording in the New gTLD Registry Agreement 7.13, make it possible for governments/public authorities to give their support. It is absolutely necessary that this agreement make it clear that ICANN will respect any order from a court of competent jurisdiction. *UNINETT Norid (Module 2, 11 May 2011)*.

DIFO is pleased with the language ICANN added to the text in the Discussion Draft guidebook in 2.2.1.4.3. and finds that it is a compulsory part of the procedures in order to keep trust in ICANN and the multi-stakeholder model. *DIFO (15 May 2011)*.

Jurisdiction. DIFO is still concerned about the jurisdiction of geographical TLDs. The Danish ccTLD .dk is operated under Danish jurisdiction, and DIFO finds it obvious that a TLD relating to a geographical name, e.g. “copenhagen” or “jylland” should be governed by Danish law and not by other jurisdictions. *DIFO (15 May 2011)*.

Regional TLDs.

The fixed arbitrary numeric “cut off” percentile mechanism (Module 2, Section 2.2.1.4.2, Point 4 of the current guidebook) may be inappropriate for regional initiatives and would seem insensitive to diversity. Each region is different and has its own unique circumstances within its technical and Internet community, geo-politically and in other aspects. More important is a process that would allow an applicant of a regional initiative to explain how it would outreach to and continue to engage the respective governments not only before or during the application process but continuing forward post delegation. In addition, regarding what is most important, it may not be about what percentages of countries started or have joined a regional initiative, but whether the initiative has appropriate open doors and enlargement policies, demonstrating a continued commitment to inclusiveness. Demonstrated commitment, through a process such as a GAC early-warning system, is most important to ensure that an applicant proposing a regional initiative is the appropriate candidate for such an undertaking. We believe that the DotAsia initiative experience has shown that an early warning system can work, and that a more collaborative approach between the GAC and the applicant/registry operator can be successful for the community at-large. *DotAsia (Module 2, 3 May 2011)*.

We are supportive of the comments of the DotAsia initiative that: (1) a one size fits all arbitrary percentile for regional TLD initiatives is inappropriate; (2) the new gTLD process should respect the diversity and different cultural, geopolitical and Internet community conditions for each regional initiative; and (3) commitment from the applicant to continue (beyond the application stage) to respond to governments in the region is more important. *B. Burmaa (Module 2, 5 May 2011); K. Huang (Module 2, 6 May 2011); J. Disini (Module 2, 6 May 2011). H. Hotta (Module 2, 11 May 2011). LIM Choon Sai (Module 2, 12 May 2011). RySG (15 May 2011). A. Saleh*

(Module 2, 16 May 2011). IDN WG-TWNIC (Module 2, 16 May 2011). T. Matsumoto (Module 2, 15 May 2011). InternetNZ (Module 2, 16 May 2011).

Regional TLDs—5-macro regions. It is recognized that the new gTLD program is designed with scalability in mind; however, given that there are only 5 macro-regions (and a very limited number of listed sub-regions), a more accommodating process respecting the vast diversity between each region should not pose a problem. *DotAsia (Module 2, 3 May 2011).*

Regional TLDs—GAC input. GAC input should be sought for all regional name applications. An early warning system, followed up by the applicant, that provides the applicant, ICANN and GAC with flexibility to more appropriately address the issues unique for each regional initiative will form a much better and more comprehensive process. *DotAsia (Module 2, 3 May 2011).*

New language offered for Module 2, Section 2.2.1.4.2, Point 4 (in italics). DotAsia offers the following rewrite for ICANN's consideration: "In the case of an application for a string appearing on either of the lists above, *ICANN will consult with the Government Advisory Committee as part of its evaluation process. [delete "documentation of support will be required from at least 60% of"]*. *The applicant should present documentation demonstrating the outreach to and correspondence with the respective national governments in the region, and there may be no more than one unmitigated written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region. Furthermore, the applicant is required to describe and explain how its governance and operations support continued responsiveness to and cooperation with relevant governments in the region and/or public authorities associated with the continent or the region.*

Where [*delete "the 60% rule is applied, and"*] there are common regions on both lists, the regional composition contained in the 'composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings' takes precedence. *DotAsia (Module 2, 3 May 2011).*

Government "no objection procedure" –criticism. The 2.2.1.4.2 requirement of document of support from at least 60% of the respective national governments in the region is very difficult to achieve or in some cases irrelevant for the following reasons:

- (1) Governments are inclined not to provide written documents to a private company, especially on a topic they are not very interested in. This means that many of the governments will not send a "no objection" document even if they have no objection.
- (2) Especially for IDN TLDs, many governments will not be very interested and it is unlikely that a "no objection" document will be written by such governments.
- (3) The appropriateness of IDN TLDs cannot be decided by governments other than those who use the characters of the specific IDN TLD (e.g., the Japanese TLD string for .asia will not interest governments other than Japan. Such governments cannot decide the appropriateness of the Japanese TLD string, and they will not write a "no objection" document).

H. Hotta (Module 2, 11 May 2011).

An arbitrary figure of 60% is not practical or feasible for implementation:

- (1) Most government agencies and/or statutory boards need to maintain impartiality and will find it difficult to provide a written statement of support to a private commercial entity in such a situation, even if these government agencies and/or statutory boards in essence do not object to the application.

- (2) One region may be home to numerous different languages and cultures, with one country's official language differing from another's. It is unfair and inappropriate to ask for a government to support an application for a language that is not analogous to its own official language.

LIM Choon Sai (Module 2, 12 May 2011).

Country and territory names. UNINETT is pleased that country and territory names are still taken out of the new gTLD program. Even if it is stated that this applies only for *this application round* (page 2-14), we take it for granted that this will apply until the ccNSO Study Group on Country and Territory Names has completed their work. This evaluation was removed from the ccPDP on IDN, as country and territory names include both Latin and non-Latin names. *UNINETT Norid (Module 2, 11 May 2011). DIFO (15 May 2011).*

Country codes.

ICANN's proposed prohibition of country codes at the second level is unrealistic and anti-commercial and will be hard to police. It would prohibit a dot brand applicant from registering a country name at the second level for a perfectly logical and legitimate reason (e.g. us.budweiser). As there is no prohibition on the creation of folders (e.g. www.budweiser/uk) this is an artificial restriction that should be lifted. *Valideus (13 May 2011). MARQUES/ECTA (15 May 2011).*

Evaluation Question 22 implies a registry operator can formulate a plan to release geographic names, but Specification 5, Section 2 of the Registry Agreement states that a registry operator can release two-character country codes but not geographic names. AusRegistry requests that Specification 5 be modified to match language in Question 22 and therefore allow the registration of geographic names under the TLD. *AusRegistry (16 May 2011).*

Use of Geographic Names at Second and Other Levels--Dot Brand Applicants. The importance of protecting geographic names is understandable but we ask ICANN to recognize the special nature of potential dot brand applicants and either relieve them of this requirement (question 22, DAG) or provide (or grant permission to independently develop and employ) a universal solution which will allow dot brand applicants to release the reserved geographic names (as well as two-label country codes) for their exclusive internal use all at once. GAC could implement a universal solution whereby a centrally maintained list of countries and ccTLD operators who have agreed to their country names/country codes being registered under dot brand TLDs (without the need for special procedures) is made available. As a result, any Registry who wishes to use such names will simply enter into an agreement with GAC or another relevant body, rather than having to consult with over 200 different governments individually. If introducing such a mechanism is not viable, dot brand applicants would benefit greatly from being exempt from the requirement to create reservation and release mechanisms for geographic names. Alternatively, GAC could provide a list of contact points for the government representatives associated with each second level string. Moreover, governments could be obliged to respond to a request from the registry within a set period of time. Internet users will benefit greatly from being able to find and access their preferred brands according to the geographic locations. This may be delayed unnecessarily if the release procedures for geographic names are overcomplicated. *Brights Consulting (14 May 2011).*

Subject to approval from relevant national governments, a single-registrant TLD should be allowed to register both two-letter abbreviations and full country and regional names at the second level (add this language to Section 2.6 "and except for single-registrant TLDs with respect to geographical names at the second level"). Single-registrant TLDs will reasonably

want to create second level domains for their operating units or chapters in each country or region (e.g. Canada.canon). *BC (15 May 2011)*.

Brand TLDs may require the use of e.g. “jp” or “Japan” at the second level. According to Specification 5 of the draft Agreement, registries must first initially reserve names on the ISO 3166-1 list. Though it is specified that the applicant may propose a release of these reservations, the process for releasing these names should be outlined in the final applicant guidebook. *UrbanBrain (16 May 2011)*.

Specification 5.5 notes that country and territory names contained in the ISO 3166 list shall be reserved at the second level and specifically points toward only the short form English equivalent of the country or territory name. There is no mention of alpha-3 names. Given the purpose behind the reservation of country and territory names, this leaves some with the question if second level names such as “JPN.TLD” can be registered. ICANN should clarify this in the upcoming version of the guidebook. *UrbanBrain (16 May 2011)*.

Analysis of Comments

Protection of capital and other city names

ICANN takes the interests of governments and public authorities in protection of geographic names seriously. The issues regarding which geographical names should be protected have been extensively discussed. To provide adequate protection to capital city names, the Guidebook indicates that protection extends to “a representation, in any language,” of a capital city name. Governments may use the GAC Early Warning or objection processes to identify a capital city name if it has not been identified by the applicant.

Non-capital city names have also been discussed extensively. Briefly, there are millions of city names, many of which are also generic words in which entities other than governments have legitimate interests. Even the definition of what constitutes a city may be uncertain in many circumstances. City names present challenges because city names may also be generic terms or brand names and, in many cases, city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process.

An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name, will require support or non-objection from the relevant government or public authority.

Applicants are required to provide a description/purpose of what the TLD will be used for, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate. The Registry Agreement has the same clause.

While, a workable method for clear identification and reservation of city names cannot be developed, other protections have been put in place and there are notable recent improvements to those protections. In consultations with its Governmental Advisory Committee (GAC), ICANN has developed GAC Early Warning and GAC Advice processes. Through these, governments can identify sensitive TLD applications and provide advice directly to the applicant and the ICANN Board that those applications be denied. Details for these new processes were first in

the April 2011 Discussion Draft and have been updated in the newly posted version of the Guidebook.

Timelines for government action

ICANN also acknowledges the comments on suggestions regarding the publication of timelines – ensuring sufficient time exists for objections, expressions of support and other procedures. ICANN will develop detail in its timelines to demonstrate how these processes work together.

Requirement for approval of continent and regional names

ICANN understands the objections made to a “one size fits all” approach for government approval of continent and regional names. Several models have been explored before and after the publication of the requirement that TLDs for continent names listed in independent, official lists be approved by 60% of the governments in that region. As has been described in earlier analysis, a conservative approach has been taken in providing a methodology to delegate continent names.

ICANN agrees that the new processes for GAC Early Warning and GAC Advice provide new avenues for governments to directly object to sensitive strings and geographical names in particular. However, GAC advice and recent discussions have not indicated that release of continent or regional names should be liberalized as a result. The Guidebook recommends that these types of geographic names be released if 60% of the countries in that region approve the delegation to the applicant and no more than one government objects. The commenters seek to eliminate the approval criteria, in favor of demonstrated cooperation with governments and no more than one government objection. Some comments state that many or most governments do not care about this issue and so approval is difficult to achieve. There are very few regional names and their delegation should be handled conservatively. There are many other names through which community members can find representation in the DNS other than these few names on official lists.

At the Mexico City meeting, the Board asked staff to provide greater specificity concerning government approval requirements for region and continent names. The definition developed as a result provides applicants with more clarity about what qualifies as a regional or sub-regional name and the degree of approval required. The requirement for 60% approval means that a slightly greater than a majority of governments in each area affirmatively approve the application and the applied for string. In this case, mere non-objection does not apply. The reasonableness of the 60% figure was checked by calculating at the number of countries / territories required for approval within each of the UN defined regions. The requirement that there be more than one written objection means that no single government has a veto power. The mechanism adopted is aligned with UN practices (which in most cases is by a simple majority in committees of the General Assembly: http://www.un.org/ga/60/ga_background.html).

While the 60% requirement is a constant for all such regions, when tested, it appears to make sense for regions with few and with many countries.

Second-Level Geographic Name Registration

Well-intentioned, well-thought out and well-taken comments see clarification on which geographic names are reserved at the second-level and more specificity about the procedures for releasing them.

As the Guidebook indicates, both two-character country-code names and country names that are specifically indicated on certain lists are reserved on the second level. Additionally, as indicated in the Guidebook, those names can be released through a process. One suggested process in the Guidebook is: “For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain,” referencing http://gac.icann.org/system/files/dotinfocircular_0.pdf.

Applicants can seek to release country-name labels (two-letter codes and reserved country names) either in their application or after delegation through the process defined by the agreement. Additionally, as indicated, processes approved by governments or the GAC may be employed for the release of country names at the second level.

Comments indicate that the language in the Guidebook and in the agreement are inconsistent. The language will be clarified to clearly indicate the availability of these processes for release of second-level, reserved country names and two-letter codes.

REGISTRY AGREEMENT

General

Key Points

- ICANN expects all applicants to enter into the agreement substantially as written, and it is not possible at this stage to anticipate what changes from the agreement might be acceptable and which would require Board review – it will depend on the unique circumstances of each agreement.

Summary of Comments

Changes to Agreement. The guidebook states that additional Board review of the registry agreement will not be necessary if there have been no “material changes to the base agreement.” The RySG asks that ICANN clarify what it considers “material changes to the base agreement,” and generally under what circumstances ICANN plans to negotiate changes to the base agreement. The RySG thinks that the imposition of new obligations or risks upon registry operators, or reduced indemnification for registry operators, could constitute “material changes.” *RySG (15 May 2011).*

Analysis of Comments

As indicated in the guidebook, ICANN expects all applicants to enter into the agreement substantially as written. Applicants may attempt to negotiate exceptions, but that could delay delegation of the TLD. Whether a particular requested change will require Board review will depend on the unique circumstances of each agreement and it is not possible to anticipate now exactly which changes or categories of changes would be considered to be material and thus

require Board review. Further work might be done on developing ICANN processes and guidelines regarding this issue between now and when new gTLDs begin to be delegated under the program.

Vertical Integration (VI)

Key Points

- The Applicant Guidebook applies to registry operations only. Entities that engage in both registry and registrar operations will also be governed by the agreements and mechanisms applicable to both registry operators and registrars.
- Registry Operator is required to give notice to ICANN in the event a registry service subcontractor or other affiliate becomes a registrar or registrar reseller and should structure its third party contracts to account for this.

Summary of Comments

Update fully to account for VI Decision. ICANN needs to go back and check that the draft applicant guidebook and all mechanisms therein fully account for vertical integration issues. E.g., Specification 7 of the registry agreement refers to new registries complying with the PDDRP, RRDRP, and URS, but has no reference to registries complying with UDRP decisions (which registrars would have to comply with). Moreover the PDDRP refers only to conduct by the registry. The ICANN Board's decision to eliminate vertical separation is likely also to have important implications and consequences for existing consensus policies. *INTA (14 May 2011)*.

Use of Subcontractors. In Section 2.9(b), the current language states that if a registry subcontracts provisioning of a registry service to an ICANN-accredited registrar, it has to disclose such arrangement to ICANN. What if the registry's subcontractor is not an ICANN-accredited registrar initially, but obtains registrar accreditation at some later point? Or starts operating as a reseller? Or its own affiliate does so? Is the registry supposed to somehow find that out and inform ICANN? This may be not an insignificant obligation; especially given the definition of Affiliate is quite broad. The RySG recommends further clarification of this issue, specifically as it relates to the actions of third parties after the fact. *RySG (15 May 2011)*.

Analysis of Comments

The applicant guidebook is designed to apply to new registry operators and is limited in scope to the operation of new registries. To the extent that a registry operator also engages in registrar operations, those operations will be governed by a registrar accreditation agreement between the registrar and ICANN. The registrar would thus be subject to the UDRP and all other mechanisms binding on accredited registrars.

To the extent that a subcontractor or affiliate of Registry Operator becomes an accredited registrar or registrar reseller, Registry Operator is required to notify ICANN. Registry Operator should ensure that its agreement providing for subcontracted services requires the subcontractor to notify Registry Operator if the subcontractor or one of its affiliates becomes an accredited registrar or registrar reseller. Registry Operator will then be in a position to notify ICANN of such arrangement.

Pricing

Key Points

- The definition of “Qualified Marketing Programs” will be further refined in the new draft Registry Agreement based on community comment.

Summary of Comments

Renewal pricing. Microsoft supports the revisions to Section 2.10(c) to prohibit abusive and/or discriminatory renewal pricing practices. *Microsoft (15 May 2011)*.

The revised clause in Section 2.10 in AGv6 is an improvement but there is still ambiguity about discounted renewal pricing. This ambiguity could be removed if ICANN changed the exception (“Qualified Marketing Program”) to encompass discounts or incentives that formed part of a promotional program authorized by the registry agreement and deleted the new definition of “Qualified Marketing Programs.” (See text of RySG comments at pp. 10-11 for specific proposed language to revise Section 2.10 to address RySG’s concerns.) *RySG (15 May 2011)*.

The term “Qualified Marketing Programs” does not have the same scope as allowable promotional programs elsewhere under the agreement or in the Code of Conduct. Thus, there may be uncertainty in whether a registry could offer discounted renewal pricing, even when the renewal price would correspond to the price of the original registration, where that registration was discounted. (See text of RySG comments at pp. 10-11 for specific proposed language to revise Section 2.10 to address RySG’s concerns.) *RySG (15 May 2011)*.

Analysis of Comments

The draft provision regarding “Qualified Marketing Programs” is designed to allow Registry Operator to offer short-term targeted marketing programs that benefit registrants. No other provision in the Registry Agreement or the specifications to the Registry Agreement specifically references marketing programs. The new draft Registry Agreement contains revisions in response to community comments further refining the definition of Qualified Marketing Programs in response to concerns raised in the comments. The exact revisions suggested in the comments could be broadly construed to allow for discriminatory pricing programs and were not adopted. The addition to the end of this provision suggested in the comments is unclear and could lead to confusion. Registry Operator may offer renewal discount pricing to any registrar regardless of whether or not the registration in question was originally registered as part of a discount program so long as Registry Operator complies with the notice provisions of Section 2.10(b) and the uniform pricing provisions (which include criteria for discount programs) in Section 2.10(c).

Use of Registrars

Key Points

- There is no requirement to submit the registry’s initial Registry-Registrar Agreement to ICANN for approval.

- Registry Operator must directly contract with registrars through the Registry-Registrar Agreement for the TLD.
- In accordance with prior GNSO guidance, registry operators may not discriminate against registrars, regardless of the type of TLD.

Summary of Comments

Process for RRA (Section 2.9). What will be the process and timing for approving the initial form of the registry-registrar agreement (RRA) for each registry, and what criteria will ICANN use in approving the initial form of registry-registrar agreement and any revision thereof? The RySG has two areas of concern. One: that approval of new TLD RRAs may get bogged down and inhibit launches. Two: that ICANN may introduce new obligations on registries and/or registrars via the RRA approval process. *RySG (15 May 2011).*

Governmental entities—Agent for Registry-Registrar Agreements (RRAs). The assumption in Module 5 at 5-12 and 5-13 that a registry operator will enter into direct contracts with registrars raises concern for governmental entities that operate under a wide range of constraints in their contracting processes. For example, given the contracting processes of the City of New York, it is unrealistic for the City to enter directly into contracts with ICANN-approved registrars, particularly since registrars will not provide goods or services directly to the City. The City of New York anticipated having its selected registry operator vendor (who will be named in any TLD application and be subject to review and approval of ICANN) directly enter into registrar agreements. The City of New York suggests that permitting an applicant to act through a responsible agent in entering into RRAs that are compliant with ICANN policies ought to be allowed in compliance with Module 5 and the gTLD Registry Agreement. Failure to take into account the strictures of government contracting in allowing flexibility in this regard could substantially limit the applicant pool for government-sponsored TLDs and the ultimate success of any TLDs delegated to applicants that include a governmental entity. *City of New York (13 May 2011).*

Single-registrant TLD discrimination exception. The base agreement should be amended to include the same exception for single-registrant TLDs that is contained in Item 6 of the Code of Conduct. The registry agreement should not unduly restrict single-registrant TLDs from using only a wholly-owned or closely affiliated registrar to register and manage names that it controls. *BC (15 May 2011).*

Analysis of Comments

The draft Registry Agreement does not require Registry Operator to have its Registry-Registrar Agreements approved by ICANN. Registry Operator may negotiate those agreements, subject to any obligations of Registry Operator set forth in the Registry Agreement or ICANN policies, without ICANN involvement. Once those agreements are in place, Registry Operator is required to obtain ICANN's consent for any amendments to those agreements.

Successful applicants that subcontract operation of a registry must be a party to the registry's Registry-Registrar Agreement for the TLD. The subcontractor may not enter into that agreement directly with registrars. However, the applicant/Registry Operator is required to

ensure that its subcontractor complies with the obligations of Registry Operator set forth in the Registry Agreement as well.

Per Principle 19 set forth in the GNSO's Final Report – Introduction of New Generic Top-Level Domains, "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars." The GNSO report did not provide for different treatment for single-registrant or ".brand" TLDs. It would be inappropriate to include a provision in the registry agreement for new TLDs that is contrary to GNSO guidance on the new gTLD program. Contrary to the assertions in certain community comments, the obligations and restrictions of Section 2.9 are intended to apply to all new TLDs, regardless of type. However, registrants can choose any registrar that meets the registry's specifications for accreditation. Registrants are free to register names in the TLD with one registrar.

Other Registry Operator Covenants

Key Points

- In response to comments that the obligation to investigate and respond to all reports of illegal conduct in the TLD may be onerous, the obligation has been revised in the new draft Registry Agreement to apply only to reports from governments or governmental agencies.
- The obligation to provide registry data for use in economic studies has been clarified in the new draft Registry Agreement to exclude analyses and work product of Registry Operator.
- All data transmissions of registry data to ICANN or other third parties pursuant to the Registry Agreement must be done in compliance with privacy laws.

Summary of Comments

Illegal conduct reports (Section 2.8). Microsoft supports the new requirement in section 2.8 of the new gTLD Registry Agreement that requires the Registry Operator to take reasonable steps to investigate and respond to reports of illegal conduct in the TLD. However, ICANN should provide some illustration of what constitutes "reasonable steps." Lack of clarity of this requirement will undermine its effectiveness. *Microsoft (15 May 2011)*.

The new language creates "an undefined obligation to 'investigate and respond to any reports . . . of illegal conduct in connection with the use of the TLD.'" The language as drafted can be interpreted to require a Registry Operator to investigate and take some form of affirmative action in response to "any" complaint raised, either from a government agency or a private party. Additionally, what constitutes "illegal conduct" can vary from country to country and may include activities such as dissenting speech that would be legally protected forms of conduct in other countries. Registry Operators should not be mandated to comply with or take some form of affirmative action in response to any such request, particularly where such requests are in contravention of the Registry Operator's internal policies or the laws of the country in which the Registry Operator is located. Registry Operators should not be required to respond in any fashion to an inquiry from a private party. The use of the term "governmental and quasi-governmental agencies" is overbroad. The RySG suggests revising the provision as provided in its comments. *RySG (15 May 2011)*.

The scope of the obligation to investigate and respond ought to be better defined as well as the associated notion of illegal conduct. *AFNIC (15 May 2011)*.

Cooperation with Economic Studies (Section 2.15). Microsoft supports the new section 2.15 requiring registry operators to cooperate with any ICANN initiated or commissioned economic study of the impact or functioning of new gTLDs on the Internet. *Microsoft (15 May 2011)*.

As drafted, this provision would grant ICANN unfettered access to confidential and proprietary information, including internal reports and analyses, maintained by the Registry Operator. Therefore, the data that is required to be provided should be limited to raw operational data maintained by the Registry Operator, which should be sufficient for any economic studies being performed. Additionally, the provision should require ICANN to seek written consent from a Registry Operator before it provides, as a result of legal process (i.e., subpoena, civil discovery request, etc.) or otherwise, any data collected from a Registry Operator to a private party or a government agency. *RySG (15 May 2011)*.

Regarding 2.15 and Specification 4, the scope of the data to be requested of the registry operator, including “confidential data,” should be better defined. Provisions on the use, storage, and destruction of such data by ICANN or its designee should also be discussed. Under French law, entities based in France which seek to transfer personal data to a non-EU-based entity must comply with requirements that strictly regulate such transfer and require adequate protection of this data. As a consequence, under French law this provision of the registry agreement may not be sufficient to ensure full disclosure of data to ICANN. Additional guarantees and contractual arrangements may be required. *AFNIC (15 May 2011)*.

Analysis of Comments

The requirement for Registry Operator to take reasonable steps to investigate and respond to reports of illegal conduct was inserted in response to the GAC Scorecard. This provision has been revised in the new draft Registry Agreement in response to community comment in order to limit its scope. For example, Registry Operator will only be required to take reasonable steps with respect to reports from governments and governmental agencies. The provision is designed to require cooperation with legitimate government concerns regarding conduct within the TLD. Registry Operator is required to take reasonable steps to investigate and respond to reports regarding such conduct but the appropriate actions will be dependent on the facts and circumstances of each report. As such, it would not be appropriate to provide for detailed required actions or to define what may be considered illegal conduct. ICANN acknowledges that certain non-governmental organizations play an important role in combating malicious conduct in the DNS, and those organizations could work with ICANN and law enforcement to explore ways to facilitate cooperation between such organizations and governments in order to ensure that such reports receive all due attention. The provision has been further revised to clarify that Registry Operator will not be required to take any action in contravention of applicable law.

The obligation of Registry Operator to provide data for economic studies has been further revised in response to community comment to clarify that disclosure of internal analyses and work product of Registry Operator is not required. ICANN’s obligation under this provision to aggregate and make anonymous such information is intended to function as a documented assurance of this treatment. A new provision has been added to the draft Registry Agreement obligating Registry Operator to notify all registrars of the intended uses of personal data that is

transferred to ICANN by Registry Operator pursuant to the Registry Agreement and to require registrars to obtain the consent of registrants to such uses.

ICANN Covenants

Key Points

- ICANN will not be responsible for possible censorship of some TLDs by governments or other entities.

Summary of Comments

ICANN Obligations with respect to the Authoritative Root Database. The new proviso is not appropriate as it would allow ICANN to disclaim all responsibility of blocking or restricting access to a TLD regardless of whether or not they may have contributed to the event or could have taken steps to prevent such event (including where it failed to exercise or enforce a contractual right). We recommend that the new language be deleted. *RySG (15 May 2011)*.

Analysis of Comments

ICANN will not and cannot directly block access to a TLD by itself, and ICANN is not party to contracts whereby it can prevent government entities, ISPs or other entities from blocking or restricting access to certain TLDs. In the event that such blocking or restriction takes place, it would not be appropriate to hold ICANN liable, and Registry Operator should seek redress directly against the entity responsible for the blocking.

Renewal

Key Points

- Presumptive renewal provisions benefit the Internet community.

Summary of Comments

Presumption of renewal (Article 4). The presumption of renewal is a policy item on which the community has not yet reached agreement. This issue should be discussed by the community and should not be made policy by being enshrined in a contract. At the very least a clause should be added that, should a Policy Development Process (PDP) be held on the topic of presumption of renewal, the consensus view of such a PDP would be applicable to future considerations of renewal for the contract. *A. Doria (15 May 2011)*.

Analysis of Comments

Presumptive renewal provisions are included in all other current ICANN gTLD registry agreements. These renewal provisions encourage long-term investment in robust gTLD operations, and this has benefitted the community in the form of reliable operation of the registry infrastructure. Including a provision stating that ICANN could unilaterally re-write the renewal provision would discourage investment in top-level domains, since any money invested in marketing and operating the TLD might end up “wasted” if ICANN were to take away the TLD

and hand it over to another operator. Specification 1 to the Registry Agreement specifically excepts registry agreement renewal modifications from the category of matters that can be modified by Consensus Policies, which is also consistent with ICANN's current gTLD registry agreements.

Termination

Key Points

- Previous revisions to the termination provisions regarding bankruptcy related actions in response to community comment have provided adequate flexibility.

Summary of Comments

Termination by ICANN based on Bankruptcy Related Actions. Although this timing is better than the original 30 days, the new version continues the exception for proceedings that are not dismissed in 60 days. An extension of this period to 120 days might make it more meaningful. In addition, adding the term "imminent" before "material" would be helpful. *RySG (15 May 2011).*

Termination by ICANN based on Certain Criminal Acts. Microsoft supports the additions to section 4.3(f) that allow ICANN to terminate the new gTLD Registry Agreement if the registry operator does not terminate employees or board members convicted of certain crimes, found by a court to have engaged in fraud or violated fiduciary duty, and substantive equivalents thereto. *Microsoft (15 May 2011)*

Analysis of Comments

The provision relating to ICANN's termination right in connection with certain bankruptcy related actions was revised in the April 2011 discussion draft Registry Agreement to give Registry Operator additional time to secure dismissals of certain actions. This change was made in connection with community comments and provides adequate flexibility. Any material threat to the viability of the registry for the TLD in this context, regardless of whether or not it could be argued to be imminent, will trigger this provision.

Transition Following Termination

Key Points

- The criteria that must be met and demonstrated to ICANN in order for Registry Operator to have a consent right in the event of a re-delegation of the TLD has been conformed to similar criteria provided in the Code of Conduct.
- Some potential TLDs meeting the specified criteria might not be associated with established or widely recognized trademarks. Future delegation of certain of these TLDs without the consent of the previous registry operator might be appropriate, but any future delegation of a previous TLD would be subject to "Legal Rights" objections.

Summary of Comments

Redelegation of dot brand gTLDs. ICANN still has not satisfactorily addressed concerns raised by numerous commenters about its plan to reserve to itself the sole discretion to redelegate a dot brand TLD if the trademark owner registry operator chooses to no longer operate the TLD. The revisions to section 4.5 are unclear and insufficient—are “sub-domains” second-level domains? ICANN must not transition a dot brand TLD to a successor registry without the written consent of the registry operator, which can be withheld, conditioned, or delayed. The potential for consumer confusion and fraud if a dot brand TLD is operated by entity not affiliated with or authorized by the brand owner is both tremendous and troubling. *Microsoft (15 May 2011).*

INTA appreciates the recent changes to Section 4.5 of the Registry Agreement but believes that further clarification is needed to specify the circumstances under which a brand owner can reasonably withhold consent to redelegate a TLD reflecting its brand name. In addition, the exception should not be limited to registries where the domains are registered to the registry operator or its affiliates but should include where registrants are licensees of the pre-existing trademark incorporated in the dot brand top-level string. Many dot brand operators such as franchisors may wish that domains for which independent licensees are responsible be registered to the licensee. These provisions should apply to all uses of dot brand registries. If ICANN does not address these issues, the potential loss of control over the mark that could result from redelegation of a dot brand registry over the brand owner’s objection could present a fundamental obstacle to brand owners applying to run new gTLD registries. *INTA (14 May 2011).*

Section 4.5 helps to remove one barrier to companies considering dot brand applications—the risk that the company will lose control of the TLD string corresponding to its brand or company name if it chooses to discontinue operation of the TLD. *COA (15 May 2011).*

Single-registrant TLD Definition. The exception in Section 4.5 should reference a common definition for single-registrant TLD instead of defining it separately (i.e., “Provided however, that for Single-registrant TLDs, ICANN may not transition operation of the TLD...”). In circumstances where ICANN transitions a single-registrant TLD to a new operator, IP rights of the original operator should not be conveyed to the new operator or to ICANN, as transferring registry data may reveal trade secrets to a third party, including customer lists. *BC (15 May 2011).*

The following definition should be added to the guidebook and registry agreement: “Single registrant TLD: a TLD where the Registry Operator is the registrant of record for all domain names in the TLD.” *BC (15 May 2011).*

Analysis of Comments

The revisions to Section 4.5 in the April 2011 discussion draft Registry Agreement were intended to respond to multiple community comments regarding the ability of ICANN to re-delegate certain TLDs. The criteria that must be met (and demonstrated to ICANN) in order for Registry Operator to have a consent right over re-delegation in the event of a termination or expiration of the Registry Agreement has been conformed to the related criteria in the Code of Conduct located in Specification 9 to the new draft Registry Agreement (which has been revised in response to community comments). However, because this criteria (as well as the significantly broader criteria suggested in the community comments) could result in TLDs meeting the criteria that have a TLD string that is not an established or widely recognized trademark, the provision has been revised to clarify that such TLDs will not be transitioned upon

expiration or termination of the Registry Agreement without Registry Operator Consent, but the TLD strings associated with such TLDs could be available for future delegation, subject to established “Legal Rights” objections available at the time of such future delegation. This approach will allow both trademark and non-trademark based TLDs that fall within the specified criteria, while providing for a mechanism for trademark-based TLDs to prevent future delegation of an abandoned TLD if such delegation would infringe legal rights as recognized under “Legal Rights” objection processes.

The criteria in this provision and in the Code of Conduct is intended to describe TLDs in which the Registry Operator maintains use of all registrations in the TLD for itself or its affiliates. Expanding the criteria to cover TLDs that permit use of registrations by unaffiliated third parties could result in the operation of TLDs that avoid the Code of Conduct obligations of other TLDs while utilizing a similar business model.

Dispute Resolution

Key Points

- Community comments have not articulated what potential conflict of interest is created by the use of the ICC for more than one area of dispute resolution.

Summary of Comments

Arbitration forum. The ICC International Court of Arbitration should not be the exclusive forum for arbitration of disputes arising under the Registry Agreement; the ICC will be under contract with ICANN as the dispute resolution provider for the Limited Public Interest and Community objection procedures, thus creating a potential conflict. *IPC (15 May 2011).*

Analysis of Comments

The ICC International Court of Arbitration provides a set of rules and procedures for the adjudication of disputes. Community comments have not articulated what potential conflict of interest is created by the use of those rules and procedures for more than one area of dispute resolution. Individual arbitrators will be subject to conflict of interest rules and properly excluded if they have a preexisting relationship with a party to the arbitration.

Change in Control of Registry Operator and Assignment

Key Points

- The current provision regarding assignment and subcontracting gives ICANN the ability to evaluate any assignee or successor to Registry Operator based on the then-current criteria.
- An initial time-based complete bar on such transactions is unnecessary.
- Assignees of the Registry Agreement will be subject to all obligations of Registry Operator.

Summary of Comments

Assignment Restrictions. The possibility of an active secondary market in gTLDs raises significant concerns. ICANN should take action to minimize the likelihood that such a secondary market will come to fruition and to the extent it does that participants do not successfully evade the examination and objection processes. Four measures are immediately identifiable:

- (1) ICANN should revise section 7.5 of the Registry Agreement to prohibit assignments within a defined period (12-18 months) after delegation, which would decrease “gTLD flipping”;
- (2) ICANN should ensure that post-delegation dispute resolution procedures apply to assignees of the Registry Agreement, which would mitigate considerably the risk that the gTLD assignee itself or its intended use of the gTLD would essentially elude the objections that could have been levied had the gTLD assignee been the original applicant.
- (3) ICANN should develop “Assignment Guidelines” that set forth the conditions and criteria that a proposed gTLD Assignee must satisfy to obtain ICANN’s approval of the proposed assignment. These conditions and criteria at a minimum must be the equivalent of the full range of evaluation criteria for new gTLD applicants.
- (4) The guidelines comparable if not identical to the Assignment Guidelines should be developed to ensure that a change in control is not used as a mechanism to evade substantive evaluation of the new controlling entity or person. *Microsoft (15 May 2011).*

Analysis of Comments

Section 7.5 of the Registry Agreement provides that Registry Operator must give certain notices and obtain ICANN’s written consent in connection with an assignment or change of control transaction. Further, ICANN shall be deemed to have reasonably withheld its consent to any such transaction in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. Currently, such criteria and qualifications would include the evaluation criteria for new gTLD applicants. These criteria and qualifications may be revised from time to time and ICANN must maintain flexibility regarding the criteria it will apply to any specific transaction based on the facts and circumstances (including community objections) relating to such transaction. There is no compelling reason, given ICANN’s ability to evaluate and approve assignment transactions, to impose an initial time-based complete bar on such transactions.

If ICANN consents to an assignment of the Registry Agreement, all obligations of Registry Operator will be binding on the assignee, including all post-delegation dispute mechanisms and other rights protection mechanisms.

Whois-Specification 4

Key Points

- ICANN is committed to enforcing the thick Whois requirements of the new gTLD program.

- Whois “verification” is addressed by the Registrar Accreditation Agreement, and any changes should be discussed through the GNSO.
- Searchable Whois will continue to be an optional service.
- Handling of Whois data must be done in compliance with privacy laws.

Summary of Comments

Compliance improvement. While we recognize that ICANN is working toward improving Whois, the system, particularly enforcement of the agreements, is not yet adequate in the current DNS. ICANN needs to clearly address how it plans to provide adequate compliance and enforcement as enforcement will become even more difficult with the introduction of new gTLDs. *News Corporation (13 May 2011).*

Purpose of TLD or its business model. The defined Whois output described in Specification 4 of the Registry Agreement does not account for the purpose of the TLD or its business model. ICANN should consider giving applicants the ability to propose relevant Whois output. *AusRegistry (16 May 2011).*

Whois accuracy--mandate verification and monitoring.

Although Time Warner is pleased that ICANN has recognized the importance of accurate Whois by offering new gTLD applicants an extra point in the evaluation process if they verify and monitor Whois, we see no reason why this should not be made mandatory. Such a requirement, if vigorously enforced, could help prevent a wide range of abuses. *Time Warner (14 May 2011).*

Mechanisms to promote Whois quality should be incorporated into the minimum requirements for the “abuse prevention and mitigation” criterion so that applicants failing to commit to them will receive a failing score of zero on this criterion. *COA (15 May 2011). SIIA (15 May 2011). IPC (15 May 2011).*

In addition to specifying and mandating accurate Whois efforts as part of the required minimum requirements, ICANN should, after the first round of applications is received and reviewed, revise the minimum requirements for any abuse policies and procedures to incorporate best practices contained in the various applications. Otherwise, different registries may employ drastically different standards, which will lead to greater abuses for the gTLDs with the laxest standards. *NCTA (Module 2, 13 May 2011).*

ICANN has taken a step backwards by not requiring all the new gTLDs in this round to take on all of the expanded Whois data quality and accessibility obligations agreed to by three of the gTLDs in the previous round (.asia, .mobi, .post). These eminently reasonable and practical requirements represent the current best practice for gTLD registry agreements, and ICANN has never adequately explained why all new gTLD registries should not be required to meet them. *COA (15 May 2011); SIIA (15 May 2011); IPC (15 May 2011).*

Searchable Whois should be mandatory. Awarding of an additional point to applicants that will provide it is positive but insufficient. Access to searchable Whois is extremely valuable to entities that combat online fraud, abuse and infringement, and the search specifications in Specification 4 will be very useful in combating online fraud and abuse. It is regrettable that ICANN allowed a committee of its Board to make the arbitrary determination that searchable Whois would not be required. *Microsoft (15 May 2011).*

Standardize Searchable Whois. Searchable Whois, described in Evaluation Criteria Question 26 and in Specification 4 of the Registry Agreement, requires further technical definition. The way it is currently described will create multiple, potentially incompatible implementations which will give end users inconsistent results and leave them confused. Searchable Whois should be standardized prior to opening the Application Period. If Searchable Whois is not standardized prior to the Application Period opening, then the “exceed requirements” for Evaluation Criteria Question 26 should be removed. *AusRegistry (16 May 2011).*

The Whois improvements in the April 2011 discussion draft do not go far enough. Also, regarding evaluation criterion 26, ICANN has never explained why a fully searchable Whois presents greater risks of abuse than the current model offered by registrars in the thin Whois environment. Under ICANN’s stewardship, Whois service has been allowed to degrade to its current feature-poor level. *COA (15 May 2011).*

Zone File Access Requests. The RySG recommends that ICANN re-insert language requiring the submission of IP address and host name from all parties requesting zone file access. This information is critical to enable the registry operator to prevent abuse. *RySG (15 May 2011).*

Clarification. The information required under the “Bulk Registration Data Access” provision in Specification 4, Section 3 of the Registry Agreement does not match the minimum information required in the Data Escrow Specification 2 of the Registry Agreement and is in fact a subset of such data. It would be helpful to understand how providing Bulk Registration Data Access to ICANN ensures operational stability of Registry Services, or facilitates compliance checks on accredited registrars as requiring a subset of the Data Escrow data requires the Registry Operator to develop and support what is seemingly an additional unnecessary process. *AusRegistry (16 May 2011).*

National privacy laws. Sections 1.4, 1.5 and 1.6 of Specification 4 require the Registry Operator to provide specific elements of output for the Registration Data Directory Service. However, in some countries publication of some elements listed in these sections violates national privacy laws. AusRegistry suggests a provision be added which requires the provision of Whois as stated in Specification 4, unless the Registry Operator’s national privacy laws prohibit some elements from being displayed. If those laws do so prohibit display, the Registry Operator must document this in the Application to ICANN and describe what elements of Whois can be provided under national privacy laws. For elements which will remain undisclosed as part of the Registry Operator’s legal obligations, key/value pairs must still be present and the value of the undisclosed field must still comply with the format requirements in section 1.7 of Specification 4. *AusRegistry (16 May 2011).*

Analysis of Comments

ICANN is committed to enforcing the thick Whois requirements of the new gTLD program. Accurate and high-quality Whois data will be an important component of new gTLDs and applicants offering robust Whois services will receive extra credit in their applications for such efforts. However, the benefits of additional mandated Whois requirements must be weighed against countervailing technical and privacy concerns, the increased costs of providing such services and ICANN’s enforcement resources. After considering community comments, the Whois requirements in the new draft Registry Agreement are considered to be appropriate minimum obligations for each registry. Registry Operator may require additional Whois outputs consistent with its business model, subject to applicable laws. Any departures from these

baseline/status quo Whois requirements should be discussed in ICANN's GNSO. "Maintenance of and access to accurate and up-to-date information concerning domain name registrations" is specified as being within the "picket fence" of topics on which ICANN may establish new Consensus Policies.

Whois "verification" is the subject of Registrar Accreditation Agreement section 3.7.8, which provides that registrars will comply with any Consensus Policies established by ICANN "requiring reasonable and commercially practicable (a) verification, at the time of registration, of contact information associated with a Registered Name sponsored by Registrar or (b) periodic re-verification of such information." Any new Whois verification requirements for gTLDs should be discussed and approved through the GNSO.

The issue of searchable Whois was referred by ICANN to the ICANN Board Data Consumer Protection Working Group <<http://www.icann.org/en/committees/consumer-protection/>>. The DCP-WG's final report noted "The DCP-WG advises the Board that making searchable Whois mandatory is a policy matter that would have to be referred to the GNSO, but we accept it being optional as proposed in current version of the Applicant Guidebook. We flag that there are consumer and data protection issues that could be raised through a searchable Whois system." <<http://www.icann.org/en/committees/consumer-protection/report-on-recommendations-07dec10-en.htm>>.

At its meeting in Cartagena, the ICANN Board adopted this recommendation and therefore searchable Whois will continue to be offered at the option of each registry rather than as a mandate applicable to all new registries. This is consistent with the current gTLD agreements, a few of which do mention that searchable Whois will be offered. The provisions governing the searchable Whois requirements in each of the current registry agreements that provide for it were inserted voluntarily by the applicable registry as part of the negotiation process and were not required by ICANN. Those provisions all mention that the service would be offered "subject to applicable privacy policies," and therefore the guidebook's approach of taking into account privacy considerations is not inconsistent with current practice.

The community has yet to develop a standardized specification for searchable Whois that could be incorporated into Specification 4. Because of the lack of consensus on such a specification, Specification 4 provides only high-level guidelines on the requirements for searchable Whois in those registries that chose to provide it.

The information required under the "Bulk Registration Data Access" provision in Specification 4, Section 3 of the Registry Agreement does not match the minimum information required in the Data Escrow Specification 2 of the Registry Agreement because ICANN does not require full escrow data for the purposes of compliance checks and verification of registrar utilization.

ICANN has previously established a procedure for handling Whois conflicts with privacy laws available at <http://www.icann.org/en/processes/icann-procedure-17jan08.htm>. Since the inception of this procedure, no submissions have been received. A new provision (utilizing language from provisions in existing ICANN registry agreements) has been added to the new draft Registry Agreement requiring compliance with applicable privacy laws that will be applicable to all handling of personal data, including Whois data.

Reserved Names-Specification 5

Key Points

- The ICANN Board is considering criteria that must be met for a limited class of established global organizations to qualify to have their marks reserved from registration. However, this process is ongoing and no decisions have been reached regarding implementing this criteria into the new gTLD program.
- Pursuant to GAC advice, geographic names appearing on predetermined lists and country codes will be initially reserved at the second level, regardless of the type of TLD. Those names may be released in connection with the consent of the applicable government or pursuant to procedures approved by the GAC (e.g. the .INFO procedures).

Summary of Comments

Reserved names list—Olympic and Olympiad. The terms Olympic and Olympiad should be added to the Reserved Names list, which would be consistent with the laws of the U.S. and numerous other countries around the globe, and allow the U.S. Olympic Committee to focus its limited resources on its primary mission, rather than on defensive registrations and a cumbersome process of filing formal objections against infringing gTLD applications. The RPMs in the guidebook are insufficient to protect the Olympic movement. Both the USOC and the International Olympic Committee (IOC) have repeatedly advocated that reserving the words Olympic and Olympiad in the top and second levels of all new gTLDs serves the public interests of the international community and comports with accepted principles of law. As explained in detail in past comments submitted to ICANN, more than thirty nations have enacted sui generis legislation reserving exclusive use of the words Olympic and Olympiad to the IOC and the National Olympic Committees. More than sixty countries have signed the Nairobi Treaty on the Protection of the Olympic Symbol, establishing special protection for the Olympic Movement as an internationally accepted principle of law. The GAC has advised the ICANN Board to approve the request to add Olympic and Olympiad to the Reserved Names list. USOC (13 May 2011). IOC (15 May 2011).

Reserved names—remove ICANN mark. Equity and fairness dictate that the ICANN Mark should be removed from the reserved names list. ICANN should bear the same burden and expense of protecting its mark against cyber squatters as other brand owners must. *Microsoft* (15 May 2011).

Two-character labels. The newly added reservation of “two-character labels” should be deleted from the applicant guidebook; it may cause problems and lacks a rationale. Confusion with the “two-letter codes” of ccTLDs or technical reasons are by all means not evident. Reservation of two-character labels has never been a publicly discussed point and putting it into the guidebook rules without a community discussion is outside the policy development process. Its timing is odd because at least a dozen gTLD and ccTLD registries have released “two-character labels” just recently or are planning to release them in the near future, with ICANN’s approval in the case of gTLDs. Reservation of two-character labels will create legal challenges in many new gTLDs (e.g. in Germany DENIC, the operator of the .de ccTLD was in 2010 forced by competition and trademark laws to release all “two-character labels”). *dotBERLIN* (11 May 2011). *DOTZON* (15 May 2011).

Protect all geographical names. Non-capital city names should be protected to the same degree as capital city names. All geographical names (regardless of existence in the ISO 3166 list)

which the national government specified per the right of the national government should be protected to the same degree as capital city names. These protected names would be listed by each government and pre-registered with ICANN. *Tokyo Metropolitan Government (13 May 2011)*.

Protect variations of capital city names. Variations of capital city names (in any language) should be protected by requesting documentation of support from the relevant governments (e.g., “Tokyo” and “Tokyo-to” both represent the capital city of Japan). *Tokyo Metropolitan Government (13 May 2011)*.

Country codes at the second level.

ICANN’s proposed prohibition of country codes at the second level is unrealistic and anti-commercial and will be hard to police. It would prohibit a dot brand applicant from registering a country name at the second level for a perfectly logical and legitimate reason (e.g. us.budweiser). As there is no prohibition on the creation of folders (e.g. www.budweiser/uk) this is an artificial restriction that should be lifted. *Valideus (13 May 2011)*. *MARQUES/ECTA (15 May 2011)*.

Use of Geographic Names at Second and Other Levels—Dot Brand Applicants. The importance of protecting geographic names is understandable but we ask ICANN to recognize the special nature of potential dot brand applicants and either relieve them of this requirement (question 22, DAG) or provide (or grant permission to independently develop and employ) a universal solution which will allow dot brand applicants to release the reserved geographic names (as well as two-label country codes) for their exclusive internal use all at once. GAC could implement a universal solution whereby a centrally maintained list of countries and ccTLD operators who have agreed to their country names/country codes being registered under dot brand TLDs (without the need for special procedures) is made available. As a result, any Registry who wishes to use such names will simply enter into an agreement with GAC or another relevant body, rather than having to consult with over 200 different governments individually. If introducing such a mechanism is not viable, dot brand applicants would benefit greatly from being exempt from the requirement to create reservation and release mechanisms for geographic names. Alternatively, GAC could provide a list of contact points for the government representatives associated with each second level string. Moreover, governments could be obliged to respond to a request from the registry within a set period of time. Internet users will benefit greatly from being able to find and access their preferred brands according to the geographic locations. This may be delayed unnecessarily if the release procedures for geographic names are overcomplicated. *Bright Consulting (14 May 2011)*.

Subject to approval from relevant national governments, a single-registrant TLD should be allowed to register both two-letter abbreviations and full country and regional names at the second level (add this language to Section 2.6 “and except for single-registrant TLDs with respect to geographical names at the second level”). Single-registrant TLDs will reasonably want to create second level domains for their operating units or chapters in each country or region (e.g. Canada.canon). *BC (15 May 2011)*.

Brand TLDs may require the use of e.g. “jp” or “Japan” at the second level. According to Specification 5 of the draft Agreement, registries must first initially reserve names on the ISO 3166-1 list. Though it is specified that the applicant may propose a release of these reservations, the process for releasing these names should be outlined in the final applicant guidebook. *UrbanBrain (16 May 2011)*.

Specification 5.5 notes that country and territory names contained in the ISO 3166 list shall be reserved at the second level and specifically points toward only the short form English equivalent of the country or territory name. There is no mention of alpha-3 names. Given the purpose behind the reservation of country and territory names, this leaves some with the question if second level names such as “JPN.TLD” can be registered. ICANN should clarify this in the upcoming version of the guidebook. *UrbanBrain (16 May 2011)*.

Evaluation Question 22 implies a registry operator can formulate a plan to release geographic names, but Specification 5, Section 2 of the Registry Agreement states that a registry operator can release two-character country codes but not geographic names. AusRegistry requests that Specification 5 be modified to match language in Question 22 and therefore allow the registration of geographic names under the TLD. *AusRegistry (16 May 2011)*.

Analysis of Comments

The ICANN Board is considering criteria that must be met for a limited class of established global organizations to qualify to have their marks reserved from registration. However, this process is ongoing and no decisions has been reached regarding implementing this criteria into the new gTLD program.

In accordance with GAC advice, all country names appearing on the ISO 3166-1 list, as well as all two-letter country codes will generally be reserved from registration at the second level in new gTLDs. Specification 5 provides that ICANN may authorize exceptions to this requirement. Specification 5 has been revised to clarify that these names may be released with the consent of the applicable governments or pursuant to procedures approved by the GAC. The applicant will be responsible for describing whether it will seek to release such second-level strings and if so what procedures would be used. Such plans will be subject to GAC and community review prior to ICANN authorizing any exceptions. Any such exceptions might be granted on an individual basis, or on a blanket basis as long as each registry agrees to certain procedures. For example the GAC has previously indicated a preference for the procedure utilized for the release of country names in the .INFO TLD. Further work might be done on developing ICANN processes and guidelines regarding this issue between now and when new gTLDs begin to be delegated under the program.

Protecting all city names would not be feasible given the number of names potentially included in such categories. Also, names that happen to relate to some city, town, village, or hamlet somewhere might also have other legitimate uses that are not related to that city, town, village, or hamlet. This reasoning is described in detail under the geographical names section of this summary and analysis and in prior comment analyses.

Continuing Operations Instrument-Specification 8

Key Points

- All registry operators, including government entities, will be required to maintain a continuing operations instrument.
- Proposed alternatives to the continuing operations instrument may not provide the necessary resources to ensure stable registry functions.

Summary of Comments

Local governments—different treatment. The continued operations instrument requirement in Specification 8 would be particularly onerous for local governments in light of their budgeting processes. ICANN has elsewhere recognized in the draft Registry Agreement that TLDs operated by government entities should be treated somewhat differently than other TLDs--e.g., Article 4, section 4.5 alternative language for intergovernmental or governmental entities regarding transition of registry upon termination of agreement makes no reference to a continuing operations instrument. This is the correct approach since governmental entities are not subject to disappearing after registry launch and work under particular statutory requirements inconsistent with a continued operations instrument requirement. In addition, GAAP accounting principles do not permit the City of New York to carry balances between fiscal years, so maintenance of a continuing operations instrument over a 5-year period would violate annual accounting requirements intended to ensure compliance with state and local law as well as GAAP. The City of New York has sufficient assets to maintain registry operations at a level that should provide the requisite assurances ICANN seeks to address through a continuing operations instrument. *City of New York (13 May 2011).*

Objection to Continued Operations Instrument and proposed alternative. The description of the continued operations instrument in the current guidebook is not sufficiently clear. The continued operations instrument requirement has been a significant impediment to new applicants in their ability to raise funds or engage in appropriate business planning. RySG proposes a replacement to the continued operations instrument: the creation of a pseudo-insurance fund paid for by each of the new gTLD Registry Operators for the first 5 years following launch of the new gTLD (e.g. requiring each registry operator to pay an additional \$5,000 in Registry Fees per year to ICANN (or its designee) for the specific purpose of funding two or three Emergency Back End Registry Operators should be sufficient; see text of RySG comments for additional details). The function of the continued operations instrument also could take the form of an insurance policy written by a highly rated reputable insurer. If private insurance is not available, then the captive insurance fund described in RySG comments could be created. The \$5,000 per registry per year figure should be viewed as a straw man until proper underwriting of the risk is done to determine an appropriate contribution. ICANN could hire the appropriate expert to calculate the appropriate contribution and pool size, and the cost of the expert could be reimbursed from the pool. *RySG (15 May 2011).*

Analysis of Comments

Exempting government or quasi-governmental applicants from the requirement to maintain a continuing operations instrument could jeopardize registrants in the event that such applicants/operators either decide or are unable to maintain the operation of the TLD for any reason. Because of this risk, the continuing operations instrument is required of all applicants, including governmental entities, in order to ensure stable registry operations and protection of registrants in the TLD. If ICANN were to exempt all government or quasi-governmental applicants from this obligation it could lead to abuses and cases where entities walk away from their TLD. Governments might abandon TLDs when governments change or during budget cuts.

The alternatives to the continued operations instrument described in the community comments have been considered by ICANN and determined to not be feasible. A registry funded emergency fund may not provide adequate resources to ensure stable registry function. Should a large number of registry operators fail within a short period following the launch of new gTLDs,

there would be insufficient participants in the such a fund to provide adequate funding to maintain emergence operations in the failed registries.

Code of Conduct-Specification 9

Key Points

- Registry Operators that are able to demonstrate to ICANN that they meet certain criteria described in Section 6 of the Code of Conduct may qualify for an exemption from the Code of Conduct but will still be required to comply with the other non-discrimination provisions of the Registry Agreement.
- The reservation of names that pose a threat to the security and stability of the DNS is permitted by Section 2.6 of the Registry Agreement
- ICANN will make reports regarding compliance with the Code of Conduct public consistent with its accountability and transparency obligations.

Summary of Comments

Input on Abuses and Compliance. Before or during the application process ICANN should seek community input on potential abuses (including lists developed by the VI and RAP working groups), detection data, the data needed to detect, and protection mechanisms and compliance methods. Community input should also be sought on punitive measures to ensure compliance. *BC (15 May 2011).*

Dot Brand Applicants. We are pleased to note that provisions which take into account the situation of potential dot brand applicants have now been included in the Registry Code of Conduct. *Bright Consulting (14 May 2011).*

The definition of unaffiliated third party needs to be clarified in this context – Need to limit use with respect to customers, subscribers, employees? Etc. *RySG (15 May 2011).*

Exempting certain dot brand registries from the strictures of the Registry Operator Code of Conduct and in particular from the non-discrimination requirement among accredited registrars is a step in the right direction. ICANN should take the next logical step and allow the registry operator in this situation to dispense with the use of accredited registrars altogether. *COA (15 May 2011).*

ICANN should clarify how the dot brand exceptions in Specification 9 and in Section 4.5 of the draft registry agreement operate before finalizing the applicant guidebook. Each exception applies only under stated conditions which differ from one another. It is not clear whether this distinction is intended or inadvertent and it may be unclear to potential dot brand applicants how they should structure themselves in order to benefit from either one or the other of these exceptions. *COA (15 May 2011). IPC (15 May 2011).*

The language “otherwise make available” in the exception provision for the dot brand/single registrant TLDs is too broad and should be replaced with “transfer control of the registration.” The phrase “otherwise make available” might be interpreted to include instances where a single-

registrant operator allows non-affiliated parties to post content to websites where the registration is still entirely controlled by the operator. *BC (15 May 2011)*.

Treatment of Registrars (Section 1(a)). The provision should only obligate Registry Operator to provide an equal level of operation access to the registry's systems and support services. The current language would appear to prohibit a broad array of arrangements that would be common practice between affiliated companies. For example, it would appear to prohibit a registry from providing an initial capital contribution to an affiliated registrar, or from providing shared services or facilities to such a registrar. Prohibiting a registry from providing these kinds of assistance to an affiliated registrar would render it impracticable for a registry to establish such a registrar, which would be inconsistent with the Board's directive to permit such arrangements. It could also put the registrar at a competitive disadvantage with other registrars that may enjoy such support from their affiliated companies. In addition, as only registrars have access to a registry's systems and support services, we do not believe it is necessary to prohibit registries from providing a preference or special consideration to resellers. *RySG (15 May 2011)*.

Registration of Names by Registry Operator (Section 1(b)). This Section does not provide a carve-out for registration of names in order to preserve security and stability of the DNS (i.e.; conficker). This omission could negatively impact the capability of registries to operationally protect the security and stability of TLDs. *RySG (15 May 2011)*

Clarifications needed. Key terms such as "other related entity" have not been defined. All second level names which the registry intends to register in its own right as "necessary for the management, operations..." should be publicly specified either as reserved names in the registry operator's application or as "additional registry services" through the RSTEP process. Otherwise, the exception in 1(b) of the Code of Conduct provides too wide a loophole and invites abuse by the registry operator over a wide range of second level domains. *IPC (15 May 2011)*.

Proposed revision to Section 1(e), Specification 9. RySG recommends these changes (underlined): "Fail to adopt, implement and enforce policies and procedures reasonably designed to prevent the disclosure of confidential registry data or...except (i) as necessary for the management and operations of the TLD, and (ii) to the extent [delete "unless"] all unrelated third parties..." *RySG (15 May 2011)*.

Internal Compliance Reviews. The RySG notes that publication of the results may deter discussion of confidential matters, which may be an unwanted result. *RySG (15 May 2011)*.

Internal compliance review--checklist. The internal compliance reviews required by item 3 should be specified in more detail (e.g. a checklist of items to be included). *IPC (15 May 2011)*.

Analysis of Comments

Through the previous two public postings of the draft Code of Conduct, ICANN has sought community input on the types of practices that should be prohibited or required in connection with the introduction of vertical integration. ICANN will continue to work with the community to mitigate any potential harms from vertical integration through appropriate revisions to the Code of Conduct.

The criteria that Registry Operator must meet and demonstrate to ICANN in order to qualify for a possible exemption from the Code of Conduct is intended to describe TLDs where all registrations are maintained by Registry Operator for its own use or the use of its affiliates. See the Analysis of Comments under “Transition Following Termination” for further discussion on the appropriate criteria. It is important to note that, consistent with GNSO Principals on the new gTLD program, Section 2.9 of the Registry Agreement, which mandates non-discrimination among ICANN-accredited registrars continues to be applicable to all types of TLDs.

Paragraph 1(a) has been revised in the new draft Registry Agreement in response to community comment to clarify that the non-discrimination restrictions apply to availability and use of registry services and not to other typical business arrangements between affiliates. Further, the reference to resellers has been removed as inapplicable.

A carve-out to Paragraph 1(b) allowing for the registration of names by Registry Operator in connection with the preservation of the security and stability of the DNS is not necessary as Registry Operator is permitted to reserve such names from registration in its discretion pursuant to Section 2.6 of the Registry Agreement. Registry Operator will not be required to list any names that it registers pursuant to Paragraph 1(b) but Registry Operator will be required to demonstrate how such names are necessary for the operation and management of the TLD if requested by ICANN. Should the registration of any such names violate a third party’s legal rights, the PDDRP will be available to resolve disputes arising from such violation.

The adoption of policies and procedures designed to avoid disclosure of confidential registry data is not sufficient. Registry Operator must covenant not to make such disclosures. As such, the proposed revisions to Paragraph 1(e) have not been adopted.

The results of internal reviews of compliance with the Code of Conduct will be made public consistent with ICANN’s accountability and transparency obligations to the community. ICANN may develop a required format to be used in connection with such reports following further study of the implementation of the Code of Conduct and reporting practices.

Registry Performance Specification – Specification 10

Key Points

- Registry response times will be subject to publication.
- All relevant ICANN contact information will be made available to registries.

Summary of Comments

Monitoring Results. ICANN is proposing a system by which ICANN will monitor registry response times over the Internet. The RySG has pointed out to ICANN that this monitoring method will yield variable results depending upon Internet traffic and transit issues beyond every registry operator’s control. The RySG would like confirmation that ICANN does not plan on publishing the monitoring results, which might for example be prejudicial to registry operators in certain parts of the world. *RySG (15 May 2011).*

ICANN Contacts (Sections 7.1 through 7.3). There should be an obligation for ICANN to publish to all Registry Operators the e-mail address and phone number for ICANN's emergency operations department. *RySG (15 May 2011)*.

Analysis of Comments

In connection with its accountability and transparency obligations, ICANN does intend to publish monitoring results. Information regarding response times may be important to registrants and other members of the community regardless of whether or not Registry Operator has full control over such response times.

ICANN will make all necessary contact information needed for "Emergency Escalation" available to Registry Operators as needed and appropriate.

RESPONDENTS

Adobe Systems Incorporated (Adobe Systems)
AFNIC
Eric Iriarte Ahon (E. Iriarte Ahon)
AIM-European Brands Association (AIM)
American Intellectual Property Law Association (AIPLA)
Ronald N. Andruff et al. (R. Andruff et al.)
Arla Foods Amba (Arla Foods)
Asociacion Puntogal
AusRegistry International (AusRegistry)
AutoTrader.com
Bayern Connect GmbH (Bayern Connect)
BBC and BBC Worldwide (BBC)
Brights Consulting Inc. (Brights Consulting)
B. Burmaa, Datacom Co., Ltd., Mongolia (B. Burmaa)
China Internet Network Information Center (CNNIC)
City of New York
Coalition Against Domain Name Abuse (CADNA)
Coalition for Online Accountability (COA)
Commercial and Business Users Constituency (BC)
Dansk Internet Forum (DIFO)
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DotAsia Organisation (DotAsia)
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IDN Working Group of TWNIC (IDN WG-TWNIC)
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International AntiCounterfeiting Coalition (IACC)
International Olympic Committee (IOC)
International Trademark Association (INTA)
Internet Commerce Association (ICA)
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Max Menius (M. Menius)
Microsoft Corporation (Microsoft)
Minds + Machines
Tero Mustala (T. Mustala)
National Cable & Telecommunications Association (NCTA)
Network Solutions, LLC (Network Solutions)
Neustar, Inc. et al. (Neustar et al.)
News Corporation
Michele Neylon (M. Neylon)
Non-Commercial Users Constituency (NCUC)
Not-for-Profit Operational Concerns Constituency (NPOC)
Oversee.net
Partridge IP Law (Partridge)
Registries Stakeholder Group (RySG)
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United States Olympic Committee (USOC)
UrbanBrain Inc. (UrbanBrain)
Valideus Ltd. (Valideus)
WIPO Arbitration and Mediation Center (WIPO Center)

EXHIBIT C-015

gTLD Applicant Guidebook

Version 2012-01-11



11 January 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



gTLD Applicant Guidebook

(v. 2012-01-11)

Module 1

11 January 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gnso.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

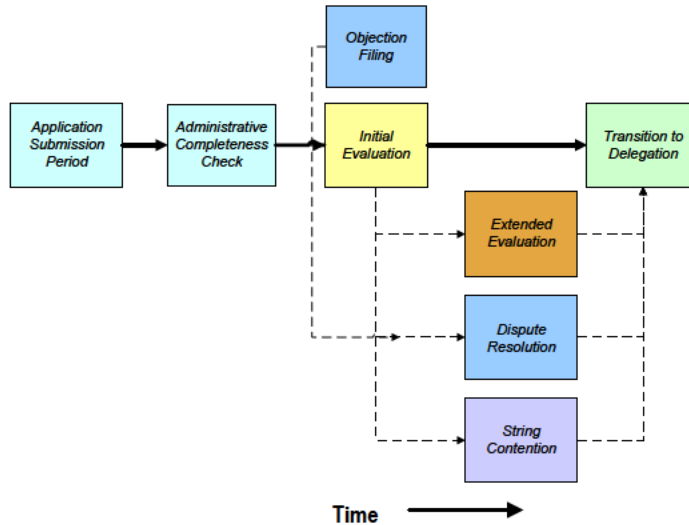


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN’s task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.¹ The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

¹ While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.²

1.1.2.6 *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

² See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9 Dispute Resolution

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C’s application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

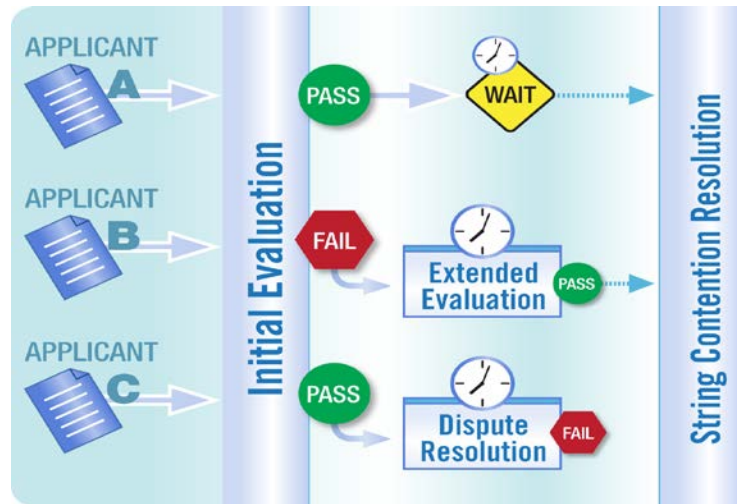


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

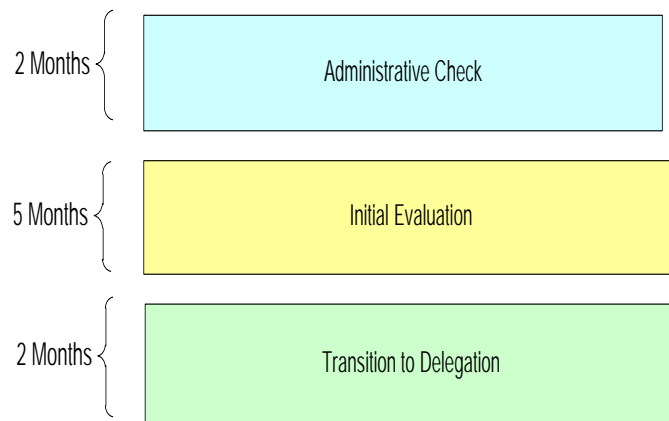


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

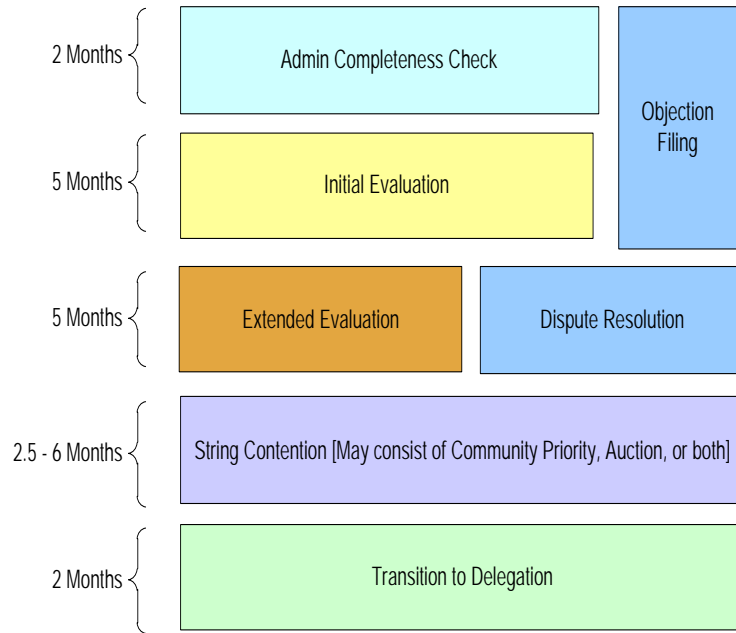


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 Subsequent Application Rounds

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2 Information for All Applicants

1.2.1 Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)^{4 5};
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

³ <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

⁴ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

⁵ It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁶ may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

⁶ http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2 Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1 Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2 Implications of Application Designation

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3 Changes to Application Designation

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review <http://www.icann.org/en/topics/TLD-acceptance/> for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

1.2.5 Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7 Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8 Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at <http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf>.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9 Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See <http://newgtlds.icann.org/applicants/candidate-support> for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at <http://icann.org/en/topics/idn/rfcs.htm>.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).⁷

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

⁷ See examples at <http://stupid.domain.name/node/683>

1.3.2 IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at <http://www.iana.org/procedures/idn-repository.html>.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines⁸ and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

⁸ See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at <http://iana.org/domains/idn-tables/>, and submission guidelines at <http://iana.org/procedures/idn-repository.html>.

1.3.3 IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.⁹ Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

⁹ The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

- a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a “Declared Variants List” that will be available on ICANN’s website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (<http://www.icann.org/en/topics/new-gtld-program.htm>), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012**.

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2 Customer Service during the Application Process

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

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

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

Note on 2000 proof-of-concept round applicants -- Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof-of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

¹⁰ The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider's payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider's procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider's rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider's rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel’s review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.¹¹

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider’s instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

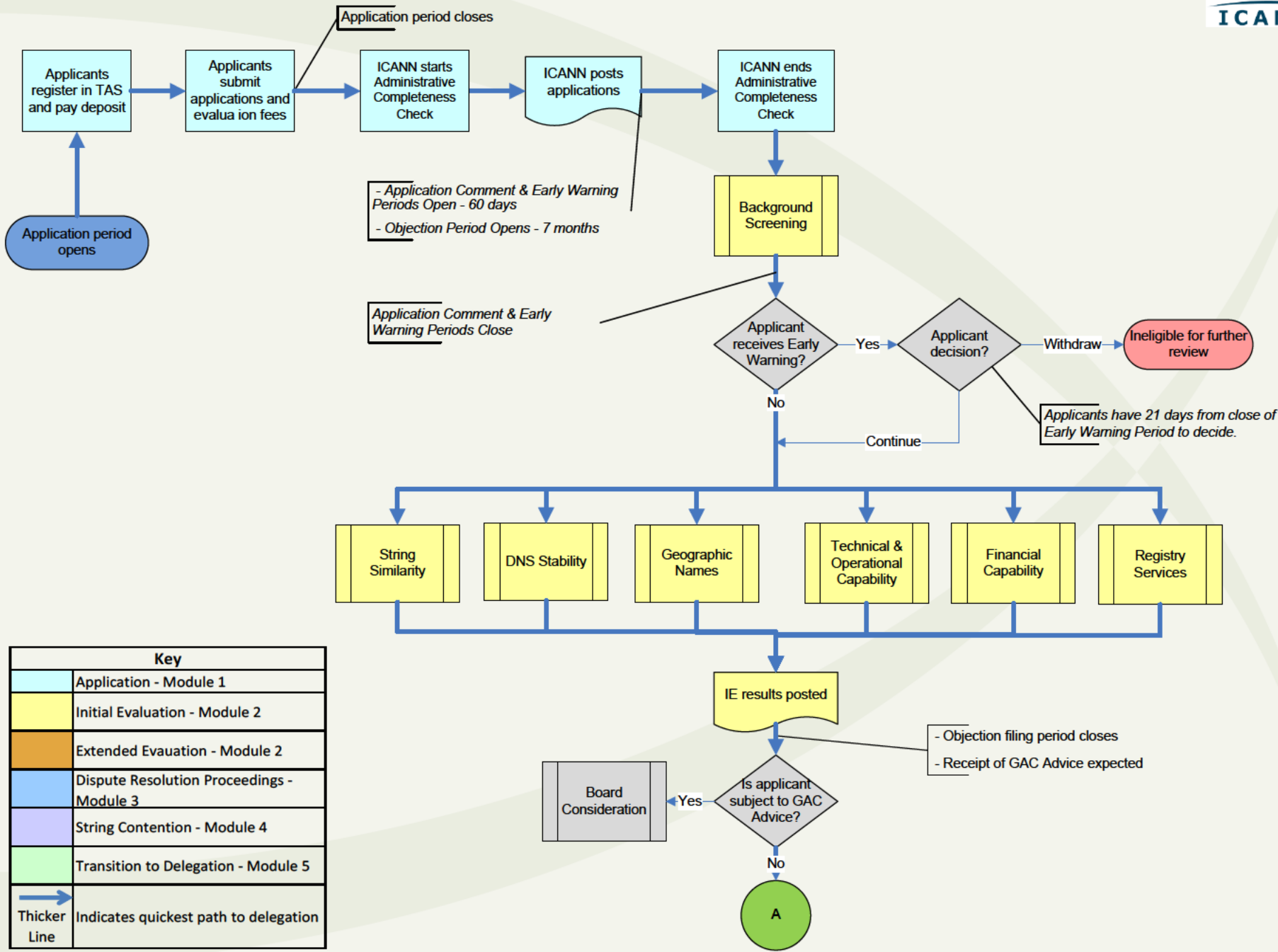
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

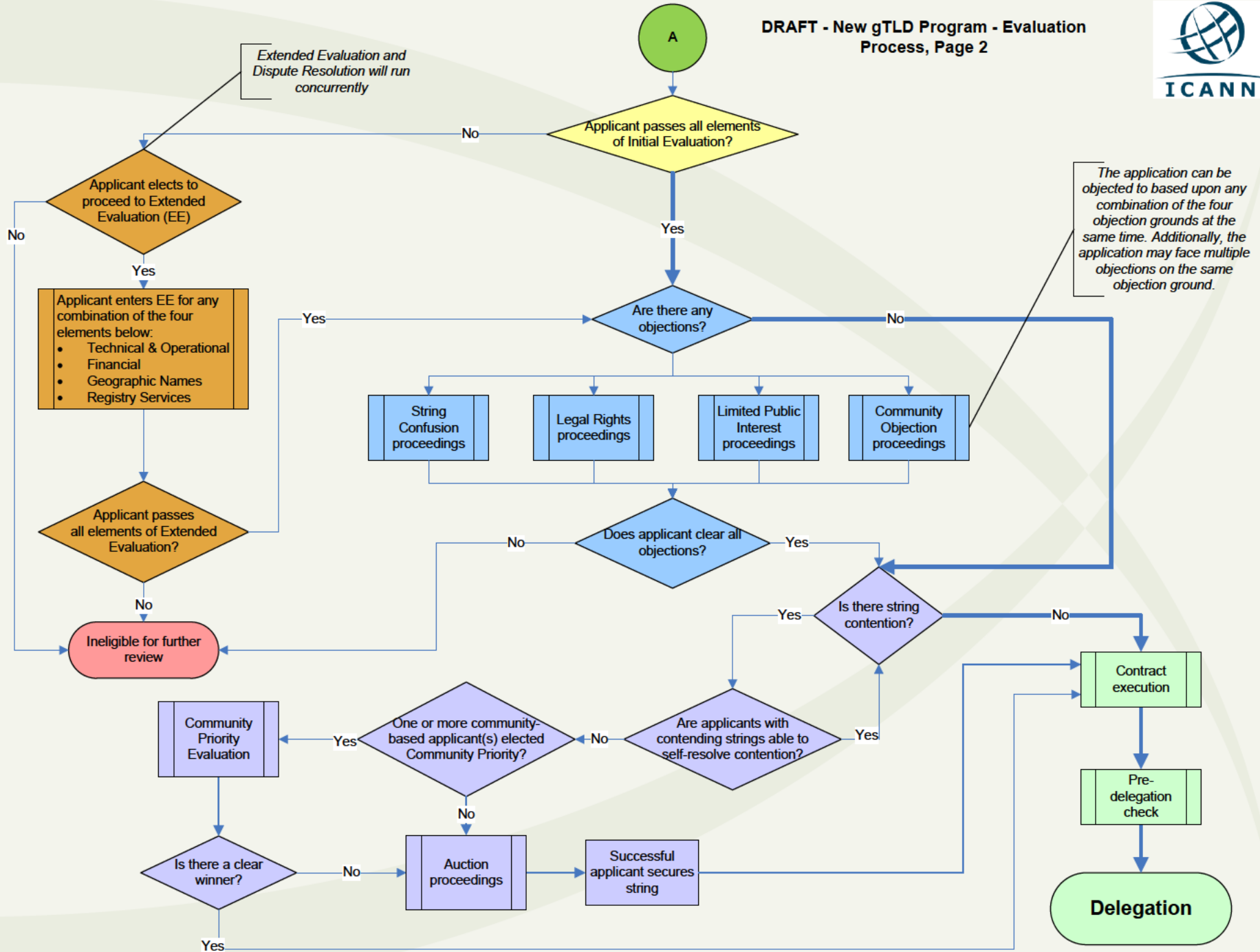
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process



Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation
	Thicker Line





gTLD Applicant Guidebook

(v. 2012-01-11)

Module 2

11 January 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
 - String similarity
 - Reserved names
 - DNS stability
 - Geographic names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 Background Screening

Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.¹

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

¹ See <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization>

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 History of cybersquatting

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2 Initial Evaluation

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel’s task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
 - Every other single character.
 - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as “foo” and “Foo” are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

IDN tables that have been submitted to ICANN are available at <http://www.iana.org/domains/idn-tables/>.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN's website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term “validated” is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at <http://www.icann.org/en/topics/idn>.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.² Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.³

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

² See <http://icann.sword-group.com/algorithm/>

³ In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2 *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 *Reserved Names*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

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

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
<p>*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.</p>		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

2.2.1.2.2 *Declared Variants*

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3 *Strings Ineligible for Delegation*

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألبيلصرأ	لاله ارمح أأ
ءارمحلأ قرولبلأ	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)* (RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

2.2.3.2 *Customary Services*

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 *TLD Zone Contents*

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



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

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

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

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

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

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

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

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

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

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

Panel confirms supporting documentation where required.

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

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue Extended Evaluation?

Extended Evaluation process

Applicant continues to subsequent steps.

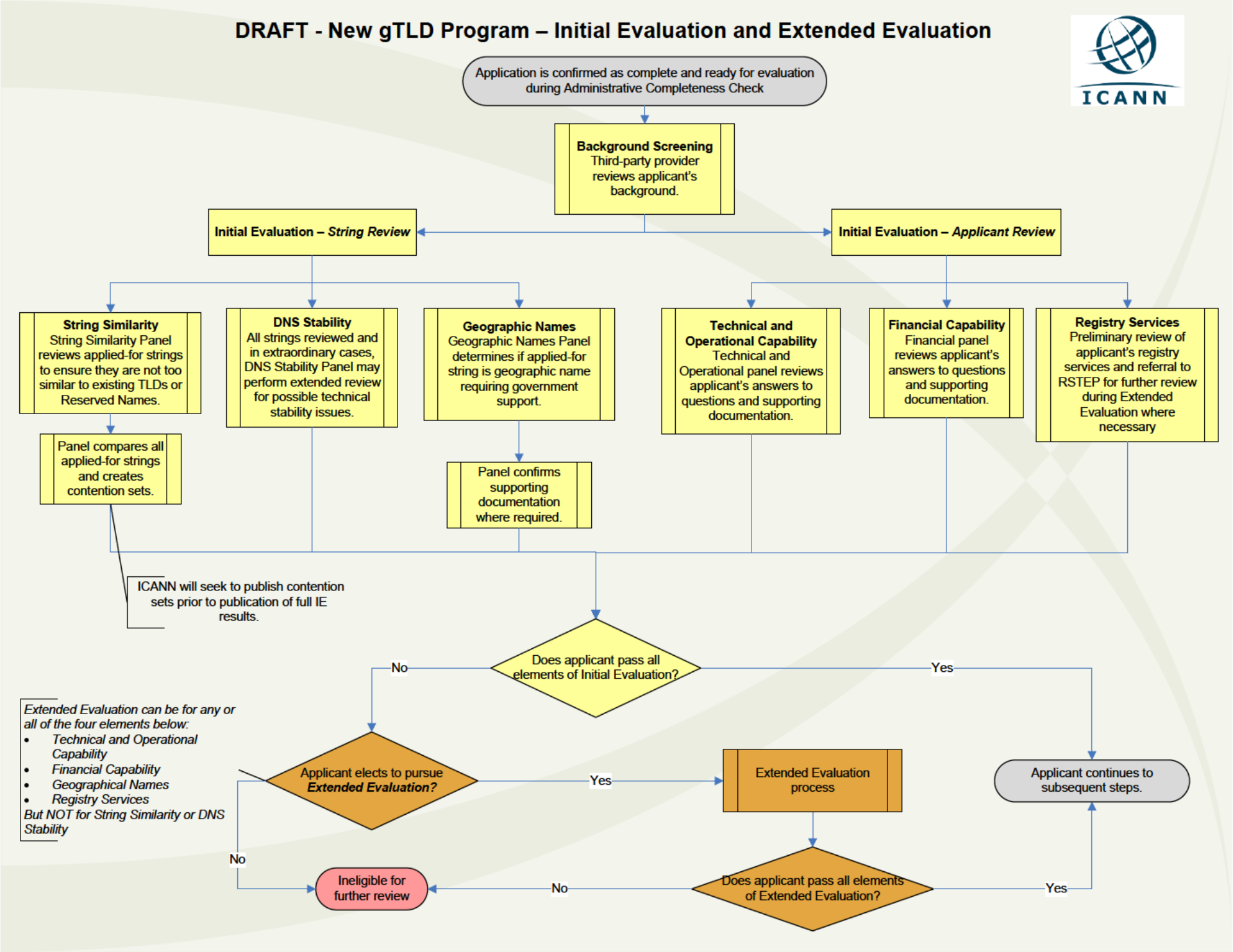
Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

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

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

But NOT for String Similarity or DNS Stability



Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

Eligibility

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president,	Partial				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.					
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+006F.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results. The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for protecting the privacy or confidential information of registrants or users? If so, please describe any such 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				measures. Describe whether and in what ways outreach and communications will help to achieve your projected benefits.			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	Answers should address the following points: <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered. The applicant's designation as standard or community-based cannot be changed once the application is submitted.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community. 			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature. 			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. • relationship to the identification of community members. • any connotations the string may have beyond the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> • Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. • Name selection: what types of second-level names may be registered in the gTLD. • Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. • Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

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Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the “Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings” list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See “Principles regarding New gTLDs” at https://gacweb.icann.org/display/gacweb/New+gTLDs.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See https://gacweb.icann.org/display/gacweb/New+gTLDs.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level must be separately approved according to</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

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				Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). <p>A complete answer is expected to be no more than</p>	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> a plan for operating a robust and reliable SRS, one of the five critical registry functions; scalability and performance consistent with the overall business approach, and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of a well-developed plan to operate a robust and reliable SRS; SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; SRS is consistent with the technical, operational and financial approach described in the application; and Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the application demonstrates compliance with any applicable</p>

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		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface; (3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and (4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area). 	Y		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of registration lifecycles and states; (2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and (3) the ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points; (3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and (4) Demonstrates an adequate level of resources that are already on hand or committed or readily available to carry out this function.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; Policies for handling complaints regarding abuse; Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.</p> <ul style="list-style-type: none"> Measures to promote Whois accuracy (can be undertaken by the registry directly 	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; Plans are adequately resourced in the planned costs detailed in the financial section; Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant’s capabilities and knowledge required to meet this element; Details of well-developed abuse policies and procedures; Plans are sufficient to result in compliance with contractual requirements; Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 – fails requirements Does not meet all the requirements to</p>

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		<p>or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. <ul style="list-style-type: none"> ● A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; ● Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong 					score 1.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;</p> <ul style="list-style-type: none"> ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also</p>	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements; (4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and (5) Demonstrates an adequate level of resources that are on hand,

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of adequate security</p>

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							<p>capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed;</p> <p>(3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants;</p> <p>(4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and</p> <p>(5) Proposed security measures are commensurate with the nature of the applied-for gTLD string.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
Demonstration of Technical & Operational Capability (Internal)	30	<p>(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response policies, plans, and processes; • plans to minimize the risk of unauthorized access to its systems or tampering with registry data; • intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against 	N	<p>Questions 30(b) – 44 are designed to provide a description of the applicant’s intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>those threats, and provision for periodic threat analysis updates;</p> <ul style="list-style-type: none"> • details for auditing capability on all network access; • physical security approach; • identification of department or group responsible for the registry's security organization; • background checks conducted on security personnel; • description of the main security threats to the registry operation that have been identified; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions. If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical</p>	N	<p>To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of technical aspects of registry requirements; (2) an adequate level of resiliency for the registry's technical operations; (3) consistency with planned or currently deployed technical/operational solutions; (4) consistency with the overall business approach and planned size of the registry; (5) adequate resourcing for technical plan in the planned costs detailed in the financial section; and (6) consistency with subsequent technical questions. 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Technical plans consistent with the technical, operational, and financial approach as described in the application; (3) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<p>infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the registry; (4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and (5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. <p>0 - fails requirements:</p>

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		<p>against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					Does not meet all the requirements to score 1.
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate</p>

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							<p>level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> • the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; • any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p> <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers; (2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and (2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence; (3) Geo-diversity plans are consistent with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). Demonstrate how the system will function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement. <p>Examples of evidence include:</p> <ul style="list-style-type: none"> Server configuration standard (i.e., planned configuration). Network addressing and bandwidth for query load and update propagation. 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; evidence of compliance with Specification 6 to the Registry Agreement; and evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions. 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element; Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix; Plans are consistent with technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<ul style="list-style-type: none"> • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10; (3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	37	<p>Data Backup Policies & Procedures: provide details of frequency and procedures for backup of data,</p> <ul style="list-style-type: none"> • hardware, and systems used for backup, • data format, • data backup features, • backup testing procedures, • procedures for retrieval of data/rebuild of database, • storage controls and procedures, and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel 	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed backup and retrieval processes deployed; (2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element; (2) A description of leading practices being or to be followed; (3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of data escrow, one of the five critical registry functions; (2) compliance with Specification 2 of the Registry Agreement; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry. 	<p>1 – meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement); (3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 – fails requirements: Does not meet all the requirements to score a 1.</p>
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>		<p>disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>		Registry Agreement.	<p>result in compliance with requirements (Specification 6);</p> <p>(3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is 	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of a registry transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>unable to move forward according to the plan.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; How results are captured, what is done with the results, and with whom results are shared; How test plans are updated (e.g., what triggers an update, change management processes for making updates); Length of time to restore critical registry functions; Length of time to restore all operations, inclusive of critical registry functions; and Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements; a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element; A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results; Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> Meeting the fault tolerance / monitoring guidelines described Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; Plans are consistent with the technical, operational, and financial approach described in the application; and Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: 	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key

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		<p>RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and</p> <ul style="list-style-type: none"> resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>				<p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) an ability to comply with relevant RFCs.</p>	<p>material from registrants through the SRS ;</p> <p>(3) An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage);</p> <p>(4) Technical plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <p>(1) Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations;</p> <p>(3) Evidence of ability to resolve rendering and known IDN issues or spoofing attacks;</p> <p>(4) IDN plans are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p> <p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> balance sheet; income statement; statement of shareholders equity/partner capital; cash flow statement, and letter of auditor or independent certification, if applicable. 	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history (less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; and (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made. <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p>	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p> <p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and 	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant); (2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and (3) Projections are reasonably aligned with the historical financial statements provided in Question 45. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<ul style="list-style-type: none"> Costs of outsourcing, if any. 	
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described. Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> Executed funding agreements; A letter of credit; A commitment letter; or A bank statement. <p>Funding commitments may be conditional on the approval of the application.</p>	<p>2 - exceeds requirements: Response meets all the attributes for a score of 1 and</p> <ol style="list-style-type: none"> Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ; If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and earmarked for this purpose only in an amount adequate for three years operation; If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity. <p>1 - meets requirements:</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> • Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; • Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and • Describe the measures to mitigate the 	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <p>(1) Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>1 - meets requirements:</p> <p>(1) Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks);</p> <p>(2) Response gives consideration to probability and resource impact of</p>

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		<p>key risks as described in this question.</p> <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>contingencies identified; and</p> <p>(3) If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> • how on-going technical requirements will be met; and • what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p> <p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>	N				
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical,</p>	N	Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the	0-3	Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry</p>		<p>registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>		<p>fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements:</p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>					
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date 	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument.</p> <ul style="list-style-type: none"> • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee. ○ Applicant's complete name and address. ○ LOC identifying number. ○ Exact amount in USD. ○ Expiry date. ○ Address, procedure, and required forms whereby presentation for payment is to be made. ○ Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. 		<p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(ii) A <u>deposit into an irrevocable cash escrow account</u> held by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term of five years from the delegation of the TLD. • The funds in the deposit escrow account are not considered to be an asset of ICANN. • Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. • The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. • The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. • Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

In local currency (unless noted otherwise)

Comments / Notes

Provide name of local currency used.

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume					
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
E) Total Cash Inflows		-	345 000	496 800	698 339
Projected Operating Cash Outflows					
F) Labor:					
i) Marketing Labor					
ii) Customer Support Labor		5 000	68 000	71 000	74 000
iii) Technical Labor		32 000	45 000	47 000	49 000
G) Marketing		40 000	44 000	26 400	31 680
H) Facilities		7 000	10 000	12 000	14 400
I) General & Administrative		14 000	112 000	122 500	136 000
J) Interest and Taxes		27 500	29 000	29 800	30 760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) Hot site maintenance					
		5 000	7 500	7 500	7 500
ii) Partial Registry Functions					
		32 000	37 500	41 000	43 000
iii) (list type of activities being outsourced)					
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
w) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12 200	18 000	21 600	25 920
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079
Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs					
		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs					
		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260
Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS					
		5 000	5 500	6 050	
B) Provision of Whois					
		6 000	6 600	7 260	
C) DNS Resolution for Registered Domain Names					
		7 000	7 700	8 470	
D) Registry Data Escrow					
		8 000	8 800	9 680	
E) Maintenance of Zone in accordance with DNSSEC					
		9 000	9 900	10 890	
F) Other		-	-	-	-
G) Total Critical Function Cash Outflows		35 000	38 500	42 350	
III) Projected Capital Expenditures					
A) Hardware					
		98 000	21 000	16 000	58 000
B) Software					
		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment					
		43 000	22 000	14 000	16 000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)					
		-	-	-	-
ii)					
		-	-	-	-
iii)					
		-	-	-	-
iv)					
		-	-	-	-
v)					
		-	-	-	-
w)					
		-	-	-	-
E) Other Capital Expenditures		-	-	-	-
F) Total Capital Expenditures		173 000	61 000	54 000	85 000
IV) Projected Assets & Liabilities					
A) Cash					
		668 300	474 300	413 000	471 679
B) Accounts receivable					
		70 000	106 000	160 000	160 000
C) Other current assets					
		40 000	60 000	80 000	80 000
D) Total Current Assets		668 300	584 300	579 000	711 679
E) Accounts payable					
		41 000	110 000	113 000	125 300
F) Short-term Debt					
		-	-	-	-
G) Other Current Liabilities					
		-	-	-	-
H) Total Current Liabilities		41 000	110 000	113 000	125 300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
K) Other Long-term Assets					
		359 000	420 000	474 000	559 000
L) Total Long-term Assets		359 000	420 000	474 000	559 000
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000
V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows					
	= Sec. I) N	(199 700)	(92 000)	46 000	205 079
B) Capital expenditures					
	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)
C) Change in Non Cash Current Assets					
	= Sec. IV) (B) (C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)
D) Change in Total Current Liabilities					
	= Sec. IV) H: Cur Yr - Prior Yr	41 000	69 000	3 000	12 300
E) Debt Adjustments					
	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments		-	-	-	-
G) Projected Net Cash flow		(331,700)	(194,000)	(61,000)	58,379
VI) Sources of funds					
A) Debt:					
i) On-hand at time of application					
		1 000 000	-	-	-
ii) Contingent and/or committed but not yet on-hand					
		-	-	-	-
B) Equity:					
i) On-hand at time of application					
		-	-	-	-
ii) Contingent and/or committed but not yet on-hand					
		-	-	-	-
C) Total Sources of funds		1 000 000	-	-	-

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function. Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support. Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown are adequate to fund our business operations.

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Live / Operational				
		Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows					
D)	Other cash inflows					
	E) Total Cash Inflows					
Projected Operating Cash Outflows						
F)	Labor:					
	i) Marketing Labor					
	ii) Customer Support Labor					
	iii) Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
	i) (list type of activities being outsourced)					
	ii) (list type of activities being outsourced)					
	iii) (list type of activities being outsourced)					
	iv) (list type of activities being outsourced)					
	v) (list type of activities being outsourced)					
	vi) (list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb) Break out of Critical Function Operating Cash Outflows						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III) Projected Capital Expenditures						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
	i)					
	ii)					
	iii)					
	iv)					
	v)					
	vi)					
E)	Other Capital Expenditures					
	F) Total Capital Expenditures					
IV) Projected Assets & Liabilities						
A)	Cash					
B)	Accounts receivable					
C)	Other current assets					
	D) Total Current Assets					
E)	Accounts payable					
F)	Short-term Debt					
G)	Other Current Liabilities					
	H) Total Current Liabilities					
I)	Total Property, Plant & Equipment (PP&E)					
J)	3-year Reserve					
K)	Other Long-term Assets					
	L) Total Long-term Assets					
	M) Total Long-term Debt					
V) Projected Cash flow (excl. 3-year Reserve)						
A)	Net operating cash flows					
C)	Capital expenditures					
D)	Change in Non Cash Current Assets	n/a				
E)	Change in Total Current Liabilities					
F)	Debt Adjustments	n/a				
G)	Other Adjustments					
	H) Projected Net Cash flow					
VI) Sources of funds						
A)	Debt:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
B)	Equity:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						

Template 2 - Financial Projections: Worst Case						Comments / Notes
In local currency (unless noted otherwise)			Live / Operational			Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows		-	-	-	
D)	Other cash inflows					
	E) Total Cash Inflows	-	-	-	-	
Projected Operating Cash Outflows						
F) Labor:						
i)	Marketing Labor					
ii)	Customer Support Labor					
iii)	Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
i)	(list type of activities being outsourced)					
ii)	(list type of activities being outsourced)					
iii)	(list type of activities being outsourced)					
iv)	(list type of activities being outsourced)					
v)	(list type of activities being outsourced)					
vi)	(list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows	-	-	-	-	
	N) Projected Net Operating Cash flow	-	-	-	-	
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows	-	-	-	-	
		CHECK				
IIb) Break out of Critical Function Operating Cash Outflows						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows	-	-	-	-	
	H) 3-year Total	-	-	-	-	
III) Projected Capital Expenditures						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
i)						
ii)						
iii)						
iv)						
v)						
vi)						
E)	Other Capital Expenditures					
	F) Total Capital Expenditures	-	-	-	-	
IV) Projected Assets & Liabilities						
A)	Cash					
B)	Accounts receivable					
C)	Other current assets					
	D) Total Current Assets	-	-	-	-	
E)	Accounts payable					
F)	Short-term Debt					
G)	Other Current Liabilities					
	H) Total Current Liabilities	-	-	-	-	
I)	Total Property, Plant & Equipment (PP&E)					
J)	3-year Reserve					
K)	Other Long-term Assets					
	L) Total Long-term Assets	-	-	-	-	
M)	Total Long-term Debt					
V) Projected Cash flow (excl. 3-year Reserve)						
A)	Net operating cash flows					
B)	Capital expenditures					
C)	Change in Non Cash Current Assets	n/a				
D)	Change in Total Current Liabilities					
E)	Debt Adjustments	n/a				
F)	Other Adjustments					
	H) Projected Net Cash flow	-	-	-	-	
VI) Sources of funds						
A) Debt:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
B) Equity:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds	-	-	-	-	
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						



gTLD Applicant Guidebook

(v. 2012-01-11)

Module 3

11 January 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. The ICANN Board is also expected to provide a rationale for its decision if it does not follow the GAC Advice.
- II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant. If the issue identified by the GAC is not remediated, the ICANN Board is also expected to provide a rationale for its decision if the Board does not follow GAC advice.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any

application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see <http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

¹ See also <http://www.iana.org/domains/int/policy/>.

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 *Community Objection*

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

for standing for a community objection, the objector must prove both of the following:

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.

- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.
- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and

international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 *Filing Procedures*

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed.

- For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program. These rules are available in draft form and have been posted along with this module.
- For a Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute

Resolution. These rules are available and have been posted along with this module.

- For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)⁴, as supplemented by the ICC as needed.
- For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC)⁵, as supplemented by the ICC as needed.

3.3.1 *Objection Filing Procedures*

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date. Objections will not be accepted by the DRSPs after this date.
- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.

⁴ See <http://www.iccwbo.org/court/expertise/id4379/index.html>

⁵ *Ibid.*

- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 *Objection Filing Fees*

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.
- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have

been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 *Selection of Expert Panels*

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;
- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and

community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DRSP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 *String Confusion Objection*

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 *Legal Rights Objection*

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector’s existing mark.
2. Whether the objector’s acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant’s intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector’s mark, or could not have reasonably been unaware of that mark, and including whether the applicant has

engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.

5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6ter of the Paris Convention for the Protection of Industrial Property.

3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of discrimination that violate generally accepted legal norms recognized under principles of international law;
- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a

significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;
- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;

- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

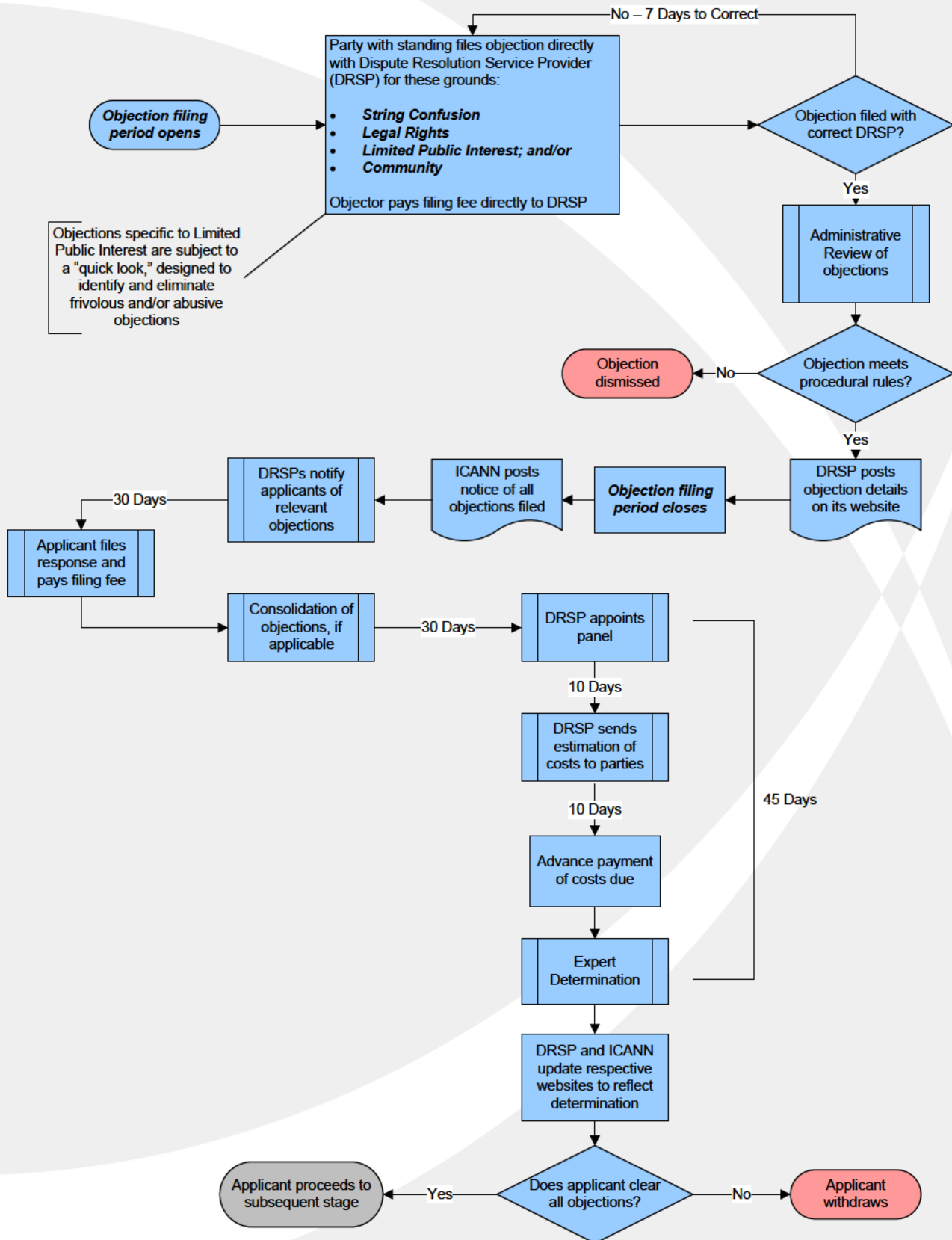
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) “Limited Public Interest Objection” refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
 - (iv) “Community Objection” refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) “DRSP Rules” are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.

International Centre for Dispute Resolution (ICDR)

Fees & Costs Schedule for String Confusion Objections
(Fee Schedule)

May 20, 2010

Administrative Filing Fees (non-refundable)

- US \$2750 Filing Fee; per party; per objection.
This amount is due on all objections filed.
- US \$1250¹ Case Service Fee; per party; per objection.
This additional amount only becomes due if any type of hearing is conducted in accordance with Article 19 of the gTLD Dispute Resolution Procedures.

Neutral Panel Compensation (limited to one arbitrator)

- US \$6000² per objector/applicant.
This is collected for all cases to be heard on documents only and includes all arbitrator expenses.
- US \$3000³ per party.
This is billed if any type of hearing is conducted.
 - Same amount billed for each additional day of hearing beyond one day.
 - Includes all travel time of the neutral.
 - Does not include travel expenses which will be billed separately

¹See Article 19 of the gTLD Dispute Resolution Procedures.

²See Article 14(b) of the gTLD Dispute Resolution Procedures.

³See Article 14(c) of the gTLD Dispute Resolution Procedures.

International Centre for Dispute Resolution (ICDR)
Supplementary Procedures for String Confusion Objections
(Rules)

10 January 2012

Impartiality and Independence of Experts

Article 1

1. Dispute Resolution Panelists, who shall be referred to as "Experts", acting under the New **gTLD DISPUTE RESOLUTION PROCEDURES** and these Rules shall be impartial and independent. Prior to accepting appointment, a prospective Expert shall disclose to the Dispute Resolution Service Provider (DRSP) any circumstance likely to give rise to justifiable doubts as to the Expert's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that may give rise to such doubts, an Expert shall promptly disclose such circumstances to the parties and to the DRSP. Upon receipt of such information from an Expert or a party, the DRSP shall communicate it to the other parties and to the panel.
2. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any Expert.

Challenge of Experts

Article 2

1. A party may challenge any Expert whenever circumstances exist that give rise to justifiable doubts as to the Expert's impartiality or independence. A party wishing to challenge an Expert shall send notice of the challenge to the DRSP within 10 days after being notified of the appointment of the Expert or within 10 days after the circumstances giving rise to the challenge become known to that party.
2. The challenge shall state in writing the reasons for the challenge.
3. Upon receipt of such a challenge, the DRSP shall notify the other parties of the challenge. Upon review of the challenge the DRSP in its sole discretion shall make the decision on the challenge and advise the parties of its decision. The challenged Expert may also withdraw from office upon notice of the challenge.

Replacement of an Expert

Article 3

If an Expert withdraws after a challenge, or the DRSP sustains the challenge, or the DRSP determines that there are sufficient reasons to accept the resignation of an Expert, or an Expert dies, a substitute Expert shall be appointed pursuant to the provisions of Article 13 of the **gTLD Dispute Resolution Procedures**.

Waiver of Rules

Article 4

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

Confidentiality

Article 5

Confidential information disclosed during the proceedings by the parties, counsel, or by witnesses shall not be divulged by an Expert or by the DRSP.

Interpretation of Rules

Article 6

The Expert shall interpret and apply these Rules insofar as they relate to its powers and duties. The DRSP shall interpret and apply all other Rules.

Exclusion of Liability

Article 7

1. Neither the International Centre for Dispute Resolution (ICDR), the American Arbitration Association (AAA), nor any Expert in a proceeding under the New gTLD Dispute Resolution Procedures and/or these Rules is a necessary or proper party in judicial proceedings relating to the Objection proceeding.

2. Parties to an Objection proceeding under the New gTLD Dispute Resolution Procedures and/or these Rules shall be deemed to have consented that neither the ICDR, the AAA, nor any Expert shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any Objection proceeding under the gTLD Dispute Resolution Procedures and/or these Rules.

DRAFT

**World Intellectual Property Organization Schedule of Fees and Costs:
New gTLD Pre-Delegation Legal Rights Objection Procedure**

(All amounts are in United States dollars)

(This Schedule of Fees and Costs may be amended by WIPO in accordance with the WIPO Rules for New gTLD Dispute Resolution.)

DRSP Fee ¹

	DRSP Fee
Single-Expert Panel	2,000
Three-Expert Panel	3,000

Panel Fee ²

Base Panel Fee for Single Objection to Single Application Dispute

Single-Expert Panel	8,000
Three-Expert Panel	20,000
	(Presiding Expert: 10,000; Co-Expert: 5,000)

*Panel Fee for Multiple Objections to Single Application: ³
60% of Regular Base Fee (to be paid per Objection filed)*

Single-Expert Panel	4,800
Three-Expert Panel	12,000
	(Presiding Expert: 6,000; Co-Expert: 3,000)

*Panel Fee for Multiple Objections filed by Same Objector to Multiple Applications:
80% of Regular Base Fee (to be paid per Objection filed)³*

Single-Expert Panel	6,400
Three-Expert Panel	16,000
	(Presiding Expert: 8,000; Co-Expert: 4,000)

¹ See Articles 8(c) and 11(f) of the New gTLD Dispute Resolution Procedure.

² See Article 14 of the New gTLD Dispute Resolution Procedure.

³ See Article 12 of the New gTLD Dispute Resolution Procedure.

World Intellectual Property Organization Schedule of Fees and Costs:
New gTLD Pre-Delegation Legal Rights Objection Procedure

*All Other Scenarios*³

In all other scenarios, the DRSP shall determine the applicable fees in consultation with the Panel, taking into account the base fees stipulated above and the circumstances of the consolidated objections and applications.

Additional Advance Payments

Depending on the circumstances of the case, additional advance payments may be required to be made. In determining whether additional advance payments shall be required, the DRSP, in consultation with the Panel, may consider the following non-exclusive factors: the number of Applications and/or Objections to the TLD, the number of parties, the complexity of the dispute, the anticipated time required for rendering an Expert Determination, and the possible need for hearings, phone or video conferences, or additional pleading rounds.

**World Intellectual Property Organization
Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections
("WIPO Rules for New gTLD Dispute Resolution")**

(In effect as of June 20, 2011)

1. Scope of WIPO Rules for New gTLD Dispute Resolution in Relation to Procedure

(a) Set out below are the applicable WIPO Rules for New gTLD Dispute Resolution for Existing Legal Rights Objections as referred to in Article 4 of the New gTLD Dispute Resolution Procedure ("Procedure") as approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on June 20, 2011. The WIPO Rules for New gTLD Dispute Resolution are to be read and used in connection with the Procedure which provides the basic framework for the four categories of objections (as referred to in Articles 2 and 4 of the Procedure) arising from Applications under ICANN's New gTLD Program.

(b) The version of the WIPO Rules for New gTLD Dispute Resolution applicable to a proceeding conducted under the Procedure is the version in effect on the day when the relevant Application for a new gTLD is submitted (as referred to in Article 23(b) of the Procedure).

2. Definitions

Terms defined in the Procedure shall have the same meaning in the WIPO Rules for New gTLD Dispute Resolution. Words used in the singular shall include the plural and *vice versa* as the context may require.

3. Communications

(a) Subject to Article 6 of the Procedure, except where otherwise agreed beforehand with the WIPO Arbitration and Mediation Center ("Center"), and subject to the discretion of any appointed Panel, any submission to the Center or to the Panel shall be made by electronic mail (email) using arbiter.mail@wipo.int.

(b) In the event a party wishes to submit a hard copy or other non-electronic submission prior to Panel appointment, it shall first request leave to do so from the Center; the Center shall, in its sole discretion, then determine whether to accept the non-electronic submission. After Panel appointment, parties are referred to Article 6(a) of the Procedure.

4. Submission of Objection and Response

(a) In accordance with Articles 7 and 8 of the Procedure, the Objector shall transmit its Objection using the Objection Model Form set out in Annex A hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

(b) In accordance with Article 11 of the Procedure, the Applicant shall transmit its Response using the Response Model Form set out in Annex C hereto and posted on the Center's website and shall comply with the Center's Filing Guidelines set out in Annex B hereto and posted on the Center's website.

5. Center Review of Objections

(a) In accordance with Article 9 of the Procedure if an Objection is dismissed due to the Objector's failure to remedy an administrative deficiency, there shall be no refund of any DRSP Fee paid by the Objector pursuant to Article 14 of the Procedure and Paragraph 10 of the WIPO Rules for New gTLD Dispute Resolution.

(b) If an Objector submits a new Objection within ten (10) calendar days of closure of a proceeding as provided in Article 9(d) of the Procedure and Paragraph 5(a) of the WIPO Rules for New gTLD Dispute Resolution to remedy an administratively deficient Objection, such new Objection may be accompanied by a request for a DRSP Fee waiver, in whole or in part, for the Center's consideration in its sole discretion.

6. Appointment of Case Manager

(a) The Center shall advise the parties of the name and contact details of the Case Manager who shall be responsible for all administrative matters relating to the dispute and communications to the Panel.

(b) The Case Manager may provide administrative assistance to the parties or Panel, but shall have no authority to decide matters of a substantive nature concerning the dispute.

7. Consolidation

(a) In accordance with Article 12 of the Procedure, the Center may, where possible and practicable, and in its sole discretion, decide to consolidate Objections by appointing the same Panel to decide multiple Objections sharing certain commonalities. In the event of consolidation, the Panel shall render individual Expert Determinations for each Objection.

(b) A party may submit a consolidation request pursuant to Article 12(b) of the Procedure, or may oppose any consolidation request submitted. Any such opposition to a consolidation request shall be provided within seven (7) calendar days of the consolidation request. Any consolidation request or opposition thereto shall be limited to 1,500 words in length.

(c) In the case of consolidated Objections, the applicable reduced Panel fees are specified in Annex D hereto and posted on the Center's website.

World Intellectual Property Organization Rules for New gTLD Dispute Resolution

(d) Pursuant to Article 12 of the Procedure, in weighing the benefits that may result from consolidation against the possible prejudice or inconvenience that consolidation may cause, the Center in reaching its decision concerning consolidation, may take into account, *inter alia*, the following non-exclusive factors:

- (i) Whether the Objections concern the same or similar TLD(s);
- (ii) Whether the same Objector files Objections concerning multiple TLD applications;
- (iii) Whether in any consolidation request, or opposition thereto, the Objector or Applicant relies on single or multiple mark(s);
- (iv) The scope of evidence relied on by an Objector or Applicant in any Objection or application;
- (v) Any other arguments raised in any consolidation request, or opposition thereto;
- (vi) Expert availability to accept appointment.

(e) The Center's decision on any consolidation of multiple Objections for Expert Determination by the same Panel is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

8. Panel Appointment Procedures

(a) The Center will maintain and publish on its website a publicly-available List of Experts.

(b) Pursuant to Article 13(b)(ii) of the Procedure, there shall be a Single-Expert Panel unless all the Parties agree to the appointment of a Three-Expert Panel.

(c) In the event of a Single-Expert Panel, the Center shall in its sole discretion appoint an Expert from its List of Experts.

(d) In the event all the Parties agree to the appointment of a Three-Expert Panel, any such agreement shall be communicated to the Center within five (5) calendar days of the Center's receipt of the Response filed in accordance with Article 11 of the Procedure and Paragraph 4(b) of the WIPO Rules for New gTLD Dispute Resolution.

- (i) If Objections are not consolidated, and if the parties have communicated their agreement on the appointment of a Three-Expert Panel, within five (5) days of such communication each party shall separately submit to the Center (notwithstanding Article 6(b) of the Procedure) the names of three (3) candidates from the Center's List of Experts, in the order of their respective preference, for appointment by the Center as a Co-Expert. In the event none of a party's three (3) candidates is available for appointment as a Co-Expert, the Center shall appoint the Co-Expert in its sole discretion.

World Intellectual Property Organization Rules for New gTLD Dispute Resolution

- (ii) In the event of consolidation in accordance with Paragraph 7 of the WIPO Rules for New gTLD Dispute Resolution, the Objectors or Applicants shall, as the case may be, jointly submit the names of the three (3) candidates from the Center's List of Experts in order of preference (i.e., one list on behalf of all Objector(s) and one list on behalf of all Applicant(s)). If the Objectors or Applicants as the case may be do not jointly agree on and submit the names of three (3) candidates within five (5) calendar days of the parties' communication to the Center on their agreement to the appointment of a Three-Expert Panel, the Center shall in its sole discretion appoint the Co-Experts.
- (iii) The third Expert, who shall be the Presiding Expert, shall absent exceptional circumstances be appointed by the Center from a list of five (5) candidates submitted by the Center to the parties. The Center's selection of a Presiding Expert shall be made in a manner that seeks to reasonably balance the preferences of each party as communicated to the Center within five (5) calendar days of the Center's communication of the list of candidates to the parties.
- (iv) Where any party fails to indicate its order of preference for the Presiding Expert to the Center, the Center shall nevertheless proceed to appoint the Presiding Expert in its sole discretion, taking into account any preferences of any other party.

9. Expert Impartiality and Independence

(a) In accordance with Article 13(c) of the Procedure, any prospective Expert shall, before accepting appointment, disclose to the Center and parties any circumstance that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstance exist by submitting to the Center a *Declaration of Impartiality and Independence* using the form set out in Annex E hereto and posted on the Center's website.

(b) If at any stage during a proceeding conducted under the Procedure, circumstances arise that might give rise to justifiable doubt as to an Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

(c) A party may challenge an Expert if circumstances exist which give rise to justifiable doubt as to the Expert's impartiality or independence. A party may challenge an Expert whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

- (i) A party challenging an Expert shall send notice to the Center and the other party, stating the reasons for the challenge, within five (5) calendar days after being notified of that Expert's appointment or becoming aware of circumstances that it considers give rise to justifiable doubt as to that Expert's impartiality or independence.
- (ii) The decision on the challenge shall be made by the Center in its sole discretion. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision. In the event of an Expert's removal, the Center shall appoint a new Expert in accordance with the Procedure and these WIPO Rules for New gTLD Dispute Resolution.

10. Fees

(a) The applicable fees for the Procedure for Existing Legal Rights Objections are specified in Annex D hereto and posted on the Center's website.

(b) After the Expert Determination has been rendered or a proceeding conducted under the Procedure has been terminated, the Center shall provide an accounting to the parties of the payments received and, in consultation with any Panel, return any unexpended balance of the Panel Fee to the parties.

11. Confidentiality

(a) A party invoking the confidentiality of any information it wishes or is required to submit in any Existing Legal Rights Objection proceeding conducted under the Procedure, shall submit the request for confidentiality to the Center for the Panel's consideration, stating the reasons for which it considers the information to be confidential. If the Panel decides that the information is to be treated as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(b) Further to Article 6(b) of the Procedure, except in exceptional circumstances as decided by the Panel and in consultation with the parties and the Center, no party or anyone acting on its behalf shall have any *ex parte* communication with the Panel.

12. Mediation

Further to Article 16 of the Procedure, prior to the Panel rendering its Expert Determination in a proceeding conducted under the Procedure, the parties may inform the Center that they wish to participate in mediation to attempt to resolve the dispute and may request the Center to administer the mediation. In such event, unless both parties agree otherwise, the WIPO Mediation Rules shall apply *mutatis mutandis*. On request from the parties, and absent exceptional circumstances, the Center's mediation administration fee shall be waived.

13. Effect of Court Proceedings

(a) The Objector and Applicant shall include in any Objection or Response relevant information regarding any other legal proceedings concerning the TLD. In the event that a party initiates any legal proceedings during the pendency of a proceeding conducted under the Procedure, it shall promptly notify the Center.

(b) In the event of any legal proceedings initiated prior to or during a proceeding conducted under the Procedure, the Panel shall have the discretion to decide whether to suspend or terminate such proceeding under the Procedure, or to proceed to an Expert Determination.

14. Termination

(a) If, before the Panel renders an Expert Determination, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Panel may in its discretion terminate the proceeding.

(b) If, prior to Panel appointment, it becomes unnecessary or impossible to continue a proceeding conducted under the Procedure for any reason, the Center in consultation with the parties and ICANN, may in its discretion terminate the proceeding.

15. Amendments

Subject to the Procedure, the Center may amend these WIPO Rules for New gTLD Dispute Resolution in its sole discretion.

16. Exclusion of Liability

Except in respect of deliberate wrongdoing, an Expert, the World Intellectual Property Organization, and the Center shall not be liable to any party or ICANN for any act or omission in connection with any proceeding conducted under the Procedure and the WIPO Rules for New gTLD Dispute Resolution.



gTLD Applicant Guidebook

(v. 2012-01-11)

Module 4

11 January 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

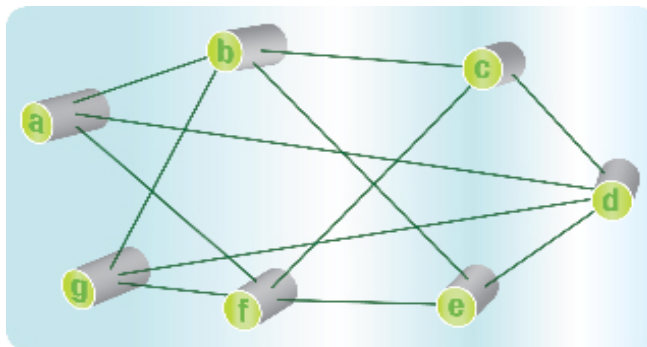


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

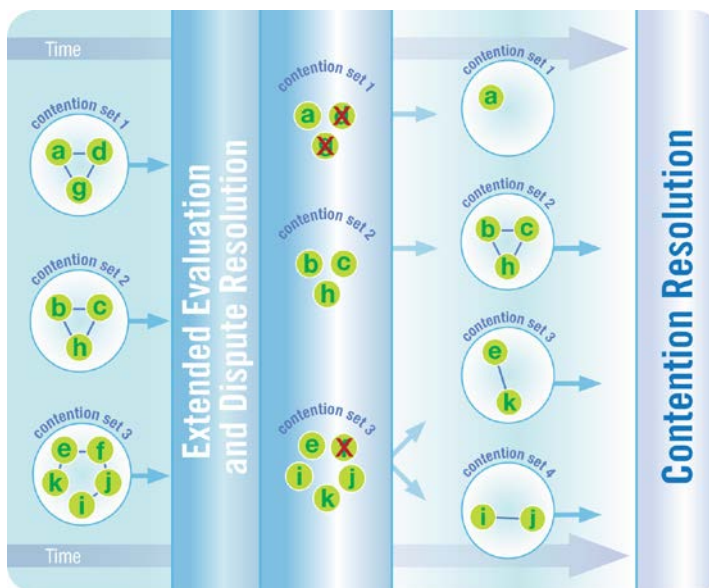


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 Impact of String Confusion Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

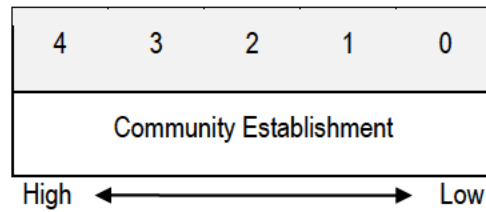
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

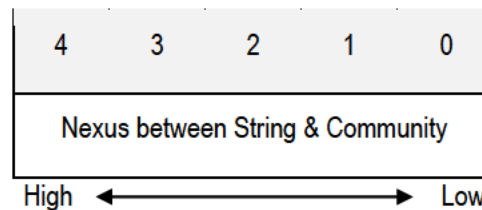
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

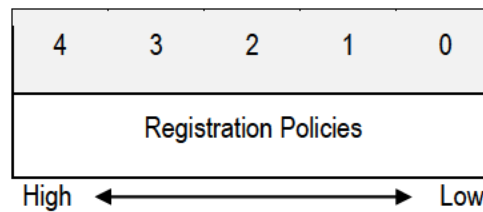
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

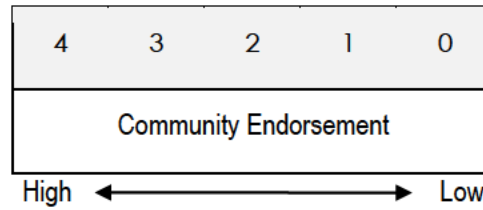
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)



As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

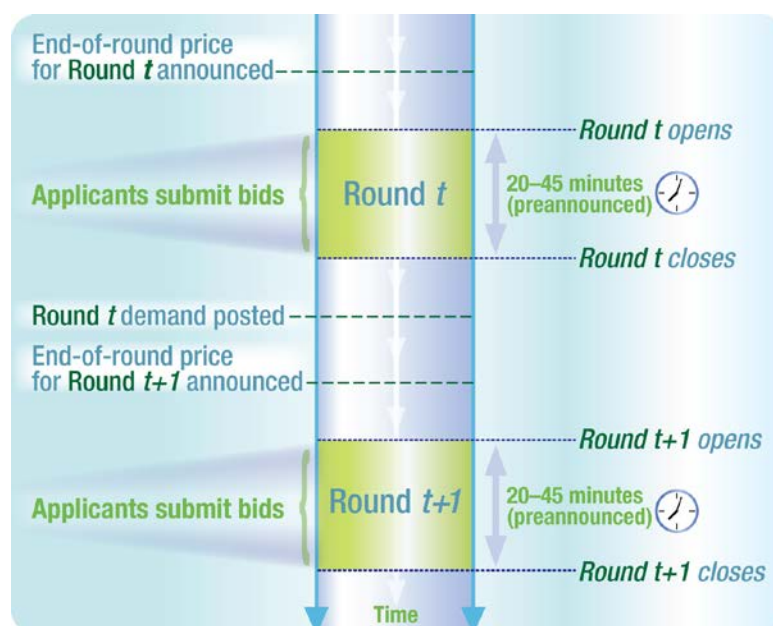


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

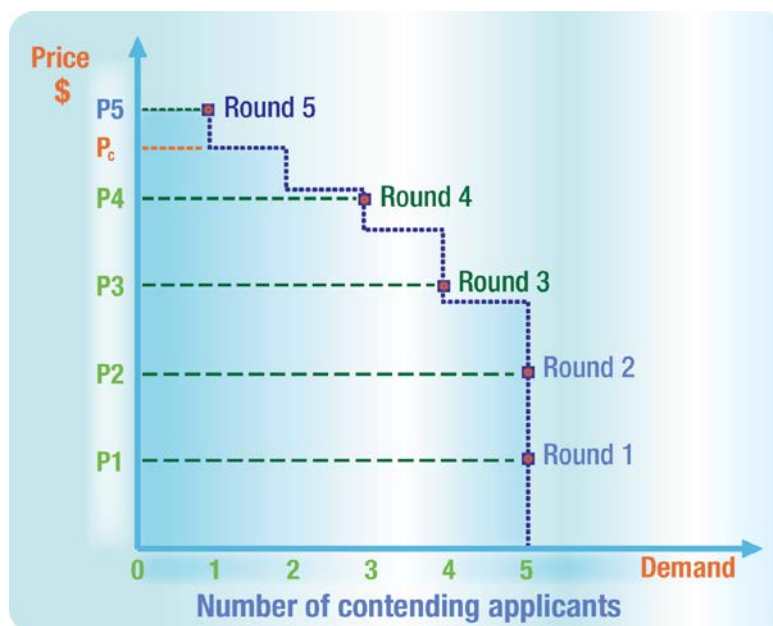


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.² Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

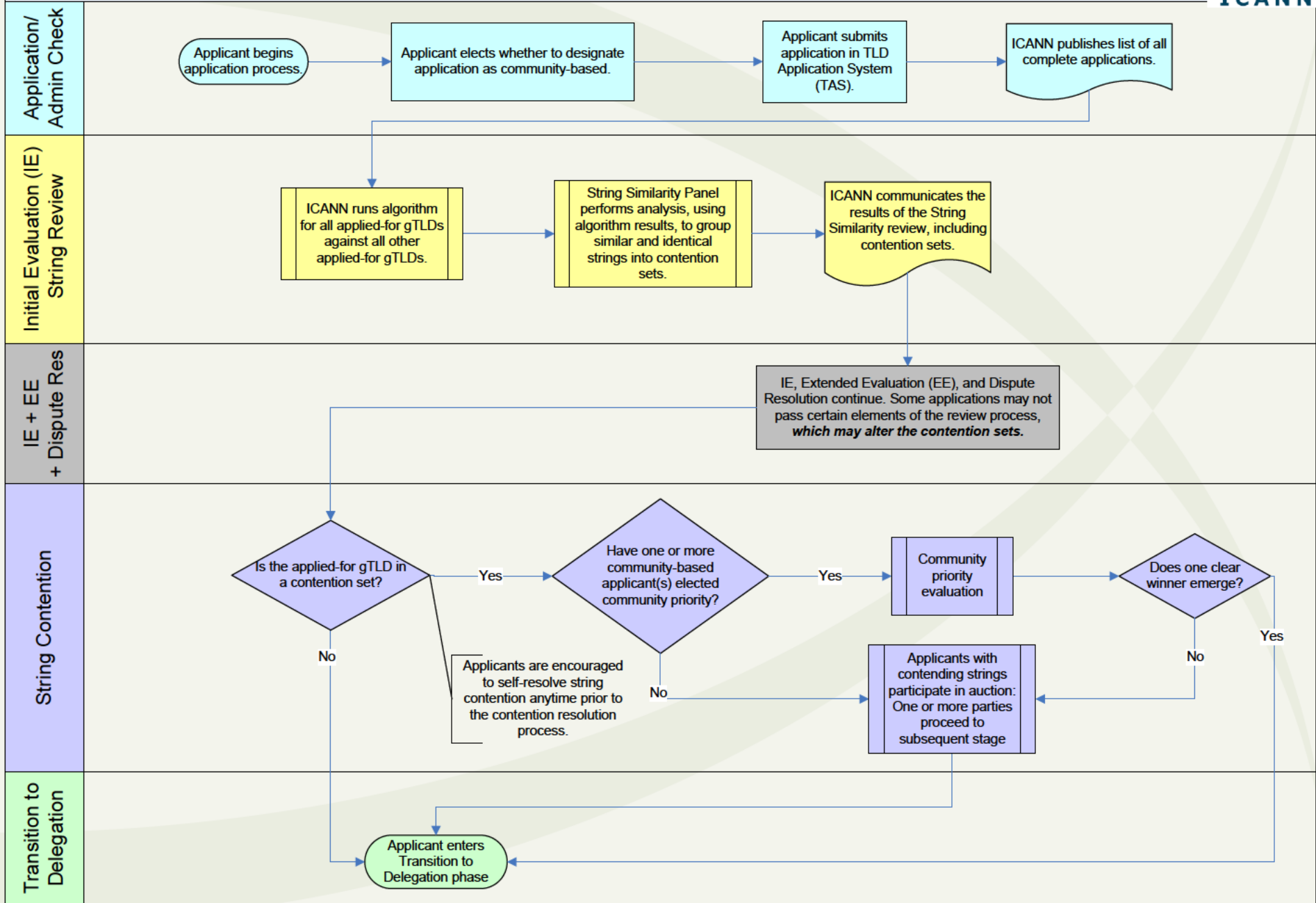
² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting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

4.4 *Contention Resolution and Contract Execution*

An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

DRAFT - New gTLD Program - String Contention





gTLD Applicant Guidebook

(v. 2012-01-11)

Module 5

11 January 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 *Pre-Delegation Testing*

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 *Testing Procedures*

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 *What is Expected of ICANN*

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

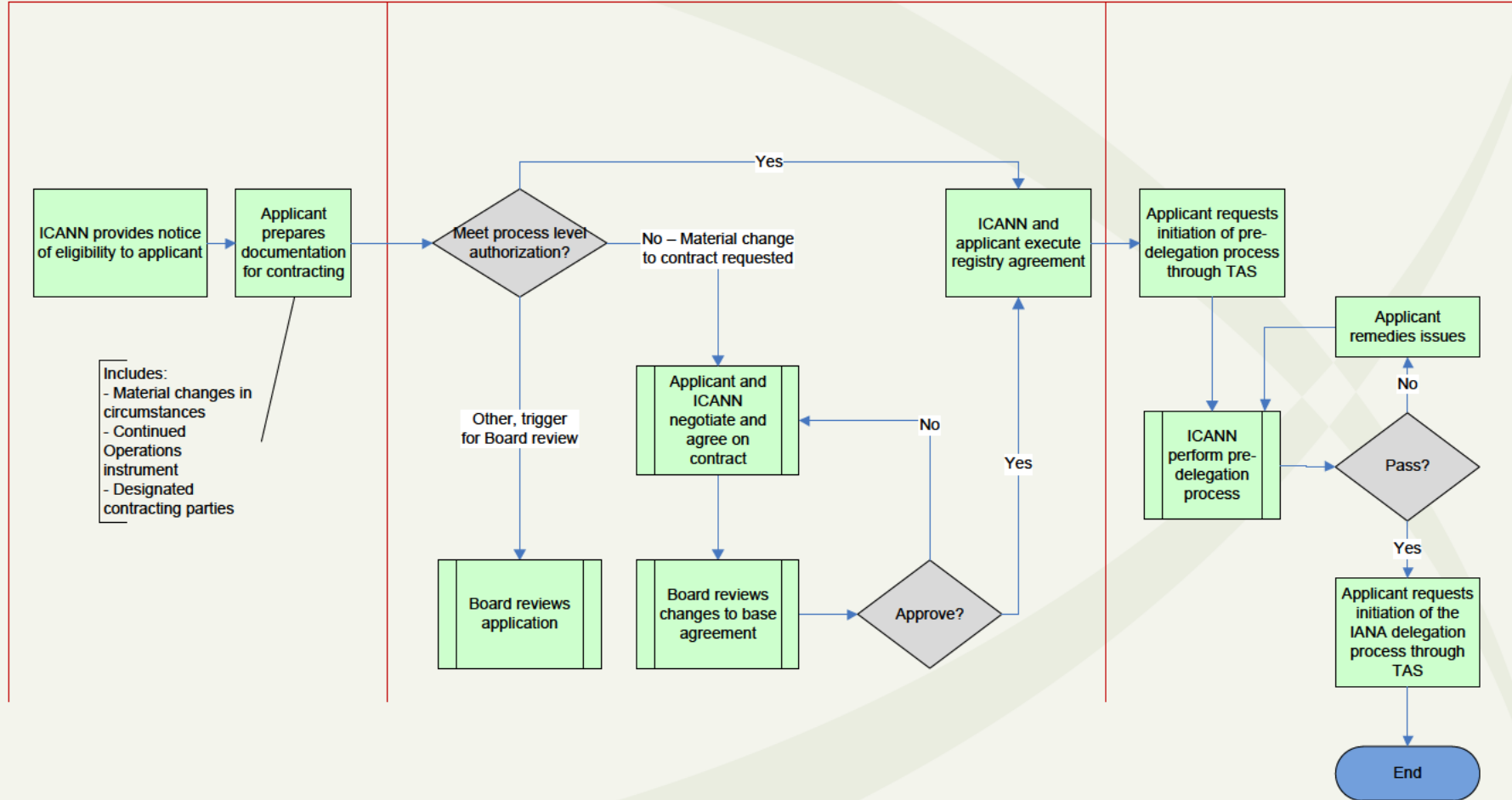
Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

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

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

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

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____] President and CEO

Date:

[Registry Operator]

By: _____
[_____] _____
[_____]

Date:

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

EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.

1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:

- 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
- 1.2.2. functional and performance specifications for the provision of Registry Services;
- 1.2.3. Security and Stability of the registry database for the TLD;
- 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:

- 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
- 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
- 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0":
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. Registration Data Directory Services. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

```

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

```

Registrant Phone: +1.5555551212
 Registrant Phone Ext: 1234
 Registrant Fax: +1.5555551213
 Registrant Fax Ext: 4321
 Registrant Email: EMAIL@EXAMPLE.TLD
 Admin ID: 5372809-ERL
 Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
 Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
 Admin Street: 123 EXAMPLE STREET
 Admin City: ANYTOWN
 Admin State/Province: AP
 Admin Postal Code: A1A1A1
 Admin Country: EX
 Admin Phone: +1.5555551212
 Admin Phone Ext: 1234
 Admin Fax: +1.5555551213
 Admin Fax Ext:
 Admin Email: EMAIL@EXAMPLE.TLD
 Tech ID: 5372811-ERL
 Tech Name: EXAMPLE REGISTRAR TECHNICAL
 Tech Organization: EXAMPLE REGISTRAR LLC
 Tech Street: 123 EXAMPLE STREET
 Tech City: ANYTOWN
 Tech State/Province: AP
 Tech Postal Code: A1A1A1
 Tech Country: EX
 Tech Phone: +1.1235551234
 Tech Phone Ext: 1234
 Tech Fax: +1.5555551213
 Tech Fax Ext: 93
 Tech Email: EMAIL@EXAMPLE.TLD
 Name Server: NS01.EXAMPLEREGISTRAR.TLD
 Name Server: NS02.EXAMPLEREGISTRAR.TLD
 DNSSEC: signedDelegation
 DNSSEC: unsigned
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
 Street: 1234 Admiralty Way
 City: Marina del Rey
 State/Province: CA
 Postal Code: 90292
 Country: US
 Phone Number: +1.3105551212
 Fax Number: +1.3105551213

Email: registrar@example.tld
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 Admin Contact: Joe Registrar
 Phone Number: +1.3105551213
 Fax Number: +1.3105551213
 Email: joeregistrar@example-registrar.tld
 Admin Contact: Jane Registrar
 Phone Number: +1.3105551214
 Fax Number: +1.3105551213
 Email: janeregistrar@example-registrar.tld
 Technical Contact: John Geek
 Phone Number: +1.3105551215
 Fax Number: +1.3105551216
 Email: johngeek@example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
 IP Address: 192.0.2.123
 IP Address: 2001:0DB8::1
 Registrar: Example Registrar, Inc.
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. **Use of Data by User.** Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. **Term of Use.** Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. **No Fee for Access.** Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. **Assistance.** Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. Registry Services. “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. Wildcard Prohibition. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. High Availability. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. Extraordinary Event. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. Business Continuity. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.

2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.

3. Registry Operator will conduct internal reviews at least once per calendar year to

ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.

4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. EPP

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
11 JANUARY 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion. Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa)

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded]
International Class of Goods and Services or Equivalent if applicable: Trademark
Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded]
International Class of Goods and Services or Equivalent if applicable: Trademark
Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded]
International Class of Goods and Services or Equivalent if applicable: Trademark
Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
11 JANUARY 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

- 1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.
- 1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

- 2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.
- 2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

- 3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.
- 3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.
- 3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.
- 3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

- 4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").
- 4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:

5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or

5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:

5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.

5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.

5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.

5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.

5.9 Other factors for the Examiner to consider:

5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.

5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
11 JANUARY 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(b) impairing the distinctive character or the reputation of the complainant's mark; or

(c) creating a likelihood of confusion with the complainant's mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
 - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
 - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
11 JANUARY 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-01-11)

Module 6

11 January 2012

Module 6

Top-Level Domain Application – Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT C-016



International Chamber of Commerce

The world business organization

International Centre for Expertise • Centre international d'expertise

ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure

The ICC International Centre for Expertise (“Centre”), named as Dispute Resolution Service Provider (“DRSP”) in the New gTLD Dispute Resolution Procedure¹ (“Procedure”), has accepted ICANN’s invitation to be one of the DRSPs administering cases pursuant to the Procedure.

The Centre will administer these proceedings pursuant to the Procedure and the Rules for Expertise of the ICC² (“ICC Rules”), including Article 17, which shall be interpreted in accordance with this Practice Note on the Administration of Cases under the Procedure (“Practice Note”).

This Practice Note shall be considered as a supplement to the ICC Rules as mentioned by Article 4 of the Procedure.

In accordance with Article 1(d) of the Procedure, anyone filing an application for a new gTLD with ICANN has accepted the application of the ICC Rules and the Practice Note.

1. All documents and notifications shall be submitted by e-mail only to expertise@iccwbo.org, unless decided otherwise by the Centre or the expert(s);
2. Hardcopies of documents may be submitted only, when a party is explicitly invited by the Centre or the expert(s) to do so (Article 10 ICC Rules);
3. For the purpose of determining time limits, a document shall be deemed to have been submitted or a notification shall be deemed to have been made on the day it was transmitted pursuant to Article 6(c) of the Procedure (Article 10(3) ICC Rules);
4. A party wishing to file an objection shall use the model form provided by the Centre on its webpage (Article 9(3) ICC Rules);
5. A party wishing to file a response shall use the model form provided by the Centre on its webpage;

¹ Version 2012-01-11

² In force as from 1 January 2003

ICC International Centre for ADR • Centre international d'ADR de la CCI

38 Cours Albert 1er, 75008 Paris, France

Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49

6. By accepting the process as defined in Article 1(d) of the Procedure, parties are deemed to have waived the requirements for the expert mission as set out in Article 12(1) of the ICC Rules;
7. The Centre shall not be required to state reasons for its procedural decisions;
8. By accepting the process as defined in Article 1(d) of the Procedure, parties are deemed to have agreed that the expert determination shall be binding upon the parties (Article 12(3) ICC Rules);
9. Challenges and replacements of an expert shall be dealt with in accordance with Article 11(4) of the ICC Rules. They must be filed within five (5) days from the notification of the appointment of the expert or from the date when the party making the challenge was informed of the facts or circumstances on which the challenge is based;
10. Pursuant to Article 13(b)(iii) of the Procedure three experts shall be appointed in proceedings involving a Limited Public Interest Objection. One expert shall act as president, the two others as co-experts;
11. Unless otherwise agreed by the parties, the ICC ADR Rules shall apply to any request for mediation made by any of the parties;
12. Unless otherwise agreed by the parties and the Centre, the expert report shall be submitted to the parties by e-mail only;
13. For the purpose of administering proceedings pursuant to the Procedure, Article 3 of Appendix II referred to in Article 14 of the ICC Rules is modified as set out in Appendix III to the Rules;
14. The non-refundable amount payable pursuant to Article 14 of the ICC Rules, shall be considered as the filing fee pursuant to Articles 7 and 11 of the Procedure. If considered appropriate to do so, the Centre can refund this amount to a party.

EXHIBIT C-017



New gTLD Application Submitted to ICANN by: Amazon EU S.à r.l.

String: AMAZON

Originally Posted: 13 June 2012

Application ID: 1-1315-58086

Applicant Information

1. Full legal name

Amazon EU S.à r.l.

2. Address of the principal place of business

5 rue Plaetis
Luxembourg L-2338
LU

3. Phone number

+352 26733 300

4. Fax number

+352 26733 335

5. If applicable, website or URL

`http://www.amazon.com/`

Primary Contact

6(a). Name

Ms. Lorna Jean Gradden

6(b). Title

Operations Director

6(c). Address

6(d). Phone Number

+442074218250

6(e). Fax Number

+448700118187

6(f). Email Address

`lorna.gradden.am@valideus.com`

Secondary Contact

7(a). Name

Ms. Dana Brown Northcott

7(b). Title

Associate General Counsel, IP

7(c). Address

7(d). Phone Number

+1 2062667260

7(e). Fax Number

+1 2062667010

7(f). Email Address

danan@amazon.com

Proof of Legal Establishment

8(a). Legal form of the Applicant

Corporation (Société à responsabilité limitée)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Luxembourg

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

Amazon Europe Holding Technologies S.C.S. (AEHT) owns 100% of Amazon EU S.à r.l. AEHT is held by one unlimited partner, Amazon Europe Holdings, Inc. and two limited partners, Amazon.com, Inc. and Amazon.com Int'l Sales, Inc.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Amazon EU S.à r.l. is not a joint venture.

Applicant Background

11(a). Name(s) and position(s) of all directors

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(b). Name(s) and position(s) of all officers and partners

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Amazon Europe Holding Technologies S.C.S	Not Applicable
--	----------------

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**Applied-for gTLD string****13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

AMAZON

14(a). If an IDN, provide the A-label (beginning with "xn--").**14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.****14(c). If an IDN, provide the language of the label (in English).****14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).****14(d). If an IDN, provide the script of the label (in English).****14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).**

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

Neustar, Amazon EU S.à r.l.'s provider of back end registry services, confirms that it does not anticipate any problems in the operation or rendering of this ASCII string. The string conforms to accepted standards and poses no threat to the operational security and stability of the Internet.

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Founded in 1994, Amazon opened on the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon seeks to be Earth's most customer-centric company, where customers can find and discover anything they might want to buy

online, and endeavors to offer its customers the lowest possible prices. Amazon and other sellers offer millions of unique new, refurbished and used items in categories such as Books; Movies, Music & Games; Digital Downloads; Electronics & Computers; Home & Garden; Toys, Kids & Baby; Grocery; Apparel, Shoes & Jewelry; Health & Beauty; Sports & Outdoors; and Tools, Auto & Industrial. Amazon Web Services provides Amazon's developer customers with access to in-the-cloud infrastructure services based on Amazon's own back-end technology platform, which developers can use to enable virtually any type of business. The new latest generation Kindle is the lightest, most compact Kindle ever and features the same 6-inch, most advanced electronic ink display that reads like real paper even in bright sunlight. Kindle Touch is a new addition to the Kindle family with an easy-to-use touch screen that makes it easier than ever to turn pages, search, shop, and take notes - still with all the benefits of the most advanced electronic ink display. Kindle Touch 3G is the top of the line e-reader and offers the same new design and features of Kindle Touch, with the unparalleled added convenience of free 3G. Kindle Fire is the Kindle for movies, TV shows, music, books, magazines, apps, games and web browsing with all the content, free storage in the Amazon Cloud, Whispersync, Amazon Silk (Amazon's new revolutionary cloud-accelerated web browser), vibrant color touch screen, and powerful dual-core processor. Amazon and its affiliates operate websites, including www.amazon.com, www.amazon.co.uk, www.amazon.de, www.amazon.co.jp, www.amazon.fr, www.amazon.ca, www.amazon.cn, www.amazon.it, and www.amazon.es.

The mission of the .AMAZON registry is:

To provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation.

A .AMAZON registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

The .AMAZON registry will benefit registrants and internet users by offering a stable and secure foundation for online communication and interaction.

What is the goal of your proposed gTLD in terms of areas of specialty, service levels or reputation?

Amazon intends for its new .AMAZON gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction. The .AMAZON registry will be run in line with current industry standards of good registry practice.

What do you anticipate your proposed gTLD will add to the current space in terms of competition, differentiation or innovation?

Amazon values the opportunity to be one of the first companies to own a gTLD.

A .AMAZON registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

What goals does your proposed gTLD have in terms of user experience?

Amazon intends for its new .AMAZON gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction.

Provide a complete description of the applicant's intended registration policies in support of the goals above

Amazon's Intellectual Property group will be responsible for the development, maintenance and enforcement of a Domain Management Policy. The Domain Management

Policy will define (i) the rules associated with eligibility and domain name allocation, (ii) the license terms governing the use of a .AMAZON domain name, and (iii) the dispute resolution policies for the .AMAZON gTLD. Amazon will continually update the Domain Management Policy as needed to reflect Amazon's business goals and, where appropriate, ICANN consensus policies.

Registration of a domain name in the .AMAZON registry will be undertaken in four steps: (i) Eligibility Confirmation, (ii) Naming Convention Check, (iii) Acceptable Use Review, and (iv) Registration. All domains in the .AMAZON registry will remain the property of Amazon.

For example, on the rules of eligibility, each applied for character string must conform to the .AMAZON rules of eligibility. Each .AMAZON name must:

- be at least 3 characters and no more than 63 characters long
- not contain a hyphen on the 3rd and 4th position (tagged domains)
- contain only letters (a-z), numbers (0-9) and hyphens or a combination of these
- start and end with an alphanumeric character, not a hyphen
- not match any character strings reserved by ICANN
- not match any protected country names or geographical terms

Additionally:

- Internationalized domain names (IDN) may be supported in the .AMAZON registry at the second level.

- The .AMAZON registry will respect third party intellectual property rights.
- .AMAZON domains may not be delegated or assigned to third party organizations, institutions, or individuals.

- All .AMAZON domains will carry accurate and up-to-date registration records. Amazon's Intellectual Property group reserves the right to revoke a license to use a .AMAZON domain name, at any time, if any use of a .AMAZON domain name violates the Domain Management Policy.

Will your proposed gTLD impose any measures for protecting the privacy of confidential information of registrants or users?

Yes. Amazon will implement appropriate privacy policies respecting requirements of local jurisdictions. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

Describe whether and in what ways outreach and communications will help to achieve your projected benefits?

There is no foreseeable reason for Amazon to undertake public outreach or mass communication about its new gTLD registry because domains will be provisioned in line with Amazon's business goals.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

Amazon intends to initially provision a relatively small number of domains in the .AMAZON registry to support the business goals of Amazon. These initiatives should not impose social costs of any type on consumers.

How will multiple applications for a particular domain be resolved, for example, by auction or on a first come first served basis?

Applications from Amazon and its subsidiaries for domains in the .AMAZON registry will be considered by Amazon's Intellectual Property group and allocated in line with Amazon's business goals. The .AMAZON registry will not be promoted by hundreds of registrars simultaneously, so there will not be multiple-applications for a particular domain.

Explain any cost benefits for registrants you intend to implement (e.g. advantageous pricing, introductory discounts, bulk registration discounts).

Domains in the .AMAZON registry will be provisioned to support the business goals of Amazon. Accordingly, "cost benefits" may be explored depending on the business goals of Amazon. Amazon shares the goals of enhancing customer trust and choice. The Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion

of the registrar, but no greater than 10 years. Additionally the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? The Domain Management Policy will include the costs and benefits of Amazon's unique and dedicated platform for stable and secure online communication and interaction.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

Amazon EU S.à r.l., with support of its ultimate parent company, Amazon.com, Inc. (collectively referred to in this response throughout as "Amazon"), is committed to managing the .AMAZON registry in full compliance with all applicable laws, consensus policies, ICANN guidelines, RFCs and the Specifications of the Registry Agreement. In the management of domain names in the .AMAZON registry, based on GAC advice and Specification 5, Amazon intends to block from initial registration those country and territory names contained in the following lists:

1. The short form (in English) of all country and territory names contained on the ISO 3166- 1 list, as updated from time to time, including the European Union; and
2. The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
3. The list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

The process for reserving these names, and hence blocking them from registration, will be agreed to with our technical service provider Neustar.

Because the .AMAZON registry will be a single entity registry and for purposes which serve Amazon's strategic business aims, the reserved names cannot be offered to Governments or other official bodies for their own use as this would conflict with the mission and purpose of the gTLD. However, for the same reason, they will not be offered to third parties.

The .AMAZON registry only provides for the registration of names at the second level. No third level domains will be delegated at the registry level. It is consistent with GAC advice that Amazon may choose to create sub domains using country names or abbreviations at the third level. For example, Amazon may register intranet.amazon and its internal users may create sub domains such as us.intranet.amazon or uk.intranet.amazon.

Amazon may also use a folder structure to represent country names in its URLs, while the block exists at the second level. For example, intranet.amazon/germany or intranet.amazon/uk.

We imagine that over time, there will be demand from brand gTLDs leading to the

development of a standardized process for requesting GAC review and ICANN approval for the release of country and territory names for registration by the Registry Operator when the registry is a single entity registry. When such a process is in place, Amazon expects to apply for the release of country and territory names within .AMAZON.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

23.1 Introduction

Amazon EU S.à r.l. has elected to partner with Neustar, Inc. to provide back-end services for the .AMAZON registry. In making this decision, Amazon EU S.à r.l. recognized that Neustar already possesses a production-proven registry system that can be quickly deployed and smoothly operated over its robust, flexible, and scalable world-class infrastructure. The existing registry services will be leveraged for the .AMAZON registry. The following section describes the registry services to be provided.

23.2 Standard Technical and Business Components

Neustar will provide the highest level of service while delivering a secure, stable and comprehensive registry platform. Amazon EU S.à r.l. will use Neustar's Registry Services platform to deploy the .AMAZON registry, by providing the following Registry Services (none of these services are offered in a manner that is unique to .AMAZON).

- Registry-Registrar Shared Registration Service (SRS)
- Extensible Provisioning Protocol (EPP)
- Domain Name System (DNS)
- WHOIS
- DNSSEC
- Data Escrow
- Dissemination of Zone Files using Dynamic Updates
- Access to Bulk Zone Files
- Dynamic WHOIS Updates
- IPv6 Support
- Rights Protection Mechanisms
- Internationalized Domain Names (IDN).

The following is a description of each of the services.

SRS

Neustar's secure and stable SRS is a production-proven, standards-based, highly reliable, and high-performance domain name registration and management system. The SRS includes an EPP interface for receiving data from registrars for the purpose of provisioning and managing domain names and name servers. The response to Question 24 provides specific SRS information.

EPP

The .AMAZON registry will use the Extensible Provisioning Protocol (EPP) for the provisioning of domain names. The EPP implementation will be fully compliant with all RFCs. Registrars are provided with access via an EPP API and an EPP based Web GUI. With more than 10 gTLD, ccTLD, and private TLDs implementations, Neustar has extensive experience building EPP-based registries. Additional discussion on the EPP approach is presented in the response to Question 25.

DNS

Amazon EU S.à r.l. will leverage Neustar's world-class DNS network of geographically

distributed nameserver sites to provide the highest level of DNS service. The service utilizes "Anycast" routing technology, and supports both IPv4 and IPv6. The DNS network is highly proven, and currently provides service to over 20 TLDs and thousands of enterprise companies. Additional information on the DNS solution is presented in the response to Questions 35.

WHOIS

Neustar's existing standard WHOIS solution will be used for .AMAZON. The service provides supports for near real-time dynamic updates. The design and construction is agnostic with regard to data display policy is flexible enough to accommodate any data model. In addition, a searchable WHOIS service that complies with all ICANN requirements will be provided. The following WHOIS options will be provided:

- Standard WHOIS (Port 43)

- Standard WHOIS (Web)

- Searchable WHOIS (Web)

DNSSEC

An RFC compliant DNSSEC implementation will be provided using existing DNSSEC capabilities. Neustar is an experienced provider of DNSSEC services, and currently manages signed zones for three large top level domains: .biz, .us, and .co. Registrars are provided with the ability to submit and manage DS records using EPP, or through a web GUI. Additional information on DNSSEC, including the management of security extensions is found in the response to Question 43.

Data Escrow

Data escrow will be performed in compliance with all ICANN requirements in conjunction with an approved data escrow provider. The data escrow service will:

- Protect against data loss

- Follow industry best practices

- Ensure easy, accurate, and timely retrieval and restore capability in the event of a hardware failure

- Minimizes the impact of software or business failure.

Additional information on the Data Escrow service is provided in the response to Question 38.

Dissemination of Zone Files using Dynamic Updates

Dissemination of zone files will be provided through a dynamic, near real-time process. Updates will be performed within the specified performance levels. The proven technology ensures that updates pushed to all nodes within a few minutes of the changes being received by the SRS. Additional information on the DNS updates may be found in the response to Question 35.

Access to Bulk Zone Files

Amazon EU S.à r.l. will provide third party access to the bulk zone file in accordance with specification 4, Section 2 of the Registry Agreement. Credentialing and dissemination of the zone files will be facilitated through the Central Zone Data Access Provider.

Dynamic WHOIS Updates

Updates to records in the WHOIS database will be provided via dynamic, near real-time updates. Guaranteed delivery message oriented middleware is used to ensure each individual WHOIS server is refreshed with dynamic updates. This component ensures that all WHOIS servers are kept current as changes occur in the SRS, while also decoupling WHOIS from the SRS. Additional information on WHOIS updates is presented in response to Question 26.

IPv6 Support

The .AMAZON registry will provide IPv6 support in the following registry services: SRS, WHOIS, and DNS/DNSSEC. In addition, the registry supports the provisioning of IPv6 AAAA records. A detailed description on IPv6 is presented in the response to Question 36.

Required Rights Protection Mechanisms

Amazon EU S.à r.l. will provide all ICANN required Rights Mechanisms, including:

- Trademark Claims Service

- Trademark Post-Delegation Dispute Resolution Procedure (PDDRP)

- Registration Restriction Dispute Resolution Procedure (RRDRP)

- UDRP

- URS

- Sunrise service.

More information is presented in the response to Question 29.
Internationalized Domain Names (IDN)

IDN registrations are provided in full compliance with the IDNA protocol. Neustar possesses extensive experience offering IDN registrations in numerous TLDs, and its IDN implementation uses advanced technology to accommodate the unique bundling needs of certain languages. Character mappings are easily constructed to block out characters that may be deemed as confusing to users. A detailed description of the IDN implementation is presented in response to Question 44.

23.3 Unique Services

Amazon EU S.à r.l. will not be offering services that are unique to .AMAZON.

23.4 Security or Stability Concerns

All services offered are standard registry services that have no known security or stability concerns. Neustar has demonstrated a strong track record of security and stability within the industry.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

24.1 Introduction

Amazon EU S.à r.l. has partnered with Neustar, Inc., an experienced TLD registry operator, for the operation of the .AMAZON Registry. Amazon EU S.à r.l. is confident that the plan in place for the operation of a robust and reliable Shared Registration System (SRS) as currently provided by Neustar will satisfy the criterion established by ICANN.

Neustar built its SRS from the ground up as an EPP based platform and has been operating it reliably and at scale since 2001. The software currently provides registry services to five TLDs (.BIZ, .US, TEL, .CO and .TRAVEL) and is used to provide gateway services to the .CN and .TW registries. Neustar's state of the art registry has a proven track record of being secure, stable, and robust. It manages more than 6 million domains, and has over 300 registrars connected today. The following describes a detailed plan for a robust and reliable SRS that meets all ICANN requirements including compliance with Specifications 6 and 10.

24.2 The Plan for Operation of a Robust and Reliable SRS

High-level SRS System Description

The SRS to be used for .AMAZON will leverage a production-proven, standards-based, highly reliable and high-performance domain name registration and management system that fully meets or exceeds the requirements as identified in the new gTLD Application Guidebook.

The SRS is the central component of any registry implementation and its quality, reliability and capabilities are essential to the overall stability of the TLD. Neustar has a documented history of deploying SRS implementations with proven and verifiable performance, reliability and availability. The SRS adheres to all industry standards and protocols. By leveraging an existing SRS platform, Amazon EU S.à r.l. is mitigating the significant risks and costs associated with the development of a new system. Highlights of the SRS include:

- State-of-the-art, production proven multi-layer design
- Ability to rapidly and easily scale from low to high volume as a TLD grows
- Fully redundant architecture at two sites
- Support for IDN registrations in compliance with all standards
- Use by over 300 Registrars
- EPP connectivity over IPv6

Performance being measured using 100% of all production transactions (not sampling).

SRS Systems, Software, Hardware, and Interoperability

The systems and software that the registry operates on are a critical element to providing a high quality of service. If the systems are of poor quality, if they are difficult to maintain and operate, or if the registry personnel are unfamiliar with them, the registry will be prone to outages. Neustar has a decade of experience operating registry infrastructure to extremely high service level requirements. The infrastructure is designed using best of breed systems and software. Much of the application software that performs registry-specific operations was developed by the current engineering team and as a result the team is intimately familiar with its operations.

The architecture is highly scalable and provides the same high level of availability and performance as volumes increase. It combines load balancing technology with scalable server technology to provide a cost effective and efficient method for scaling.

The Registry is able to limit the ability of any one registrar from adversely impacting other registrars by consuming too many resources due to excessive EPP transactions. The system uses network layer 2 level packet shaping to limit the number of simultaneous connections registrars can open to the protocol layer. All interaction with the Registry is recorded in log files. Log files are generated at each layer of the system. These log files record at a minimum:

- The IP address of the client
- Timestamp
- Transaction Details
- Processing Time.

In addition to logging of each and every transaction with the SRS Neustar maintains audit records, in the database, of all transformational transactions. These audit records allow the Registry, in support of Amazon EU S.à r.l., to produce a complete history of changes for any domain name.

SRS Design

The SRS incorporates a multi-layer architecture that is designed to mitigate risks and easily scale as volumes increase. The three layers of the SRS are:

- Protocol Layer
- Business Policy Layer
- Database.

Each of the layers is described below.

Protocol Layer

The first layer is the protocol layer, which includes the EPP interface to registrars. It consists of a high availability farm of load-balanced EPP servers. The servers are designed to be fast processors of transactions. The servers perform basic validations and then feed information to the business policy engines as described below. The protocol layer is horizontally scalable as dictated by volume. The EPP servers authenticate against a series of security controls before granting service, as follows:

- The registrar's host exchanges keys to initiate a TLS handshake session with the EPP server.

- The registrar's host must provide credentials to determine proper access levels.

- The registrar's IP address must be preregistered in the network firewalls and traffic-shapers.

Business Policy Layer

The Business Policy Layer is the "brain" of the registry system. Within this layer, the policy engine servers perform rules-based processing as defined through configurable attributes. This process takes individual transactions, applies various validation and policy rules, persists data and dispatches notification through the central database in order to publish to various external systems. External systems fed by the Business Policy Layer include backend processes such as dynamic update of DNS, WHOIS and Billing.

Similar to the EPP protocol farm, the SRS consists of a farm of application servers within this layer. This design ensures that there is sufficient capacity to process

every transaction in a manner that meets or exceeds all service level requirements. Some registries couple the business logic layer directly in the protocol layer or within the database. This architecture limits the ability to scale the registry. Using a decoupled architecture enables the load to be distributed among farms of inexpensive servers that can be scaled up or down as demand changes.

The SRS today processes over 30 million EPP transactions daily.

Database

The database is the third core components of the SRS. The primary function of the SRS database is to provide highly reliable, persistent storage for all registry information required for domain registration services. The database is highly secure, with access limited to transactions from authenticated registrars, trusted application-server processes, and highly restricted access by the registry database administrators. A full description of the database can be found in response to Question 33.

Figure 24-1 depicts the overall SRS architecture including network components.

Number of Servers

As depicted in the SRS architecture diagram above Neustar operates a high availability architecture where at each level of the stack there are no single points of failures. Each of the network level devices run with dual pairs as do the databases. For the .AMAZON registry, the SRS will operate with 8 protocol servers and 6 policy engine servers. These expand horizontally as volume increases due to additional TLDs, increased load, and through organic growth. In addition to the SRS servers described above, there are multiple backend servers for services such as DNS and WHOIS. These are discussed in detail within those respective response sections.

Description of Interconnectivity with Other Registry Systems

The core SRS service interfaces with other external systems via Neustar's external systems layer. The services that the SRS interfaces with include:

- WHOIS

- DNS

- Billing

- Data Warehouse (Reporting and Data Escrow).

Other external interfaces may be deployed to meet the unique needs of a TLD. At this time there are no additional interfaces planned for .AMAZON.

The SRS includes an "external notifier" concept in its business policy engine as a message dispatcher. This design allows time-consuming backend processing to be decoupled from critical online registrar transactions. Using an external notifier solution, the registry can utilize "control levers" that allow it to tune or to disable processes to ensure optimal performance at all times. For example, during the early minutes of a TLD launch, when unusually high volumes of transactions are expected, the registry can elect to suspend processing of one or more back end systems in order to ensure that greater processing power is available to handle the increased load requirements. This proven architecture has been used with numerous TLD launches, some of which have involved the processing of over tens of millions of transactions in the opening hours. The following are the standard three external notifiers used the SRS:

WHOIS External Notifier

The WHOIS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on WHOIS. It is important to note that, while the WHOIS external notifier feeds the WHOIS system, it intentionally does not have visibility into the actual contents of the WHOIS system. The WHOIS external notifier serves just as a tool to send a signal to the WHOIS system that a change is ready to occur. The WHOIS system possesses the intelligence and data visibility to know exactly what needs to change in WHOIS. See response to Question 26 for greater detail.

DNS External Notifier

The DNS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on DNS. Like the WHOIS external notifier, the DNS external notifier does not have visibility into the actual contents of the DNS zones. The work items that are generated by the notifier indicate to the dynamic DNS update sub-system that a change occurred that may impact DNS. That DNS system

has the ability to decide what actual changes must be propagated out to the DNS constellation. See response to Question 35 for greater detail.

Billing External Notifier

The billing external notifier is responsible for sending all billable transactions to the downstream financial systems for billing and collection. This external notifier contains the necessary logic to determine what types of transactions are billable. The financial systems use this information to apply appropriate debits and credits based on registrar.

Data Warehouse

The data warehouse is responsible for managing reporting services, including registrar reports, business intelligence dashboards, and the processing of data escrow files. The Reporting Database is used to create both internal and external reports, primarily to support registrar billing and contractual reporting requirement. The data warehouse databases are updated on a daily basis with full copies of the production SRS data.

Frequency of Synchronization between Servers

The external notifiers discussed above perform updates in near real-time, well within the prescribed service level requirements. As transactions from registrars update the core SRS, update notifications are pushed to the external systems such as DNS and WHOIS. These updates are typically live in the external system within 2-3 minutes.

Synchronization Scheme (e.g., hot standby, cold standby)

Neustar operates two hot databases within the data center that is operating in primary mode. These two databases are kept in sync via synchronous replication. Additionally, there are two databases in the secondary data center. These databases are updated real time through asynchronous replication. This model allows for high performance while also ensuring protection of data. See response to Question 33 for greater detail.

Compliance with Specification 6 Section 1.2

The SRS implementation for .AMAZON is fully compliant with Specification 6, including section 1.2. EPP Standards are described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. Extensible Provisioning Protocol or EPP is defined by a core set of RFCs that standardize the interface that make up the registry-registrar model. The SRS interface supports EPP 1.0 as defined in the following RFCs shown in Table 24-1.

Additional information on the EPP implementation and compliance with RFCs can be found in the response to Question 25.

Compliance with Specification 10

Specification 10 of the New TLD Agreement defines the performance specifications of the TLD, including service level requirements related to DNS, RDDS (WHOIS), and EPP. The requirements include both availability and transaction response time measurements. As an experienced registry operator, Neustar has a long and verifiable track record of providing registry services that consistently exceed the performance specifications stipulated in ICANN agreements. This same high level of service will be provided for the .AMAZON Registry. The following section describes Neustar's experience and its capabilities to meet the requirements in the new agreement.

To properly measure the technical performance and progress of TLDs, Neustar collects data on key essential operating metrics. These measurements are key indicators of the performance and health of the registry. Neustar's current .biz SLA commitments are among the most stringent in the industry today, and exceed the requirements for new TLDs. Table 24-2 compares the current SRS performance levels compared to the requirements for new TLDs, and clearly demonstrates the ability of the SRS to exceed those requirements.

Their ability to commit and meet such high performance standards is a direct result of their philosophy towards operational excellence. See response to Question 31 for a full description of their philosophy for building and managing for performance.

24.3 Resourcing Plans

The development, customization, and on-going support of the SRS are the

responsibility of a combination of technical and operational teams, including:

- Development/Engineering
- Database Administration
- Systems Administration
- Network Engineering.

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will be involved in the design and testing. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably.

The necessary resources will be pulled from the pool of operational resources described in detail in the response to Question 31. Neustar's SRS implementation is very mature, and has been in production for over 10 years. As such, very little new development related to the SRS will be required for the implementation of the .AMAZON registry. The following resources are available from those teams:

- Development/Engineering - 19 employees
- Database Administration- 10 employees
- Systems Administration - 24 employees
- Network Engineering - 5 employees

The resources are more than adequate to support the SRS needs of all the TLDs operated by Neustar, including the .AMAZON registry.

25. Extensible Provisioning Protocol (EPP)

25.1 Introduction

Amazon EU S.à r.l.'s back-end registry operator, Neustar, has over 10 years of experience operating EPP based registries. They deployed one of the first EPP registries in 2001 with the launch of .biz. In 2004, they were the first gTLD to implement EPP 1.0. Over the last ten years Neustar has implemented numerous extensions to meet various unique TLD requirements. Neustar will leverage its extensive experience to ensure Amazon EU S.à r.l. is provided with an unparalleled EPP based registry. The following discussion explains the EPP interface which will be used for the .AMAZON registry. This interface exists within the protocol farm layer as described in Question 24 and is depicted in Figure 25-1.

25.2 EPP Interface

Registrars are provided with two different interfaces for interacting with the registry. Both are EPP based, and both contain all the functionality necessary to provision and manage domain names. The primary mechanism is an EPP interface to connect directly with the registry. This is the interface registrars will use for most of their interactions with the registry.

However, an alternative web GUI (Registry Administration Tool) that can also be used to perform EPP transactions will be provided. The primary use of the Registry Administration Tool is for performing administrative or customer support tasks. The main features of the EPP implementation are:

Standards Compliance: The EPP XML interface is compliant to the EPP RFCs. As future EPP RFCs are published or existing RFCs are updated, Neustar makes changes to the implementation keeping in mind of any backward compatibility issues.

Scalability: The system is deployed keeping in mind that it may be required to grow and shrink the footprint of the Registry system for a particular TLD.

Fault-tolerance: The EPP servers are deployed in two geographically separate data centers to provide for quick failover capability in case of a major outage in a particular data center. The EPP servers adhere to strict availability requirements defined in the SLAs.

Configurability: The EPP extensions are built in a way that they can be easily configured to turn on or off for a particular TLD.

Extensibility: The software is built ground up using object oriented design. This allows for easy extensibility of the software without risking the possibility of the change rippling through the whole application.

Auditable: The system stores detailed information about EPP transactions

from provisioning to DNS and WHOIS publishing. In case of a dispute regarding a name registration, the Registry can provide comprehensive audit information on EPP transactions.

Security: The system provides IP address based access control, client credential-based authorization test, digital certificate exchange, and connection limiting to the protocol layer.

25.3 Compliance with RFCs and Specifications

The registry-registrar model is described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. As shown in Table 25-1, EPP is defined by the core set of RFCs that standardize the interface that registrars use to provision domains with the SRS. As a core component of the SRS architecture, the implementation is fully compliant with all EPP RFCs.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to EPP. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

Neustar has a long history of providing exceptional service that exceeds all performance specifications. The SRS and EPP interface have been designed to exceed the EPP specifications defined in Specification 10 of the Registry Agreement and profiled in Table 25-2. Evidence of Neustar's ability to perform at these levels can be found in the .biz monthly progress reports found on the ICANN website.

EPP Toolkits

Toolkits, under open source licensing, are freely provided to registrars for interfacing with the SRS. Both Java and C++ toolkits will be provided, along with the accompanying documentation. The Registrar Tool Kit (RTK) is a software development kit (SDK) that supports the development of a registrar software system for registering domain names in the registry using EPP. The SDK consists of software and documentation as described below.

The software consists of working Java and C++ EPP common APIs and samples that implement the EPP core functions and EPP extensions used to communicate between the registry and registrar. The RTK illustrates how XML requests (registration events) can be assembled and forwarded to the registry for processing. The software provides the registrar with the basis for a reference implementation that conforms to the EPP registry-registrar protocol. The software component of the SDK also includes XML schema definition files for all Registry EPP objects and EPP object extensions. The RTK also includes a "dummy" server to aid in the testing of EPP clients.

The accompanying documentation describes the EPP software package hierarchy, the object data model, and the defined objects and methods (including calling parameter lists and expected response behavior). New versions of the RTK are made available from time to time to provide support for additional features as they become available and support for other platforms and languages.

25.4 Proprietary EPP Extensions

The .AMAZON registry will not include proprietary EPP extensions. Neustar has implemented various EPP extensions for both internal and external use in other TLD registries. These extensions use the standard EPP extension framework described in RFC 5730. Table 25-3 provides a list of extensions developed for other TLDs. Should the .AMAZON registry require an EPP extension at some point in the future, the extension will be implemented in compliance with all RFC specifications including RFC 3735.

The full EPP schema to be used in the .AMAZON registry is attached in the document

titled "EPP Schema."

25.5 Resourcing Plans

The development and support of EPP is largely the responsibility of the Development/Engineering and Quality Assurance teams. As an experience registry operator with a fully developed EPP solution, on-going support is largely limited to periodic updates to the standard and the implementation of TLD specific extensions. The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Quality Assurance - 7 employees.

These resources are more than adequate to support any EPP modification needs of the .AMAZON registry.

26. Whois

26.1 Introduction

Amazon EU S.à r.l. recognizes the importance of an accurate, reliable, and up-to-date WHOIS database to governments, law enforcement, intellectual property holders and the public as a whole and is firmly committed to complying with all of the applicable WHOIS specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement. Amazon EU S.à r.l.'s back-end registry services provider, Neustar, has extensive experience providing ICANN and RFC-compliant WHOIS services for each of the TLDs that it operates both as a Registry Operator for gTLDs, ccTLDs and back-end registry services provider. As one of the first "thick" registry operators in the gTLD space, Neustar's WHOIS service has been designed from the ground up to display as much information as required by a TLD and respond to a very stringent availability and performance requirement.

Some of the key features of .AMAZON's solution include:

- Fully compliant with all relevant RFCs including 3912

- Production proven, highly flexible, and scalable with a track record of 100% availability over the past 10 years

- Exceeds current and proposed performance specifications

- Supports dynamic updates with the capability of doing bulk updates

- Geographically distributed sites to provide greater stability and performance

In addition, .AMAZON's thick-WHOIS solution also provides for additional search capabilities and mechanisms to mitigate potential forms of abuse as discussed below. (e.g., IDN, registrant data).

26.2 Software Components

The WHOIS architecture comprises the following components:

- An in-memory database local to each WHOIS node: To provide for the performance needs, the WHOIS data is served from an in-memory database indexed by searchable keys.

- Redundant servers: To provide for redundancy, the WHOIS updates are propagated to a cluster of WHOIS servers that maintain an independent copy of the database.

- Attack resistant: To ensure that the WHOIS system cannot be abused using malicious queries or DOS attacks, the WHOIS server is only allowed to query the local database and rate limits on queries based on IPs and IP ranges can be readily applied.

- Accuracy auditor: To ensure the accuracy of the information served by the WHOIS servers, a daily audit is done between the SRS information and the WHOIS responses for the domain names which are updated during the last 24-hour period. Any discrepancies are resolved proactively.

- Modular design: The WHOIS system allows for filtering and translation of

data elements between the SRS and the WHOIS database to allow for customizations.

Scalable architecture: The WHOIS system is scalable and has a very small footprint. Depending on the query volume, the deployment size can grow and shrink quickly.

Flexible: It is flexible enough to accommodate thin, thick, or modified thick models and can accommodate any future ICANN policy, such as different information display levels based on user categorization.

SRS master database: The SRS database is the main persistent store of the Registry information. The Update Agent computes what WHOIS updates need to be pushed out. A publish-subscribe mechanism then takes these incremental updates and pushes to all the WHOIS slaves that answer queries.

26.3 Compliance with RFC and Specifications 4 and 10

Neustar has been running thick-WHOIS Services for over 10+ years in full compliance with RFC 3912 and with Specifications 4 and 10 of the Registry Agreement. RFC 3912 is a simple text based protocol over TCP that describes the interaction between the server and client on port 43. Neustar built a home-grown solution for this service. It processes millions of WHOIS queries per day.

Table 26-1 describes Neustar's compliance with Specifications 4 and 10.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to WHOIS. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

26.4 High-level WHOIS System Description

26.4.1 WHOIS Service (port 43)

The WHOIS service is responsible for handling port 43 queries. Our WHOIS is optimized for speed using an in-memory database and master-slave architecture between the SRS and WHOIS slaves.

The WHOIS service also has built-in support for IDN. If the domain name being queried is an IDN, the returned results include the language of the domain name, the domain name's UTF-8 encoded representation along with the Unicode code page.

26.4.2 Web Page for WHOIS queries

In addition to the WHOIS Service on port 43, Neustar provides a web based WHOIS application (www.whois.AMAZON). It is an intuitive and easy to use application for the general public to use. WHOIS web application provides all of the features available in the port 43 WHOIS. This includes full and partial search on:

- Domain names
- Nameservers
- Registrant, Technical and Administrative Contacts
- Registrars

It also provides features not available on the port 43 service. These include:

1. Redemption Grace Period calculation: Based on the registry's policy, domains in pendingDelete can be restorable or scheduled for release depending on the date/time the domain went into pendingDelete. For these domains, the web based WHOIS displays "Restorable" or "Scheduled for Release" to clearly show this additional status to the user.
2. Extensive support for international domain names (IDN)
3. Ability to perform WHOIS lookups on the actual Unicode IDN
4. Display of the actual Unicode IDN in addition to the ACE-encoded name
5. A Unicode to Punycode and Punycode to Unicode translator
6. An extensive FAQ
7. A list of upcoming domain deletions

26.5 IT and Infrastructure Resources

As described above the WHOIS architecture uses a workflow that decouples the update process from the SRS. This ensures SRS performance is not adversely affected by the load requirements of dynamic updates. It is also decoupled from the WHOIS lookup agent to ensure the WHOIS service is always available and performing well for users.

Each of Neustar's geographically diverse WHOIS sites use:

- Firewalls, to protect this sensitive data

- Dedicated servers for MQ Series, to ensure guaranteed delivery of WHOIS updates

- Packetshaper for source IP address-based bandwidth limiting

- Load balancers to distribute query load

- Multiple WHOIS servers for maximizing the performance of WHOIS service.

The WHOIS service uses HP BL 460C servers, each with 2 X Quad Core CPU and a 64GB of RAM. The existing infrastructure has 6 servers, but is designed to be easily scaled with additional servers should it be needed.

Figure 26-1 depicts the different components of the WHOIS architecture.

26.6 Interconnectivity with Other Registry System

As described in Question 24 about the SRS and further in response to Question 31, "Technical Overview", when an update is made by a registrar that impacts WHOIS data, a trigger is sent to the WHOIS system by the external notifier layer. The update agent processes these updates, transforms the data if necessary and then uses messaging oriented middleware to publish all updates to each WHOIS slave. The local update agent accepts the update and applies it to the local in-memory database. A separate auditor compares the data in WHOIS and the SRS daily and monthly to ensure accuracy of the published data.

26.7 Frequency of Synchronization between Servers

Updates from the SRS, through the external notifiers, to the constellation of independent WHOIS slaves happens in real-time via an asynchronous publish/subscribe messaging architecture. The updates are guaranteed to be updated in each slave within the required SLA of $95\% \leq 60$ minutes. Please note that Neustar's current architecture is built towards the stricter SLAs ($95\% \leq 15$ minutes) of .BIZ. The vast majority of updates tend to happen within 2-3 minutes.

26.8 Provision for Searchable WHOIS Capabilities

Neustar will create a new web-based service to address the new search features based on requirements specified in Specification 4 Section 1.8. The application will enable users to search the WHOIS directory using any one or more of the following fields:

- Domain name

- Registrar ID

- Contacts and registrant's name

- Contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.)

- Name server name and name server IP address

The system will also allow search using non-Latin character sets which are compliant with IDNA specification.

The user will choose one or more search criteria, combine them by Boolean operators (AND, OR, NOT) and provide partial or exact match regular expressions for each of the criterion name-value pairs. The domain names matching the search criteria will be returned to the user.

Figure 26-2 shows an architectural depiction of the new service.

Potential Forms of Abuse

As recognized by the Terms of Reference for Whois Misuse Studies, <http://gnso.icann.org/issues/whois/tor-whois-misuse-studies-25sep09-en.pdf>, a number of reported and recorded harmful acts, such as spam, phishing, identity theft, and stalking which Registrants believe were sent using WHOIS contact information. Although these Whois studies are still underway, there is a general belief that public access to Whois data may lead to a measurable degree of misuse - that is, to actions that cause actual harm, are illegal or illegitimate, or otherwise contrary to the stated legitimate purpose. One of the other key focuses of these studies will be to correlate the reported incidents of harmful acts with anti-harvesting measures that some Registrars and Registries apply to WHOIS queries (e.g., rate limiting, CAPTCHA, etc.).

Neustar firmly believes that adding the increased search capabilities, without appropriate controls could exacerbate the potential abuses associated with the Whois service. To mitigate the risk of this powerful search service being abused by unscrupulous data miners, a layer of security will be built around the query engine which will allow the registry to identify rogue activities and then take appropriate measures. Potential abuses include, but are not limited to:

- Data Mining
- Unauthorized Access
- Excessive Querying
- Denial of Service Attacks

To mitigate the abuses noted above, Neustar will implement any or all of these mechanisms as appropriate:

- Username-password based authentication
- Certificate based authentication
- Data encryption
- CAPTCHA mechanism to prevent robo invocation of Web query
- Fee-based advanced query capabilities for premium customers.

The searchable WHOIS application will adhere to all privacy laws and policies of the .AMAZON registry.

26.9 Resourcing Plans

As with the SRS, the development, customization, and on-going support of the WHOIS service is the responsibility of a combination of technical and operational teams. The primary groups responsible for managing the service include:

- Development/Engineering - 19 employees
- Database Administration - 10 employees
- Systems Administration - 24 employees
- Network Engineering - 5 employees

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will also be involved. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably. The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. Neustar's WHOIS implementation is very mature, and has been in production for over 10 years. As such, very little new development will be required to support the implementation of the .AMAZON registry. The resources are more than adequate to support the WHOIS needs of all the TLDs operated by Neustar, including the .AMAZON registry.

27. Registration Life Cycle

27.1 Registration Life Cycle

Introduction

.AMAZON will follow the lifecycle and business rules found in the majority of gTLDs today. Our back-end operator, Neustar, has over ten years of experience managing numerous TLDs that utilize standard and unique business rules and lifecycles. This section describes the business rules, registration states, and the overall domain lifecycle that will be used for .AMAZON.

Domain Lifecycle - Description

The registry will use the EPP 1.0 standard for provisioning domain names, contacts and hosts. Each domain record is comprised of three registry object types: domain, contacts, and hosts

Domains, contacts and hosts may be assigned various EPP defined statuses indicating either a particular state or restriction placed on the object. Some statuses may be applied by the Registrar; other statuses may only be applied by the Registry. Statuses are an integral part of the domain lifecycle and serve the dual purpose of indicating the particular state of the domain and indicating any restrictions placed on the domain. The EPP standard defines 17 statuses, however only 14 of these statuses will be used in the .AMAZON registry per the defined .AMAZON business rules.

The following is a brief description of each of the statuses. Server statuses may only be applied by the Registry, and client statuses may be applied by the Registrar.

OK - Default status applied by the Registry.

Inactive - Default status applied by the Registry if the domain has less than 2 nameservers.

PendingCreate - Status applied by the Registry upon processing a successful Create command, and indicates further action is pending. This status will not be used in the .AMAZON registry.

PendingTransfer - Status applied by the Registry upon processing a successful Transfer request command, and indicates further action is pending.

PendingDelete - Status applied by the Registry upon processing a successful Delete command that does not result in the immediate deletion of the domain, and indicates further action is pending.

PendingRenew - Status applied by the Registry upon processing a successful Renew command that does not result in the immediate renewal of the domain, and indicates further action is pending. This status will not be used in the .AMAZON registry.

PendingUpdate - Status applied by the Registry if an additional action is expected to complete the update, and indicates further action is pending. This status will not be used in the .AMAZON registry.

Hold - Removes the domain from the DNS zone.

UpdateProhibited - Prevents the object from being modified by an Update command.

TransferProhibited - Prevents the object from being transferred to another Registrar by the Transfer command.

RenewProhibited - Prevents a domain from being renewed by a Renew command.

DeleteProhibited - Prevents the object from being deleted by a Delete command.

The lifecycle of a domain begins with the registration of the domain. All registrations must follow the EPP standard, as well as the specific business rules described in the response to Question 18 above. Upon registration a domain will either be in an active or inactive state. Domains in an active state are delegated and have their delegation information published to the zone. Inactive domains either have no delegation information or their delegation information is not published in the zone. Following the initial registration of a domain, one of five actions may occur during its lifecycle:

Domain may be updated

Domain may be deleted, either within or after the add-grace period

Domain may be renewed at anytime during the term

Domain may be auto-renewed by the Registry

Domain may be transferred to another registrar.

Each of these actions may result in a change in domain state. This is described in more detail in the following section. Every domain must eventually be renewed, auto-renewed, transferred, or deleted. A registrar may apply EPP statuses described above to prevent specific actions such as updates, renewals, transfers, or deletions.

27.1.1.1 Registration States

Domain Lifecycle - Registration States

As described above the .AMAZON registry will implement a standard domain lifecycle found in most gTLD registries today. There are five possible domain states:

Active

Inactive

Locked

Pending Transfer

Pending Delete.

All domains are always in either an Active or Inactive state, and throughout the course of the lifecycle may also be in a Locked, Pending Transfer, and Pending Delete state. Specific conditions such as applied EPP policies and registry business rules will determine whether a domain can be transitioned between states.

Additionally, within each state, domains may be subject to various timed events such as grace periods, and notification periods.

Active State

The active state is the normal state of a domain and indicates that delegation data has been provided and the delegation information is published in the zone. A domain in an Active state may also be in the Locked or Pending Transfer states.

Inactive State

The Inactive state indicates that a domain has not been delegated or that the delegation data has not been published to the zone. A domain in an Inactive state may also be in the Locked or Pending Transfer states. By default all domain in the Pending Delete state are also in the Inactive state.

Locked State

The Locked state indicates that certain specified EPP transactions may not be performed to the domain. A domain is considered to be in a Locked state if at least one restriction has been placed on the domain; however up to eight restrictions may be applied simultaneously. Domains in the Locked state will also be in the Active or Inactive, and under certain conditions may also be in the Pending Transfer or Pending Delete states.

Pending Transfer State

The Pending Transfer state indicates a condition in which there has been a request to transfer the domain from one registrar to another. The domain is placed in the Pending Transfer state for a period of time to allow the current (losing) registrar to approve (ack) or reject (nack) the transfer request. Registrars may only nack requests for reasons specified in the Inter-Registrar Transfer Policy.

Pending Delete State

The Pending Delete State occurs when a Delete command has been sent to the Registry after the first 5 days (120 hours) of registration. The Pending Delete period is 35-days during which the first 30-days the name enters the Redemption Grace Period (RGP) and the last 5-days guarantee that the domain will be purged from the Registry Database and available to public pool for registration on a first come, first serve basis.

27.1.2 Typical Registration Lifecycle Activities

Domain Creation Process

The creation (registration) of domain names is the fundamental registry operation. All other operations are designed to support or compliment a domain creation. The following steps occur when a domain is created.

1. Contact objects are created in the SRS database. The same contact object may be used for each contact type, or they may all be different. If the contacts already exist in the database this step may be skipped.
2. Nameservers are created in the SRS database. Nameservers are not required to complete the registration process; however any domain with less than 2 name servers will not be resolvable.
3. The domain is created using the each of the objects created in the previous steps. In addition, the term and any client statuses may be assigned at the time of creation.

The actual number of EPP transactions needed to complete the registration of a domain name can be as few as one and as many as 40. The latter assumes seven distinct contacts and 13 nameservers, with Check and Create commands submitted for each object.

Update Process

Registry objects may be updated (modified) using the EPP Modify operation. The Update transaction updates the attributes of the object.

For example, the Update operation on a domain name will only allow the following attributes to be updated:

- Domain statuses
- Registrant ID
- Administrative Contact ID
- Billing Contact ID
- Technical Contact ID
- Nameservers
- AuthInfo
- Additional Registrar provided fields.

The Update operation will not modify the details of the contacts. Rather it may be used to associate a different contact object (using the Contact ID) to the domain name. To update the details of the contact object the Update transaction must be applied to the contact itself. For example, if an existing registrant wished to update the postal address, the Registrar would use the Update command to modify the contact object, and not the domain object.

Renew Process

The term of a domain may be extended using the EPP Renew operation. ICANN policy general establishes the maximum term of a domain name to be 10 years, and Neustar recommends not deviating from this policy. A domain may be renewed/extended at any point time, even immediately following the initial registration. The only stipulation is that the overall term of the domain name may not exceed 10 years. If a Renew operation is performed with a term value will extend the domain beyond the 10 year limit, the Registry will reject the transaction entirely.

Transfer Process

The EPP Transfer command is used for several domain transfer related operations:

- Initiate a domain transfer
- Cancel a domain transfer
- Approve a domain transfer
- Reject a domain transfer.

To transfer a domain from one Registrar to another the following process is followed:

4. The gaining (new) Registrar submits a Transfer command, which includes the AuthInfo code of the domain name.
5. If the AuthInfo code is valid and the domain is not in a status that does not allow transfers the domain is placed into pendingTransfer status
6. A poll message notifying the losing Registrar of the pending transfer is sent to the Registrar's message queue
7. The domain remains in pendingTransfer status for up to 120 hours, or until the losing (current) Registrar Ack (approves) or Nack (rejects) the transfer request
8. If the losing Registrar has not Acked or Nacked the transfer request within the 120 hour timeframe, the Registry auto-approves the transfer
9. The requesting Registrar may cancel the original request up until the transfer has been completed.

A transfer adds an additional year to the term of the domain. In the event that a transfer will cause the domain to exceed the 10 year maximum term, the Registry will add a partial term up to the 10 year limit. Unlike with the Renew operation, the Registry will not reject a transfer operation.

Deletion Process

A domain may be deleted from the SRS using the EPP Delete operation. The Delete operation will result in either the domain being immediately removed from the database or the domain being placed in pendingDelete status. The outcome is dependent on when the domain is deleted. If the domain is deleted within the first five days (120 hours) of registration, the domain is immediately removed from the database. A deletion at any other time will result in the domain being placed in pendingDelete status and entering the Redemption Grace Period (RGP). Additionally, domains that are deleted within five days (120) hours of any billable (add, renew, transfer) transaction may be deleted for credit.

27.1.3 Applicable Time Elements

The following section explains the time elements that are involved.

Grace Periods

There are six grace periods:

- Add-Delete Grace Period (AGP)
- Renew-Delete Grace Period
- Transfer-Delete Grace Period
- Auto-Renew-Delete Grace Period
- Auto-Renew Grace Period
- Redemption Grace Period (RGP).

The first four grace periods listed above are designed to provide the Registrar with the ability to cancel a revenue transaction (add, renew, or transfer) within a

certain period of time and receive a credit for the original transaction. The following describes each of these grace periods in detail.

Add-Delete Grace Period

The APG is associated with the date the Domain was registered. Domains may be deleted for credit during the initial 120 hours of a registration, and the Registrar will receive a billing credit for the original registration. If the domain is deleted during the Add Grace Period, the domain is dropped from the database immediately and a credit is applied to the Registrar's billing account.

Renew-Delete Grace Period

The Renew-Delete Grace Period is associated with the date the Domain was renewed. Domains may be deleted for credit during the 120 hours after a renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly renewed. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP (see below).

Transfer-Delete Grace Period

The Transfer-Delete Grace Period is associated with the date the Domain was transferred to another Registrar. Domains may be deleted for credit during the 120 hours after a transfer. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP. A deletion of domain after a transfer is not the method used to correct a transfer mistake. Domains that have been erroneously transferred or hijacked by another party can be transferred back to the original registrar through various means including contacting the Registry.

Auto-Renew-Delete Grace Period

The Auto-Renew-Delete Grace Period is associated with the date the Domain was auto-renewed. Domains may be deleted for credit during the 120 hours after an auto-renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly auto-renewed. It should be noted that domains that are deleted during the auto-renew delete grace period will be placed into pendingDelete and will enter the RGP.

Auto-Renew Grace Period

The Auto-Renew Grace Period is a special grace period intended to provide registrants with an extra amount of time, beyond the expiration date, to renew their domain name. The grace period lasts for 45 days from the expiration date of the domain name. Registrars are not required to provide registrants with the full 45 days of the period.

Redemption Grace Period

The RGP is a special grace period that enables Registrars to restore domains that have been inadvertently deleted but are still in pendingDelete status within the Redemption Grace Period. All domains enter the RGP except those deleted during the AGP.

The RGP period is 30 days, during which time the domain may be restored using the EPP RenewDomain command as described below. Following the 30day RGP period the domain will remain in pendingDelete status for an additional five days, during which time the domain may NOT be restored. The domain is released from the SRS, at the end of the 5 day non-restore period. A restore fee applies and is detailed in the Billing Section. A renewal fee will be automatically applied for any domain past expiration.

Neustar has created a unique restoration process that uses the EPP Renew transaction to restore the domain and fulfill all the reporting obligations required under ICANN policy. The following describes the restoration process.

27.2 State Diagram

Figure 27-1 provides a description of the registration lifecycle.

The different states of the lifecycle are active, inactive, locked, pending transfer, and pending delete. Please refer to section 27.1.1 for detail description of each of these states. The lines between the states represent triggers that transition a domain from one state to another.

The details of each trigger are described below:

Create: Registry receives a create domain EPP command.

WithNS: The domain has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

WithoutNS: The domain has not met the minimum number of nameservers required by registry policy. The domain will not be in the DNS zone.

Remove Nameservers: Domain's nameserver(s) is removed as part of an update domain EPP command. The total nameserver is below the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

Add Nameservers: Nameserver(s) has been added to domain as part of an update domain EPP command. The total number of nameservers has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

Delete: Registry receives a delete domain EPP command.

DeleteAfterGrace: Domain deletion does not fall within the add grace period.

DeleteWithinAddGrace: Domain deletion falls within add grace period.

Restore: Domain is restored. Domain goes back to its original state prior to the delete command.

Transfer: Transfer request EPP command is received.

Transfer Approve/Cancel/Reject: Transfer requested is approved or cancel or rejected.

TransferProhibited: The domain is in clientTransferProhibited and/or serverTransferProhibited status. This will cause the transfer request to fail. The domain goes back to its original state.

DeleteProhibited: The domain is in clientDeleteProhibited and/or serverDeleteProhibited status. This will cause the delete command to fail. The domain goes back to its original state.

Note: the locked state is not represented as a distinct state on the diagram as a domain may be in a locked state in combination with any of the other states: inactive, active, pending transfer, or pending delete.

27.2.1 EPP RFC Consistency

As described above, the domain lifecycle is determined by ICANN policy and the EPP RFCs. Neustar has been operating ICANN TLDs for the past 10 years consistent and compliant with all the ICANN policies and related EPP RFCs.

27.3 Resources

The registration lifecycle and associated business rules are largely determined by policy and business requirements; as such the Product Management and Policy teams will play a critical role in working with Amazon EU S.à r.l. to determine the precise rules that meet the requirements of the TLD. Implementation of the lifecycle rules will be the responsibility of Development/Engineering team, with testing performed by the Quality Assurance team. Neustar's SRS implementation is very flexible and configurable, and in many case development is not required to support business rule changes.

The .AMAZON registry will be using standard lifecycle rules, and as such no customization is anticipated. However should modifications be required in the future, the necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Registry Product Management - 4 employees

These resources are more than adequate to support the development needs of all the TLDs operated by Neustar, including the .AMAZON registry.

28. Abuse Prevention and Mitigation

28.1 Abuse Prevention and Mitigation

Amazon EU S.à r.l. and its registry service provider, Neustar, recognize that preventing and mitigating abuse and malicious conduct in the .AMAZON registry is an important and significant responsibility. Amazon EU S.à r.l. will leverage Neustar's extensive experience in establishing and implementing registration

policies to prevent and mitigate abusive and malicious domain activity within the proposed .AMAZON space.

.AMAZON will be a single entity registry, with all domains registered to Amazon for use in pursuit of Amazon's business goals. There will be no re-sellers in .AMAZON and there will be no market in .AMAZON domains. Amazon will strictly control the use of .AMAZON domains. Opportunities for abusive and malicious domain activity in .AMAZON are therefore very restricted but we will nonetheless abide by our obligations to ICANN. A responsible domain name registry works towards the eradication of abusive domain name registrations and malicious activity, which may include conduct such as:

- Illegal or fraudulent actions
- Spam
- Phishing
- Pharming
- Distribution of malware
- Fast flux hosting
- Botnets
- Malicious hacking
- Distribution of child pornography
- Online sale or distribution of illegal pharmaceuticals.

By taking an active role in researching and monitoring abusive domain name registration and malicious conduct, Neustar has developed the ability to efficiently work with various law enforcement and security communities to mitigate fast flux DNS-using botnets.

Policies and Procedures to Minimize Abusive Registrations

A registry must have the policies, resources, personnel, and expertise in place to combat such abusive registration and malicious conduct. Neustar, Amazon EU S.à r.l.'s registry services provider, has played a leading role in preventing of such abusive practices, and has developed and implemented a "domain takedown" policy. Amazon EU S.à r.l. also believes that combating abusive use of the DNS is important in protecting registrants.

Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution. Because removing a domain name from the zone will stop all activity associated with the domain name, including websites and e-mail, the decision to remove a domain name from the DNS must follow a documented process, culminating in a determination that the domain name to be removed poses a threat to the security and stability of the Internet or the registry. Amazon EU S.à r.l., via Neustar, has an extensive, defined, and documented process for taking the necessary action of removing a domain from the zone when its presence in the zone poses a threat to the security and stability of the infrastructure of the Internet or the registry.

Abuse Point of Contact

As required by the Registry Agreement, Amazon EU S.à r.l. will establish and publish on its website a single abuse point of contact responsible for addressing inquiries from law enforcement and the public related to malicious and abusive conduct. Amazon EU S.à r.l. will also provide such information to ICANN before delegating any domain names in .AMAZON. This information shall consist of, at a minimum, a valid e-mail address dedicated solely to the handling of malicious conduct complaints, and a telephone number and mailing address for the primary contact. Amazon EU S.à r.l. will ensure that this information is accurate and current, and that updates are provided to ICANN if and when changes are made. In addition, the registry services provider for .AMAZON, Neustar, shall continue to have an additional point of contact for requests from registrars related to abusive domain name practices.

28.2 Policies Regarding Abuse Complaints

Amazon EU S.à r.l. will adopt an Acceptable Use Policy that (i) clearly defines the types of activities that will not be permitted in .AMAZON; (ii) reserves Amazon EU S.à r.l.'s right to lock, cancel, transfer or otherwise suspend or take down domain names violating the Acceptable Use Policy; and (iii) identify the circumstances under which Amazon EU S.à r.l. may share information with law enforcement. Amazon EU

S.à r.l. will incorporate its .AMAZON Acceptable User Policy into its Registry-Registrar Agreement.

Under the .AMAZON Acceptable Use Policy, which is set forth below, Amazon EU S.à r.l. may lock down the domain name to prevent any changes to the domain name contact and nameserver information, place the domain name "on hold" rendering the domain name non-resolvable, transfer the domain name to another registrar and/or in cases in which the domain name is associated with an ongoing law enforcement investigation, Amazon EU S.à r.l. will coordinate with law enforcement to assist in the investigation as described in more detail below.

It is Amazon EU S.à r.l.'s intention that all .AMAZON domain names will be registered and used by it and its Affiliates and that only ICANN-accredited registrars that have signed a Registry-Registrar Agreement will be permitted to register .AMAZON domain names. Accordingly, the potential for abusive registrations and malicious conduct in the .AMAZON registry is expected to be limited. In the unlikely event that such abuse should occur, Amazon EU S.à r.l. will work with its registry services provider, Neustar, to implement the following policies and processes to prevent and mitigate such activities. Below is initial Acceptable Use Policy for the .AMAZON registry.

.AMAZON Acceptable Use Policy

This Acceptable Use Policy gives the .AMAZON registry the ability to quickly lock, cancel, transfer or take ownership of any .AMAZON domain name, either temporarily or permanently, if the domain name is being used in a manner that appears to threaten the stability, integrity or security of the .AMAZON registry, or any of its registrar partners - and/or that may put the safety and security of any registrant or user at risk. The process also allows the .AMAZON registry to take preventive measures to avoid any such criminal or security threats.

The Acceptable Use Policy may be triggered through a variety of channels, including, among other things, private complaint, public alert, government or enforcement agency outreach, and the on-going monitoring by the .AMAZON registry or its partners. In all cases, the .AMAZON registry or its designees will alert .AMAZON registry's registrar partners about any identified threats and will work closely with them to bring offending sites into compliance.

The following are some (but not all) activities that may be subject to rapid domain compliance:

Phishing: the attempt to acquire personally identifiable information by masquerading as a website other than .AMAZON's own.

Pharming: the redirection of Internet users to websites other than those the user intends to visit, usually through unauthorized changes to the Hosts file on a victim's computer or DNS records in DNS servers.

Dissemination of Malware: the intentional creation and distribution of "malicious" software designed to infiltrate a computer system without the owner's consent, including, without limitation, computer viruses, worms, key loggers, and Trojans.

Fast Flux Hosting: a technique used to shelter Phishing, Pharming and Malware sites and networks from detection and to frustrate methods employed to defend against such practices, whereby the IP address associated with fraudulent websites are changed rapidly so as to make the true location of the sites difficult to find.

Botnetting: the development and use of a command, agent, motor, service, or software which is implemented: (1) to remotely control the computer or computer system of an Internet user without their knowledge or consent, (2) to generate direct denial of service (DDOS) attacks.

Malicious Hacking: the attempt to gain unauthorized access (or exceed the level of authorized access) to a computer, information system, user account or profile, database, or security system.

Child Pornography: the storage, publication, display and/or dissemination of pornographic materials depicting individuals under the age of majority in the relevant jurisdiction.

The .AMAZON registry reserves the right, in its sole discretion, to take any administrative and operational actions necessary, including the use of computer forensics and information security technological services, among other things, in

order to implement the Acceptable Use Policy. In addition, the .AMAZON registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of the .AMAZON registry as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement, or (5) to correct mistakes made by the .AMAZON registry or any Registrar in connection with a domain name registration. The .AMAZON registry also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

Taking Action Against Abusive and/or Malicious Activity

The .AMAZON registry is committed to acting in a timely manner against those domain names associated with abuse or malicious conduct in violation of the Acceptable Use Policy. After a complaint is received from a trusted source or third-party, or detected by the .AMAZON registry, the registry will use commercially reasonable efforts to verify the information in the complaint. If that information can be verified to the best of the registry's ability, the sponsoring registrar will be notified and have 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. If the registrar has not acted when the 12-hour period ends (i.e., is unresponsive to the request or refuses to take action), the .AMAZON registry will place the domain on "ServerHold". (It is unlikely the registrar will not timely act because Amazon EU S.à r.l. intends to use a single, gateway registrar with which it has a contract reflecting these policies). ServerHold removes the domain name from the .AMAZON zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement should they desire to get involved.

Coordination with Law Enforcement

Amazon EU S.à r.l. will obtain assistance from Neustar to meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the .AMAZON registry. The .AMAZON registry will respond to legitimate law enforcement inquiries promptly upon receiving the request.

The response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. for rapid resolution of the request. If the request involves any of the activities that can be validated by the registry and implicates activity covered by the .AMAZON Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .AMAZON Registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

Monitoring for Malicious Activity

Neustar, .AMAZON's registry services provider, has developed and implemented an active "domain takedown" policy in which the registry itself takes down abusive domain names.

Neustar targets domain names verified to be abusive and removes them within 12 hours regardless of whether the domain name registrar cooperated. Neustar has determined that the benefit in removing such threats outweighs any potential damage to the registrar/registrant relationship. Amazon EU S.à r.l.'s restrictions on registration eligibility make it unlikely that any .AMAZON domains will be taken down. The .AMAZON registry rules are anticipated to exclude third parties beyond Amazon EU S.à r.l. and its Affiliates. Moreover, only registrars that contractually agree to cooperate in stemming abusive behaviors will be permitted to register .AMAZON domain names.

Neustar's active prevention policies stem from the notion that registrants

in .AMAZON have a reasonable expectation that they control the data associated with their domains, especially its presence in the DNS zone. Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution that harms not only the domain name registrant, but also potentially millions of unsuspecting Internet users.

Rapid Takedown Process

Since implementing the program, Neustar has developed two basic variations of the process. The more common process variation is a lightweight process that is triggered by "typical" notices. The less common variation is the full process that is triggered by unusual notices, which generally allege that a domain name is being used to threaten the stability and security of the TLD, or is part of a real-time investigation by law enforcement or security researchers. In these cases, accelerated action by the registry is necessary. These processes are described below, though it is important to note that .AMAZON will be managed as a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon's subsidiaries. Therefore, the potential for abusive registrations and other activities that have a negative impact on Internet users is minimal. In the unlikely event that such abuse should occur, Amazon with its registry operator, Neustar, will implement the following policies and processes to manage such activities.

Lightweight Process

In addition to having an active Information Security group that, on its own initiatives, seeks out abusive practices in the .AMAZON registry, Neustar is an active member in a number of security organizations that have the expertise and experience in receiving and investigating reports of abusive DNS practices, including but not limited to, the Anti-Phishing Working Group, Castle Cops, NSP-SEC, the Registration Infrastructure Safety Group and others. Each of these sources is a well-known security organization that has a reputation for preventing abuse and malicious conduct on the Internet. Aside from these organizations, Neustar also actively participates in privately run security associations that operate based on trust and anonymity, making it much easier to obtain information regarding abusive DNS activity.

Once a complaint is received from a trusted source or third-party, or detected by Neustar's internal security group, information about the abusive practice is forwarded to an internal mail distribution list that includes members of Neustar's operations, legal, support, engineering, and security teams for immediate response ("CERT Team"). Although the impacted URL is included in the notification e-mail, the CERT Team is trained not to investigate the URLs themselves because the URLs in question often have scripts, bugs, etc. that can compromise the individual's own computer and the network safety. Rather, the investigation is conducted by CERT team members who can access the URLs in a laboratory environment to avoid compromising the Neustar network. The lab environment is designed specifically for these types of tests and is scrubbed on a regular basis to ensure that none of Neustar's internal or external network elements are harmed in any fashion. Once the complaint has been reviewed and the alleged abusive domain name activity is verified to the best of the ability of the CERT Team, the sponsoring registrar has 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone.

The .AMAZON Registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

ServerHold removes the domain name from the .AMAZON zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement.

Full Process

In the unlikely event with a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon's subsidiaries, that Neustar receives a complaint that claims that a domain name is being used to threaten the stability and security of the .AMAZON registry, or is a part of a real-time investigation by law enforcement or security, Neustar follows a slightly different course of action. Upon initiation of this process, members of the CERT Team are paged and a

teleconference bridge is immediately opened up for the CERT Team to assess whether the activity warrants immediate action. If the CERT Team determines the incident is not an immediate threat to the security and the stability of critical Internet infrastructure, the CERT Team provides documentation to the Neustar Network Operations Center to clearly capture the rationale for the decision and either refers the incident to the Lightweight process set forth above or closes the incident.

However, if the CERT TEAM determines that there is a reasonable likelihood that the incident warrants immediate action, a determination is made to immediately remove the domain from the zone. As such, Customer Support will contact Amazon EU S.à r.l.'s registrar immediately to communicate that there is a domain involved in a security and stability issue. The registrar is provided only the domain name in question and the broadly stated type of incident. As .AMAZON is a Single Entity Registry using a single registrar whose work will be strictly controlled through a Service Level Agreement that includes the implementation of measures to prevent abusive registrations, the risk of evidence of abuse being compromised is minimized. Coordination with Law Enforcement & Industry Groups

Neustar has a close working relationship with a number of law enforcement agencies, both in the United States and Internationally. For example, in the United States, Neustar is in constant communication with the Federal Bureau of Investigation, US CERT, Homeland Security, the Food and Drug Administration, and the National Center for Missing and Exploited Children.

Neustar also participates in a number of industry groups aimed at sharing information among key industry players about the abusive registration and use of domain names. These groups include the Anti-Phishing Working Group and the Registration Infrastructure Safety Group (where Neustar served for several years on the Board of Directors). Through these organizations and others, Neustar proactively shares information with other registries, registrars, ccTLDs, law enforcement, security professionals, etc. not only on abusive domain name registrations within its own TLDs, but also with respect to information uncovered with respect to domain names in other registries' TLDs. Neustar has often found that rarely are abuses found only in the TLDs for which it manages, but also within other TLDs, such as .com and .info. Neustar routinely provides this information to the other registries so that the relevant registry can take the appropriate action. With the assistance of Neustar as its registry services provider, Amazon EU S.à r.l. can meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of its .AMAZON registry. Amazon EU S.à r.l. and/or Neustar will respond to legitimate law enforcement inquiries promptly upon receiving the request. Such response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. and/or Neustar for rapid resolution of the request. If the request involves any of the activities that can be validated by the registry and/or Neustar and implicates the type of activity set forth in the Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the activity further and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .AMAZON registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

28.3 Measures for Removal of Orphan Glue Records

As the Security and Stability Advisory Committee of ICANN (SSAC) rightly acknowledges, although orphaned glue records may be used for abusive or malicious purposes, the "dominant use of orphaned glue supports the correct and ordinary operation of the DNS." See

<http://www.icann.org/en/committees/security/sac048.pdf>.

While orphan glue often support correct and ordinary operation of the DNS, such glue records can be used maliciously to point to name servers that host domains used in illegal phishing, bot-nets, malware, and other abusive behaviors. Problems occur when the parent domain of the glue record is deleted but its children glue records still remain in DNS. Therefore, when the .AMAZON registry has written evidence of actual abuse of orphaned glue, the .AMAZON registry will act to remove those records

from the zone to mitigate such malicious conduct.

Neustar runs a daily audit of entries in its DNS systems and compares those with its provisioning system, which serves as an umbrella protection that items in the DNS zone are valid. Any DNS record that shows up in the DNS zone but not in the provisioning system is flagged for investigation and removed if necessary. This daily DNS audit prevents not only orphaned hosts but also other records that should not be in the zone.

In addition, if either Amazon EU S.à r.l. or Neustar becomes aware of actual abuse on orphaned glue after receiving written notification from a third party through its Abuse Contact or through its customer support, such glue records will be removed from the zone.

28.4 Measures to Promote WHOIS Accuracy

The .AMAZON registry will implement several measures to promote Whois accuracy. Whois service for Amazon EU S.à r.l. will operate as follows. The registry will keep all basic contact details for each domain name in a unique internal system, which facilitates access to the domain information. In addition, Amazon EU S.à r.l. will perform internal monitoring checks and procedures that will only allow accurate Whois information and remove outdated data.

28.4.1. Authentication of Registrant Information

Amazon EU S.à r.l. will guarantee the adequate authentication of registrant data, ensuring the highest levels of accuracy and diligence when dealing with Whois data. In doing so, Amazon EU S.à r.l.'s solid internal system will undertake, but not be limited to the following measures: running checks against Whois internal records and regular verification of all contact details and other relevant registrant information. The Amazon EU S.à r.l.'s registrar will also be charged with regularly checking Whois accuracy.

Amazon EU S.à r.l. will have a well-defined registration policy that will include a requirement that complete and accurate registrant details are provided by the requestor for a domain. These details will be validated by the Amazon EU S.à r.l. registrar who will have a contractual duty to comply with Amazon EU S.à r.l.'s registration policy. The full details of every domain requestor will be kept in Amazon EU S.à r.l.'s on-line registry management dashboard which can be accessed by Amazon EU S.à r.l.'s Domain Management Team at any time.

28.4.2. Regular Monitoring of Registration Data

Amazon EU S.à r.l. will comply with ICANN's Whois requirements. Among other measures, Amazon EU S.à r.l. will regularly remind its internal personnel to comply with ICANN's Whois information Policy through regularly checking Whois data against internal records, offering Whois accuracy services, evaluating claims of fraudulent Whois data, and cancelling domain name registrations with outdated Whois details.

28.4.3. Policies and Procedures ensuring compliance

Only Amazon EU S.à r.l. and its Affiliates will be permitted to register and use Amazon EU S.à r.l. domain names. Accordingly, the duties of the Amazon EU S.à r.l. registrar will be very limited and closely defined. Regardless, Amazon EU S.à r.l.'s Registry-Registrar Agreement will require Amazon EU S.à r.l.'s registrar to take steps necessary to ensure Whois data is complete and accurate and to implement the .AMAZON registration policies.

28.5 Resourcing Plans

Responsibility for abuse mitigation rests with a variety of functional groups at Neustar. The Neustar Abuse Monitoring team is primarily responsible for providing analysis and conducting investigations of reports of abuse. The Neustar Customer Service team also plays an important role in assisting with investigations, responding to customers, and notifying registrars of abusive domains. Finally, the Neustar Policy/Legal team is responsible for developing the relevant policies and procedures.

The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are

available from those teams:

Customer Support - 12 employees

Policy/Legal - Two employees

The resources are more than adequate to support the abuse mitigation procedures of the .AMAZON registry.

Furthermore, Amazon EU S.à r.l. dedicates significant financial and personnel resources to combating malicious and abusive behavior in the DNS and across the internet. Amazon EU S.à r.l. will extend these resources to designating the unique abuse point of contact, regularly monitoring potential abusive and malicious activities with support from dedicated technical staff, analyzing reported abuse and malicious activity, and acting to address such reported activity.

The designated abuse prevention staff within Neustar and Amazon EU S.à r.l. will be subject to regular evaluations, receive adequate training and work under expert supervision. The abuse prevention resources will comprise both internal staff and external abuse prevention experts who would give extra advice and support when necessary. This external staff includes experts in Amazon EU S.à r.l.'s registrar where one legal manager and four operational experts will be available to support Amazon EU S.à r.l.

Please note that in the above answer the terms "We", "Our" and "Amazon" may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent, or sometimes NeuStar, the registry services provider.

29. Rights Protection Mechanisms

29.1 Introduction

Amazon is applying for .AMAZON to provide a dedicated platform for stable and secure online communication and interaction. Amazon has several thousand registered intellectual property assets of all types including trademarks, designs, and domain names - we place the protection of our intellectual property as a high priority and we respect the intellectual property of others.

29.1.1 Rights protection in gTLD registry operation is a core objective of Amazon. We will closely manage this TLD by registering domains through a single registrar. Although Amazon and its subsidiaries will be the only eligible registrants, we will nonetheless require our registrar to work with us on a four-step registration process featuring: (i) Eligibility Confirmation; (ii) Naming Convention Check; (iii) Acceptable Use Review; and (iv) Registration. As stated in our answer to Question 18, all domains in our registry will remain the property of Amazon and will be provisioned to support the business goals of Amazon. Because all domains will be registered and maintained by Amazon (for use that complements our strategic business goals), we can ensure that all domains in our registries will carry accurate and up-to-date registration records.

We believe that the above registration process will ensure that abusive registrations are prevented, but we will continue to monitor ICANN policy developments, and update our procedures as required.

29.2 Core measures to prevent abusive registrations

To further prevent abusive registration or cybersquatting, we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated for new gTLD operators by ICANN:

- A 30 day Sunrise process
- A 60 day Trademark Claims process

Generally, these RPMs are targeted at abusive registrations undertaken by third parties. However, domains in our registry will be registered only to Amazon or its subsidiaries through a single registrar who will be contractually required to ensure that stated rules covering eligibility and use of a domain are adhered to through a validation process. As a result, abusive registrations should be prevented.

In the very unlikely circumstances that a domain is registered and used in an improper way, we acknowledge that we will be the respondent in related proceedings

and we undertake to co-operate fully with ICANN and other appropriate agencies to resolve any concerns.

29.2.1 Sunrise Eligibility

Our Sunrise Eligibility Requirements will clearly state that eligible applicants must be members of the Amazon group of companies and its subsidiaries. Furthermore, all domain names must be used to support the business goals of Amazon. Nonetheless, notice of our Sunrise will be provided to third party holders of validated trademarks in the Trademark Clearinghouse as required by ICANN. Our Sunrise Eligibility Requirements will be published on the website of our registry.

29.2.2 Sunrise Window

As required in the Applicant Guidebook in section 7.1, our Sunrise window will recognize "all word marks: (i) nationally or regionally registered and for which proof of use - which can be a declaration and a single specimen of current use - was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008".

Our Sunrise window will last for 30 days. Applications received from an ICANN-accredited registrar will be accepted for registration if they are (i) supported by an entry in the Trademark Clearinghouse (TMCH) during our Sunrise window and (ii) satisfy our Sunrise Eligibility Requirements. Once registered, those domain names will have a one year term of registration. Any domain names registered will be managed by our registrar.

29.2.3 Sunrise Dispute Resolution Policy

We will devise and publish the rules for our Sunrise Dispute Resolution Policy (SDRP) on our registry website. Our SDRP will apply to all our registries and will allow any party to raise a challenge on the following four grounds as required in the Applicant Guidebook (6.2.4):

- (i) At the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;
- (ii) The domain name is not identical to the mark on which the registrant based its Sunrise registration;
- (iii) The trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or
- (iv) The trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

Complaints can be submitted through our registry website within 30 days following the closure of the Sunrise, and will be initially processed by our registrar. Our registrar will promptly report to us: (i) the challenger; (ii) the challenged domain name; (iii) the grounds upon which the complaint is based; and (iv) why the challenger believes the grounds are satisfied.

29.2.4 Trademark Claims Service

Our Trademark Claims Service (TMCS) will run for a 60 day period following the closure of our 30 day Sunrise. Our TMCS will be supported by the Trademark Clearinghouse and will provide a notice to third parties interested in filing a character string in our registry of a registered trademark right that matches the character string in the TMCH.

We will honour and recognize in our TMCS the following types of marks as defined in the Applicant Guidebook section 7.1: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.

Once received from the TMCH, with which our registry provider will interface, a claim will be initially processed by our registrar who will provide a report to us on the eligibility of the applicant.

29.2.5 Implementation and Resourcing Plans of core services to prevent abusive

registration

Our Sunrise and IP Claims service will be introduced with the following timetable:

Day One: Announcement of Registry Launch and publication of registry website with details of the Sunrise and Trademark Claim Service ("TMCS")

Day 30: Sunrise opens for 30 days on a first-come, first served basis. Once registrations are approved, they will be entered into the Shared Registry System (SRS) and published in our Thick-Whois database.

Day 60-75: Registry Open, domains applied for in the Sunrise registered and TMCS begins for a minimum of 60 days

Day 120-135: TMCS ends; normal operations continue.

Our Implementation Team will comprise the following:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years' experience with implementing registry launches including rights protection schemes such as the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests.

The Implementation Team will create a formal Registry Launch plan by 1 October 2012. This plan will set out the exact process for the launch of each Amazon registry and will define responsibilities and budgets. The Registry website, which is budgeted for in the three year plans provided in our answers to Question 46, will be built by 1 December 2012 or within 30 days of pre-validation testing beginning, whichever is the sooner. It will feature Rules of Registration, Rules of Eligibility, Terms & Conditions of Registration, Acceptable Use Policies as well as the Rules of the Sunrise, the Rules of the Sunrise Dispute Resolution Policy and the Rules of the Trademark Claims Service.

Technical implementation between the registry and the Trademark Clearinghouse will be undertaken by the registry service provider as soon as practical after the Trademark Clearinghouse is operational and announces its integration process.

As demonstrated in our answer to question 46, a budget has been set aside to pay fees charged by the Trademark Clearinghouse Operator for this integration.

The contract we have with our registrar (the RAA) will require that the registrar uses the TMCH, adheres to the Terms & Conditions of the TMCH and will prohibit the registrar from filing domains in our registries on its own behalf or utilizing any data from the TMCH except in the provision of its duties as our registrar.

When processing TMCS claims, our registrar will be required to use the specific form of notice provided by ICANN in the Applicant Guidebook.

We will also require our registrar to implement appropriate privacy policies reflecting local requirements. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

29.3 Mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

To prevent the abusive use of registered domain names on an ongoing basis we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated by ICANN:

- The Uniform Dispute Resolution Policy (UDRP) to address domain names that have been registered and used in bad faith in the TLD.
- The Uniform Rapid Suspension (URS) scheme which is a faster, more efficient alternative to the Uniform Dispute Resolution Policy to deal with clear-cut cases of cybersquatting.
- The Post Delegation Dispute Resolution Procedure (PDDRP).
- Implementation of a Thick WHOIS making it easier for rights holders to identify and locate infringing parties.

The UDRP and the URS are targeted at abusive registrations undertaken by third parties and the PDDRP at so called "Bad Actor" registries. As domains in our registry will be registered not to third parties but only to Amazon or its

subsidiaries through a single registrar which will be required through contract to ensure that the rules covering eligibility and use of a domain are adhered to, we believe that abusive registrations by third parties should be completely prevented. Abusive behaviour by representatives of Amazon or our subsidiaries will be prevented by our internal processes, for example the pre-registration validation checks and monitoring of use of our registrar.

We acknowledge that we are subject to the UDRP, the URS and the PDDRP and we will co-operate fully with ICANN and appropriate registries in the unlikely circumstances that complaints against us, as the registrant, are made.

29.3.1 The Uniform Dispute Resolution Policy (UDRP)

The UDRP is an out-of-court dispute resolution mechanism for trademark owners to resolve clear cases of bad faith, abusive registration and use of domain names. The UDRP applies by contract to all domain name registrations in gTLDs. Standing to file a UDRP complaint is limited to trademark owners who must demonstrate their rights. To prevail in a UDRP complaint, the complainant must further demonstrate that the domain name registrant has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. In the event of a successful claim, the infringing domain name registration is transferred to the complainant's control.

Amazon or its subsidiaries will be the respondent in all UDRP complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no rights or legitimate interests" in a domain in our registry so the possibility of good faith UDRP complaints should be minimized. In the unlikely circumstances that a complaint is made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator.

We will be applying for an exemption to Clause 1b of the Registry Operators Code of Conduct. This means that we will not be allowed to transfer domains to third parties as the only registrant will be Amazon or our subsidiaries. Therefore if a complaint against us is filed, the only possible remedy will be the cancellation of the domain instead of the transfer to the complainant.

Should a successful complaint be made we will therefore place the cancelled domain that is the subject of the complaint on a list that prevents it from being registered again.

29.3.2 The URS

The URS is intended to be a lighter, quicker complement to the UDRP. Like the UDRP, it is intended for clear-cut cases of trademark abuse. Under the URS, the only remedy which a panel may grant is the temporary suspension of a domain name for the duration of the registration period (which may be extended by the prevailing complainant for one year, at commercial rates). URS substantive criteria mirror those of the UDRP but with a higher burden of proof for complainants, and additional registrant defences. Once a determination is rendered, a losing registrant has several appeal possibilities from 30 days up to one year. Either party may file a de novo appeal within 14 days of a decision. There are penalties for filing "abusive complaints" which may result in a ban on future URS filings.

As with the description of our UDRP process above, Amazon or its subsidiaries will be the respondent in all URS complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no legitimate right or interest to the domain name" and "that the domain name was registered and is being used in bad faith." Notwithstanding this, should a complaint be made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator.

Should a successful complaint be made, we will suspend the domain name for the duration of the registration period.

We will co-operate with the URS panel providers and panelists as we will co-operate with UDRP panel providers and panelists.

Being the only eligible registrant, we will not make changes to a domain in Locked Status or alter a registration record associated with a URS complaint as required in the Applicant Guidebook.

29.3.3 The Post-Delegation Dispute Resolution Procedure (PDDRP)

The PDDRP is an administrative option for trademark owners to file an objection

against a registry whose "affirmative conduct" in its operation or use of its gTLD is alleged to cause or materially contribute to trademark abuse. In this way, the PDDRP is intended to act as a higher-level enforcement tool to assist ICANN compliance activities, where rights holders may not be able to continue to turn solely to lower-level multijurisdictional enforcement options in a vastly expanded DNS.

The PDDRP involves a number of procedural layers, such as an administrative compliance review, appointment of a "threshold review panel", an expert determination as to liability under the procedure (with implementation of any remedies at ICANN's discretion), a possible de novo appeal and further appeal to arbitration under ICANN's registry terms. The PDDRP requires specific bad faith conduct including profit from encouraging infringement in addition to "the typical registration fee."

As set out in the Applicant Guidebook in the appendix summarising the PDDRP, the grounds for a complaint on a second level registration are that, "(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and (b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which (i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark or (ii) impairs the distinctive character or the reputation of the complainant's mark, or (iii) creates a likelihood of confusion with the complainant's mark."

Whilst we will co-operate with any complaints made under the PDDRP and we will abide by any determinations, we think it is highly improbable that any PDDRP complaints will succeed because the grounds set out above cannot be satisfied as domains in the registry will not be for sale and cannot be transferred to third parties.

29.3.4 Thick Whois

As required in Specification 4 of the Registry agreement, all Amazon registries will provide Thick Whois. A Thick WHOIS provides a centralized location of registrant information within the control of the registry (as opposed to thin Whois where the data is dispersed across registrars).

Thick Whois will provide rights owners and law enforcement with the ability to review the registration record easily.

We will place a requirement on our registrar to ensure that all registrations are filed with accurate Whois details and we will undertake reviews of Whois accuracy every three months to ensure that the integrity of data under our control is maintained.

Amazon will create and publish a Whois Query email address so that third parties can submit queries about any domains in our registry.

29.3.5 Implementation and Resourcing Plans for mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

Our post-launch rights protection mechanisms will be in place from Day One of the launch of the registry.

To ensure that we are compliant with our obligations as a registry operator, we will develop a section of our registry website to assist third parties involved in UDRP, URS and PDDRP complaints including third parties wishing to make a complaint, ICANN compliance staff and the providers of UDRP and URS panels. This will feature an email address for enquiries relating to disputes or seeking further information on specific domains. We will monitor this address for all of the following: Notice of Complaint, Notice of Default, URS Determination, UDRP Determination, Notice of Appeal and Appeal Panel Findings where appropriate.

As stated in our answer to Question 18, Amazon's Intellectual Property group will be responsible for the development, maintenance and enforcement of the Domain Management Policy. This will include ensuring that the following implementation targets are met:

- Locking domains that are the subject of URS complaints within 24 hours of receipt of a URS complaint, and ensuring our registrar locks domains that are the subject of UDRP complaints within 24 hours of receipt of a UDRP complaint.
- Confirming the implementation of the lock to the relevant URS provider, and ensure our registrar confirms the implementation of the lock to the relevant UDRP provider.

- Ensuring that our registrar cancels domain names that are the subject of a successful UDRP complaint within 24 hours
- Redirecting servers to a website with the ICANN mandated information following a successful URS within 24 hours

The human resources dedicated to managing post-launch RPM include:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years' experience with implementing registry launches including rights protection schemes including the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests.

We are confident that this staffing is more than adequate for a registry where the only registrant is Amazon or its subsidiaries. Of course, should business goals change requiring more resources, Amazon will closely review any expansion plans, and plan for additional financial, technical, and team-member support to put the Registry in the best position for success.

We will also require our registrar to implement appropriate privacy policies reflecting the high standards that we operate. For information on our Privacy Policies, please see:

http://www.amazon.com/gp/help/customer/display.html/ref=footer_privacy?ie=UTF8&nodeId=468496

29.4 Additional Mechanism that exceed requirements

Rights protection is at the core of Amazon's objective in applying for this registry. Therefore we are committed to providing the following additional mechanisms:

29.4.1 Registry Legal Manager

Amazon will appoint a Legal Manager to ensure that we are compliant with ICANN policies. The Legal Manager will also handle all disputes relating to RPMs. This will involve evaluating complaints, working with external legal counsel and law enforcement, and resolving disputes. The Legal Manager will also liaise with external stakeholders including URS and UDRP panel providers, the TMCH operator and trademark holders as needed.

29.4.2 Rights Protection Help Line

Amazon will maintain a Rights Protection Help Line. Calls to this line will be allocated a Case Number and the following details will be recorded: (i) the contact details of the complainant; (ii) the domain name that is the subject of the complaint or query; (iii) the registered right, if any, that is associated with the request; and (iv) an explanation of the concerns.

An initial response to a query or complaint will be made within 24 hours. The Rights Protection Help Line will be in place on Day One of the registry. The cost of the Rights Help Line is reflected in the Projections Templates provided at Question 46 as part of on-going registry maintenance costs.

The aim of the Rights Protection Help Line is to assist third parties in understanding the mission and purpose of our registry and to see if a resolution can be found that is quicker and easier than the filing of a UDRP or URS complaint.

The Legal Manager will oversee the Rights Protection Help Line.

29.4.3 Registrar Accreditation

Amazon will audit the performance of our registrar every six months and re-validate our Registry-Registrar Agreements annually. Our audits will include site visits to ensure the security of data etc.

29.4.4 Audits of registration records

Every three months, whichever is the most of 250 or 2% of the total of domain names registered in that period will be reviewed by our registrar to ensure accurate registration records and use that is compliant with our Acceptable Use guidelines.

29.4.5 Maintenance of Registry Website

Amazon will create a website for all our registries and we will make it easy for third parties including representatives of law enforcement to contact us by

featuring our full contact details (physical, email address and phone number).

29.4.6 Click Wrapping our Terms & Conditions

Although only Amazon and its subsidiaries can register domain names in our registry, we will bring to the attention of requestors of domain names the Terms & Conditions of registration and, especially, Acceptable Use terms through Click Wrapping.

29.4.7 Annual Report

Amazon will publish an Annual Report on Rights Protection in our registries on our Registry Website. This will include relevant statistics and it will outline all cases and how they were resolved.

29.4.8 Contacts with WIPO and other DRS providers

Amazon will invite representatives of WIPO and other DRS providers to review our RPM and to make suggestions on any improvements that we might make after the first full year of operation.

29.4.9 Registrant Pre-Verification

All requests for registration will be verified by our registrar to ensure that they come from a legitimate representative of Amazon or our subsidiaries. A record of the request will be kept in our on-line domain management console including the requestor's email address and other contact information.

29.4.10 Take down Procedures

Amazon has described Takedown Procedures for domains supporting Abusive Behaviours in Question 28. We think this is very unlikely in a registry where only Amazon or its subsidiaries are registrants but we will reserve the right to terminate a registration and to take down all associated services after a review by our Legal Manager if a takedown for reasons of rights protection is requested by law enforcement, a representative of a court we recognise etc.

29.4.11 Speed of Response

Wherever possible, as outlined above, Amazon committed to a response within 24 hours of a complaint being made. This exceeds the guidelines for the UDRP and the URS. Please note that in the above answer the terms "We", "Our" and "Amazon" may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent.

30(a). Security Policy: Summary of the security policy for the proposed registry

Amazon EU S.à r.l. and our back-end operator, Neustar, recognize the vital need to secure the systems and the integrity of the data in commercial solutions. The .AMAZON registry solution will leverage industry-best security practices including the consideration of physical, network, server, and application elements.

Neustar's approach to information security starts with comprehensive information security policies. These are based on the industry best practices for security including SANS (SysAdmin, Audit, Network, Security) Institute, NIST (National Institute of Standards and Technology), and Center for Internet Security (CIS). Policies are reviewed annually by Neustar's information security team.

The following is a summary of the security policies that will be used in the .AMAZON registry, including:

1. Summary of the security policies used in the registry operations
2. Description of independent security assessments
3. Description of security features that are appropriate for .AMAZON
4. List of commitments made to registrants regarding security levels

All of the security policies and levels described in this section are appropriate for the .AMAZON registry.

30.(a).1 Summary of Security Policies

Neustar, Inc. has developed a comprehensive Information Security Program in order to create effective administrative, technical, and physical safeguards for the protection of its information assets, and to comply with Neustar's obligations under

applicable law, regulations, and contracts. This Program establishes Neustar's policies for accessing, collecting, storing, using, transmitting, and protecting electronic, paper, and other records containing sensitive information.

The Program defines:

The policies for internal users and our clients to ensure the safe, organized and fair use of information resources.

The rights that can be expected with that use.

The standards that must be met to effectively comply with policy.

The responsibilities of the owners, maintainers, and users of Neustar's information resources.

Rules and principles used at Neustar to approach information security issues

The following policies are included in the Program:

1. Acceptable Use Policy

The Acceptable Use Policy provides the "rules of behavior" covering all Neustar Associates for using Neustar resources or accessing sensitive information.

2. Information Risk Management Policy

The Information Risk Management Policy describes the requirements for the on-going information security risk management program, including defining roles and responsibilities for conducting and evaluating risk assessments, assessments of technologies used to provide information security and monitoring procedures used to measure policy compliance.

3. Data Protection Policy

The Data Protection Policy provides the requirements for creating, storing, transmitting, disclosing, and disposing of sensitive information, including data classification and labeling requirements, the requirements for data retention. Encryption and related technologies such as digital certificates are also covered under this policy.

4. Third Party Policy

The Third Party Policy provides the requirements for handling service provider contracts, including specifically the vetting process, required contract reviews, and on-going monitoring of service providers for policy compliance.

5. Security Awareness and Training Policy

The Security Awareness and Training Policy provide the requirements for managing the on-going awareness and training program at Neustar. This includes awareness and training activities provided to all Neustar Associates.

6. Incident Response Policy

The Incident Response Policy provides the requirements for reacting to reports of potential security policy violations. This policy defines the necessary steps for identifying and reporting security incidents, remediation of problems, and conducting "lessons learned" post-mortem reviews in order to provide feedback on the effectiveness of this Program. Additionally, this policy contains the requirement for reporting data security breaches to the appropriate authorities and to the public, as required by law, contractual requirements, or regulatory bodies.

7. Physical and Environmental Controls Policy

The Physical and Environment Controls Policy provides the requirements for securely storing sensitive information and the supporting information technology equipment and infrastructure. This policy includes details on the storage of paper records as well as access to computer systems and equipment locations by authorized personnel and visitors.

8. Privacy Policy

Neustar supports the right to privacy, including the rights of individuals to control the dissemination and use of personal data that describes them, their personal choices, or life experiences. Neustar supports domestic and international laws and regulations that seek to protect the privacy rights of such individuals.

9. Identity and Access Management Policy

The Identity and Access Management Policy covers user accounts (login ID naming convention, assignment, authoritative source) as well as ID lifecycle (request, approval, creation, use, suspension, deletion, review), including provisions for system/application accounts, shared/group accounts, guest/public accounts, temporary/emergency accounts, administrative access, and remote access. This policy also includes the user password policy requirements.

10. Network Security Policy

The Network Security Policy covers aspects of Neustar network infrastructure and the technical controls in place to prevent and detect security policy violations.

11. Platform Security Policy

The Platform Security Policy covers the requirements for configuration management of servers, shared systems, applications, databases, middle-ware, and desktops and laptops owned or operated by Neustar Associates.

12. Mobile Device Security Policy

The Mobile Device Policy covers the requirements specific to mobile devices with information storage or processing capabilities. This policy includes laptop standards, as well as requirements for PDAs, mobile phones, digital cameras and music players, and any other removable device capable of transmitting, processing or storing information.

13. Vulnerability and Threat Management Policy

The Vulnerability and Threat Management Policy provides the requirements for patch management, vulnerability scanning, penetration testing, threat management (modeling and monitoring) and the appropriate ties to the Risk Management Policy.

14. Monitoring and Audit Policy

The Monitoring and Audit Policy covers the details regarding which types of computer events to record, how to maintain the logs, and the roles and responsibilities for how to review, monitor, and respond to log information. This policy also includes the requirements for backup, archival, reporting, forensics use, and retention of audit logs.

15. Project and System Development and Maintenance Policy

The System Development and Maintenance Policy covers the minimum security requirements for all software, application, and system development performed by or on behalf of Neustar and the minimum security requirements for maintaining information systems.

30. (a).2 Independent Assessment Reports

Neustar IT Operations is subject to yearly Sarbanes-Oxley (SOX), Statement on Auditing Standards #70 (SAS70) and ISO audits. Testing of controls implemented by Neustar management in the areas of access to programs and data, change management and IT Operations are subject to testing by both internal and external SOX and SAS70 audit groups. Audit Findings are communicated to process owners, Quality Management Group and Executive Management. Actions are taken to make process adjustments where required and remediation of issues is monitored by internal audit and QM groups. External Penetration Test is conducted by a third party on a yearly basis. As authorized by Neustar, the third party performs an external Penetration Test to review potential security weaknesses of network devices and hosts and demonstrate the impact to the environment. The assessment is conducted remotely from the Internet with testing divided into four phases:

A network survey is performed in order to gain a better knowledge of the network that was being tested

Vulnerability scanning is initiated with all the hosts that are discovered in the previous phase

Identification of key systems for further exploitation is conducted

Exploitation of the identified systems is attempted.

Each phase of the audit is supported by detailed documentation of audit procedures and results. Identified vulnerabilities are classified as high, medium and low risk to facilitate management's prioritization of remediation efforts. Tactical and strategic recommendations are provided to management supported by reference to industry best practices.

30.(a).3 Augmented Security Levels and Capabilities

There are no increased security levels specific for .AMAZON. However, Neustar will provide the same high level of security provided across all of the registries it manages.

A key to Neustar's Operational success is Neustar's highly structured operations practices. The standards and governance of these processes:

Include annual independent review of information security practices

Include annual external penetration tests by a third party

Conform to the ISO 9001 standard (Part of Neustar's ISO-based Quality

Management System)

Are aligned to Information Technology Infrastructure Library (ITIL) and CoBIT best practices

Are aligned with all aspects of ISO IEC 17799

Are in compliance with Sarbanes-Oxley (SOX) requirements (audited annually)

Are focused on continuous process improvement (metrics driven with product scorecards reviewed monthly).

A summary view to Neustar's security policy in alignment with ISO 17799 can be found in section 30.(a).4 below.

30.(a).4 Commitments and Security Levels

The .AMAZON registry commits to high security levels that are consistent with the needs of the TLD. These commitments include:

Compliance with High Security Standards

Security procedures and practices that are in alignment with ISO 17799

Annual SOC 2 Audits on all critical registry systems

Annual 3rd Party Penetration Tests

Annual Sarbanes Oxley Audits

Highly Developed and Document Security Policies

Compliance with all provisions described in section 30.(a).4 below and in the attached security policy document.

Resources necessary for providing information security

Fully documented security policies

Annual security training for all operations personnel

High Levels of Registry Security

Multiple redundant data centers

High Availability Design

Architecture that includes multiple layers of security

Diversified firewall and networking hardware vendors

Multi-factor authentication for accessing registry systems

Physical security access controls

A 24x7 manned Network Operations Center that monitors all systems and applications

A 24x7 manned Security Operations Center that monitors and mitigates DDoS attacks

DDoS mitigation using traffic scrubbing technologies

EXHIBIT C-018



New gTLD Application Submitted to ICANN by: Amazon EU S.à r.l.

String: 亚马逊

Originally Posted: 13 June 2012

Application ID: 1-1318-5591

Applicant Information

1. Full legal name

Amazon EU S.à r.l.

2. Address of the principal place of business

5 rue Plaetis
Luxembourg L-2338
LU

3. Phone number

+352 26733 300

4. Fax number

+352 26733 335

5. If applicable, website or URL

`http://www.amazon.com/`

Primary Contact

6(a). Name

Ms. Lorna Jean Gradden

6(b). Title

Operations Director

6(c). Address

6(d). Phone Number

+442074218250

6(e). Fax Number

+448700118187

6(f). Email Address

`lorna.gradden.am3@valideus.com`

Secondary Contact

7(a). Name

Ms. Dana Brown Northcott

7(b). Title

Associate General Counsel, IP

7(c). Address

7(d). Phone Number

+1 2062667260

7(e). Fax Number

+1 2062667010

7(f). Email Address

danan@amazon.com

Proof of Legal Establishment

8(a). Legal form of the Applicant

Corporation (Société à responsabilité limitée)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Luxembourg

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

Amazon Europe Holding Technologies S.C.S. (AEHT) owns 100% of Amazon EU S.à r.l. AEHT is held by one unlimited partner, Amazon Europe Holdings, Inc. and two limited partners, Amazon.com, Inc. and Amazon.com Int'l Sales, Inc.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Amazon EU S.à r.l. is not a joint venture.

Applicant Background

11(a). Name(s) and position(s) of all directors

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(b). Name(s) and position(s) of all officers and partners

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Amazon Europe Holding Technologies S.C.S.	Not Applicable
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11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility**Applied-for gTLD string****13. Provide the applied-for gTLD string. If an IDN, provide the U-label.**

亚马逊

14(a). If an IDN, provide the A-label (beginning with "xn--").

xn--j1q480n2rg

14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

Amazon

14(c). If an IDN, provide the language of the label (in English).

Chinese

14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).

ZH

14(d). If an IDN, provide the script of the label (in English).

Han (simplified variant)

14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).

HANS

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

U+4E9A U+9A6C U+900A

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

Wherever possible, well-established language tables that have been published in IANA Repository of IDN Practices are adopted. Published tables, especially from a ccTLD that primarily uses the given language or script, represent valuable research and deployment experience. In the interest of interoperability, we reuse these tables in our IDN implementation.

In some instances, multiple language tables for the same language may exist, with material differences in their content. In order to determine the best approach that fits our needs and specific target audience, we may conduct research and consult reference sources such as omniglot.com and evertime.com for clarity and understand the reason for the differences.

The Chinese IDN table is based on the .biz table found on in the IANA Repository. This table has been in use for nearly five years. When it was created in 2007, it was derived from the following sources:

IDN Character Table for CNNIC: http://www.iana.org/domains/idn-tables/tables/cn_zh-cn_4.0.html

IDN Character Table for TWNIC: http://www.iana.org/domains/idn-tables/tables/tw_zh-tw_4.0.1.html

When constructing the table, Neustar consulted with various experts including representatives at CNNIC and TWNIC.

15(c). List any variant strings to the applied-for gTLD string according to the relevant IDN tables.

Variant 1

A-label: xn--j1q061n1kg
U-label: 亞馬遜
Unicode: U+4E9A U+9A6C U+905C

Variant 2

A-label: xn--j1qz76b6y5b
U-label: 亞馬遜
Unicode: U+4E9A U+9A6C U+613B

Variant 3

A-label: xn--j1q480nmbg
U-label: 亞馬遜
Unicode: U+4E9A U+99AC U+900A

Variant 4

A-label: xn--j1q061n13f
U-label: 亞馬遜
Unicode: U+4E9A U+99AC U+905C

Variant 5

A-label: xn--j1qz76bqi5b
U-label: 亞馬遜
Unicode: U+4E9A U+99AC U+613B

Variant 6

A-label: xn--nlqw80n2rg
U-label: 亞馬遜
Unicode: U+4E9E U+9A6C U+900A

Variant 7

A-label: xn--nlqs61n1kg
U-label: 亞馬遜
Unicode: U+4E9E U+9A6C U+905C

Variant 8

A-label: xn--nlqr76b6y5b
U-label: 亞馬遜
Unicode: U+4E9E U+9A6C U+613B

Variant 9

A-label: xn--nlqw80nmbg
U-label: 亞馬遜
Unicode: U+4E9E U+99AC U+900A

Variant 10

A-label: xn--nlqs61n13f
U-label: 亞馬遜
Unicode: U+4E9E U+99AC U+905C

Variant 11

A-label: xn--nlqr76bqi5b
U-label: 亞馬遜
Unicode: U+4E9E U+99AC U+613B

Variant 12

A-label: xn--11q080n2rg
U-label: 亞馬遜
Unicode: U+4E9C U+9A6C U+900A

Variant 13

A-label: xn--11qw61n1kg

U-label: 垂马遜
Unicode: U+4E9C U+9A6C U+905C

Variant 14
A-label: xn--1lqv76b6y5b
U-label: 垂马瑟
Unicode: U+4E9C U+9A6C U+613B

Variant 15
A-label: xn--1lq080nmbg
U-label: 垂馬遜
Unicode: U+4E9C U+99AC U+900A

Variant 16
A-label: xn--1lqw61nl3f
U-label: 垂馬遜
Unicode: U+4E9C U+99AC U+905C

Variant 17
A-label: xn--1lqv76bqi5b
U-label: 垂馬瑟
Unicode: U+4E9C U+99AC U+613B

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

Amazon EU S.à r.l. (AEU) foresees no known rendering issues in connection with the . 垂马遜 TLD. This is based upon consultation with AEU's backend provider, Neustar, which has successfully launched a number of new gTLDs over the last decade. In reaching this determination, the following data points were analyzed:

- ICANN's Security Stability Advisory Committee DSV009, Alternative TLD Name Systems and Roots: Conflict, Control & Consequences
- IAB - RFC3696 Application Techniques for Checking & Transformation of Names
- Known software issues which Neustar has encountered from launching new gTLDs
- Character type and length
- ICANN supplemental notes to Q16
- ICANN presentation during its Costa Rica regional meeting on TLD Universal Acceptance;

The following sections discuss the potential operational or rendering problems that can arise, and how mitigated.

Compliance & Interoperability

The applied-for string conforms to all relevant RFCs, as well as the string requirements set forth in s2.2.1.3.2 Applicant Guidebook.

Mixing Scripts

A domain name label with characters from different scripts has a higher likelihood of encountering rendering issues. If the mixing of scripts occurs within the top-level label, any rendering issue would affect all domain names registered under it. If occurring within second level labels, its ill-effects are confined to the domain names with such labels.

All characters in the applied-for gTLD string are taken from a single script. The IDN policies are conservative and compliant with ICANN Guidelines for the Implementation of IDN V3.0. Specifically, mixed-script labels may not be registered

at the 2nd level, except for languages with established orthographies and conventions that require the commingled use of multiple scripts, e.g. Japanese.

Interaction between Labels

Even with the above issue appropriately restricted, it is possible that a domain name composed of labels with different properties such as script and directionality may introduce unintended rendering behavior.

Only scripts and characters that would not pose a risk when combined with the top level label will be offered.

Immature Scripts

Scripts or characters added in Unicode versions newer than 3.2 (on which IDNA2003 was based) may encounter interoperability issues due to the lack of software support.

We have no current plans to offer registration of labels containing such scripts or characters.

Other Issues

We are not offering the registration of domains that includes combining characters or characters that require IDNA contextual rules handling.

The following may be construed as operational or rendering issues, but consider them out of the scope of this question. Nevertheless, we will take reasonable steps to protect registrants and Internet users by working with vendors and relevant language communities to mitigate such issues.

- missing fonts causing string to fail to render correctly
- universal acceptance of the TLD

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

N/A

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Founded in 1994, Amazon opened the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon seeks to be Earth's most customer-centric company, where customers can find and discover anything they might want to buy online, and endeavors to offer its customers the lowest possible prices. Amazon and other sellers offer millions of unique new, refurbished and used items in categories such as Books; Movies, Music & Games; Digital Downloads; Electronics & Computers; Home & Garden; Toys, Kids & Baby; Grocery; Apparel, Shoes & Jewelry; Health & Beauty; Sports & Outdoors; and Tools, Auto & Industrial. Amazon Web Services provides Amazon's developer customers with access to in-the-cloud infrastructure services based on Amazon's own back-end technology platform, which developers can use to enable virtually any type of business. The new latest generation Kindle is the lightest, most compact Kindle ever and features the same 6-inch, most advanced electronic ink display that reads like real paper even in bright sunlight. Kindle Touch is a new addition to the Kindle family with an easy-to-use touch screen that makes it easier than ever to turn pages, search, shop, and take notes - still with all the benefits of the most advanced electronic ink display. Kindle Touch 3G is

the top of the line e-reader and offers the same new design and features of Kindle Touch, with the unparalleled added convenience of free 3G. Kindle Fire is the Kindle for movies, TV shows, music, books, magazines, apps, games and web browsing with all the content, free storage in the Amazon Cloud, Whispersync, Amazon Silk (Amazon's new revolutionary cloud-accelerated web browser), vibrant color touch screen, and powerful dual-core processor.

18a

The mission of the .亚马逊 registry is:

To provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation.

A .亚马逊 registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

The .亚马逊 registry will benefit registrants and internet users by offering a stable and secure foundation for online communication and interaction.

What is the goal of your proposed gTLD in terms of areas of specialty, service levels or reputation?

Amazon intends for its new .亚马逊 gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction. The .亚马逊 registry will be run in line with current industry standards of good registry practice.

What do you anticipate your proposed gTLD will add to the current space in terms of competition, differentiation or innovation?

Amazon values the opportunity to be one of the first companies to own a gTLD. A .亚马逊 registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

What goals does your proposed gTLD have in terms of user experience?

Amazon intends for its new .亚马逊 gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction.

Provide a complete description of the applicant's intended registration policies in support of the goals above

Amazon's Intellectual Property group will be responsible for the development, maintenance and enforcement of a Domain Management Policy. The Domain Management Policy will define (i) the rules associated with eligibility and domain name allocation, (ii) the license terms governing the use of a .亚马逊 domain name, and (iii) the dispute resolution policies for the .亚马逊 gTLD. Amazon will continually update the Domain Management Policy as needed to reflect Amazon's business goals and, where appropriate, ICANN consensus policies. Registration of a domain name in the .亚马逊 registry will be undertaken in four steps: (i) Eligibility Confirmation, (ii) Naming Convention Check, (iii) Acceptable Use Review, and (iv) Registration. All domains in the .亚马逊 registry will remain

the property of Amazon.

For example, on the rules of eligibility, each applied for character string must conform to the .亚马逊 rules of eligibility. Each .亚马逊 name must:

- be at least 3 characters and no more than 63 characters long
- not contain a hyphen on the 3rd and 4th position (tagged domains)
- contain only letters (a-z), numbers (0-9) and hyphens or a combination of these
- start and end with an alphanumeric character, not a hyphen
- not match any character strings reserved by ICANN
- not match any protected country names or geographical terms

Additionally:

- Internationalized domain names (IDN) may be supported in the .亚马逊 registry at the second level.
 - The .亚马逊 registry will respect third party intellectual property rights.
 - .亚马逊 domains may not be delegated or assigned to third party organizations, institutions, or individuals.
 - All .亚马逊 domains will carry accurate and up-to-date registration records.
- Amazon's Intellectual Property group reserves the right to revoke a license to use a .亚马逊 domain name, at any time, if any use of a .亚马逊 domain name violates the Domain Management Policy.

Will your proposed gTLD impose any measures for protecting the privacy of confidential information of registrants or users?

Yes. Amazon will implement appropriate privacy policies respecting requirements of local jurisdictions. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

Describe whether and in what ways outreach and communications will help to achieve your projected benefits?

There is no foreseeable reason for Amazon to undertake public outreach or mass communication about its new gTLD registry because domains will be provisioned in line with Amazon's business goals.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

Amazon intends to initially provision a relatively small number of domains in the .亚马逊 registry to support the business goals of Amazon. These initiatives should not impose social costs of any type on consumers.

How will multiple applications for a particular domain be resolved, for example, by auction or on a first come first served basis?

Applications from Amazon and its subsidiaries for domains in the .亚马逊 registry will be considered by Amazon's Intellectual Property group and allocated in line with Amazon's business goals. The .亚马逊 registry will not be promoted by hundreds of registrars simultaneously, so there will not be multiple-applications for a particular domain.

Explain any cost benefits for registrants you intend to implement (e.g. advantageous pricing, introductory discounts, bulk registration discounts).

Domains in the .亚马逊 registry will be provisioned to support the business goals of Amazon. Accordingly, "cost benefits" may be explored depending on the business goals of Amazon. Amazon shares the goals of enhancing customer trust and choice.

The Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than 10 years. Additionally the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation?

The Domain Management Policy will include the costs and benefits of Amazon's unique and dedicated platform for stable and secure online communication and interaction.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

Amazon EU S.à r.l., with support of its ultimate parent company, Amazon.com, Inc. (collectively referred to in this response throughout as "Amazon"), is committed to managing the .亚马逊 registry in full compliance with all applicable laws, consensus policies, ICANN guidelines, RFCs and the Specifications of the Registry Agreement. In the management of domain names in the .亚马逊 registry, based on GAC advice and Specification 5, Amazon intends to block from initial registration those country and territory names contained in the following lists:

1. The short form (in English) of all country and territory names contained on the ISO 3166- 1 list, as updated from time to time, including the European Union; and

2. The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and

3. The list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

The process for reserving these names, and hence blocking them from registration, will be agreed to with our technical service provider Neustar.

Because the .亚马逊 registry will be a single entity registry and for purposes which serve Amazon's strategic business aims, the reserved names cannot be offered to Governments or other official bodies for their own use as this would conflict with the mission and purpose of the gTLD. However, for the same reason, they will not be offered to third parties.

The .亚马逊 registry only provides for the registration of names at the second level. No third level domains will be delegated at the registry level. It is consistent with GAC advice that Amazon may choose to create sub domains using country names or abbreviations at the third level. For example, Amazon may register information.亚马逊 and its internal users may create sub domains such as cn.information.亚马逊.

Amazon may also use a folder structure to represent country names in its URLs, while the block exists at the second level. For example, information.亚马逊/China.

We imagine that over time, there will be demand from brand gTLDs leading to the development of a standardized process for requesting GAC review and ICANN approval for the release of country and territory names for registration by the Registry Operator when the registry is a single entity registry. When such a process is in place, Amazon expects to apply for the release of country and territory names within .亚马逊.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

23.1 Introduction

Amazon EU S.à r.l. has elected to partner with Neustar, Inc. to provide back-end services for the .亚马逊 registry. In making this decision, Amazon EU S.à r.l. recognized that Neustar already possesses a production-proven registry system that can be quickly deployed and smoothly operated over its robust, flexible, and scalable world-class infrastructure. The existing registry services will be leveraged for the .亚马逊 registry. The following section describes the registry services to be provided.

23.2 Standard Technical and Business Components

Neustar will provide the highest level of service while delivering a secure, stable and comprehensive registry platform. Amazon EU S.à r.l. will use Neustar's Registry Services platform to deploy the .亚马逊 registry, by providing the following Registry Services (none of these services are offered in a manner that is unique to .亚马逊).

- Registry-Registrar Shared Registration Service (SRS)
- Extensible Provisioning Protocol (EPP)
- Domain Name System (DNS)
- WHOIS
- DNSSEC
- Data Escrow
- Dissemination of Zone Files using Dynamic Updates
- Access to Bulk Zone Files
- Dynamic WHOIS Updates
- IPv6 Support
- Rights Protection Mechanisms
- Internationalized Domain Names (IDN).

The following is a description of each of the services.

SRS

Neustar's secure and stable SRS is a production-proven, standards-based, highly reliable, and high-performance domain name registration and management system. The SRS includes an EPP interface for receiving data from registrars for the purpose of provisioning and managing domain names and name servers. The response to Question 24 provides specific SRS information.

EPP

The .亚马逊 registry will use the Extensible Provisioning Protocol (EPP) for the provisioning of domain names. The EPP implementation will be fully compliant with all RFCs. Registrars are provided with access via an EPP API and an EPP based Web GUI. With more than 10 gTLD, ccTLD, and private TLDs implementations, Neustar has extensive experience building EPP-based registries. Additional discussion on the EPP approach is presented in the response to Question 25.

DNS

Amazon EU S.à r.l. will leverage Neustar's world-class DNS network of geographically distributed nameserver sites to provide the highest level of DNS service. The service utilizes "Anycast" routing technology, and supports both IPv4 and IPv6. The DNS network is highly proven, and currently provides service to over 20 TLDs and thousands of enterprise companies. Additional information on the DNS solution is presented in the response to Questions 35.

WHOIS

Neustar's existing standard WHOIS solution will be used for .亚马逊. The service

provides supports for near real-time dynamic updates. The design and construction is agnostic with regard to data display policy is flexible enough to accommodate any data model. In addition, a searchable WHOIS service that complies with all ICANN requirements will be provided. The following WHOIS options will be provided:

Standard WHOIS (Port 43)

Standard WHOIS (Web)

Searchable WHOIS (Web)

DNSSEC

An RFC compliant DNSSEC implementation will be provided using existing DNSSEC capabilities. Neustar is an experienced provider of DNSSEC services, and currently manages signed zones for three large top level domains: .biz, .us, and .co. Registrars are provided with the ability to submit and manage DS records using EPP, or through a web GUI. Additional information on DNSSEC, including the management of security extensions is found in the response to Question 43.

Data Escrow

Data escrow will be performed in compliance with all ICANN requirements in conjunction with an approved data escrow provider. The data escrow service will:

- Protect against data loss

- Follow industry best practices

- Ensure easy, accurate, and timely retrieval and restore capability in the event of a hardware failure

- Minimizes the impact of software or business failure.

Additional information on the Data Escrow service is provided in the response to Question 38.

Dissemination of Zone Files using Dynamic Updates

Dissemination of zone files will be provided through a dynamic, near real-time process. Updates will be performed within the specified performance levels. The proven technology ensures that updates pushed to all nodes within a few minutes of the changes being received by the SRS. Additional information on the DNS updates may be found in the response to Question 35.

Access to Bulk Zone Files

Amazon EU S.à r.l. will provide third party access to the bulk zone file in accordance with specification 4, Section 2 of the Registry Agreement. Credentialing and dissemination of the zone files will be facilitated through the Central Zone Data Access Provider.

Dynamic WHOIS Updates

Updates to records in the WHOIS database will be provided via dynamic, near real-time updates. Guaranteed delivery message oriented middleware is used to ensure each individual WHOIS server is refreshed with dynamic updates. This component ensures that all WHOIS servers are kept current as changes occur in the SRS, while also decoupling WHOIS from the SRS. Additional information on WHOIS updates is presented in response to Question 26.

IPv6 Support

The .亚马逊 registry will provide IPv6 support in the following registry services: SRS, WHOIS, and DNS/DNSSEC. In addition, the registry supports the provisioning of IPv6 AAAA records. A detailed description on IPv6 is presented in the response to Question 36.

Required Rights Protection Mechanisms

Amazon EU S.à r.l. will provide all ICANN required Rights Mechanisms, including:

- Trademark Claims Service

- Trademark Post-Delegation Dispute Resolution Procedure (PDDRP)

- Registration Restriction Dispute Resolution Procedure (RRDRP)

- UDRP

- URS

- Sunrise service.

More information is presented in the response to Question 29.

Internationalized Domain Names (IDN)

IDN registrations are provided in full compliance with the IDNA protocol. Neustar possesses extensive experience offering IDN registrations in numerous TLDs, and its IDN implementation uses advanced technology to accommodate the unique bundling needs of certain languages. Character mappings are easily constructed to block out

characters that may be deemed as confusing to users. A detailed description of the IDN implementation is presented in response to Question 44.

23.3 Unique Services

Amazon EU S.à r.l. will not be offering services that are unique to .亚马逊.

23.4 Security or Stability Concerns

All services offered are standard registry services that have no known security or stability concerns. Neustar has demonstrated a strong track record of security and stability within the industry.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

24.1 Introduction

Amazon EU S.à r.l. has partnered with Neustar, Inc., an experienced TLD registry operator, for the operation of the .亚马逊 Registry. Amazon EU S.à r.l. is confident that the plan in place for the operation of a robust and reliable Shared Registration System (SRS) as currently provided by Neustar will satisfy the criterion established by ICANN.

Neustar built its SRS from the ground up as an EPP based platform and has been operating it reliably and at scale since 2001. The software currently provides registry services to five TLDs (.BIZ, .US, TEL, .CO and .TRAVEL) and is used to provide gateway services to the .CN and .TW registries. Neustar's state of the art registry has a proven track record of being secure, stable, and robust. It manages more than 6 million domains, and has over 300 registrars connected today. The following describes a detailed plan for a robust and reliable SRS that meets all ICANN requirements including compliance with Specifications 6 and 10.

24.2 The Plan for Operation of a Robust and Reliable SRS

High-level SRS System Description

The SRS to be used for .亚马逊 will leverage a production-proven, standards-based, highly reliable and high-performance domain name registration and management system that fully meets or exceeds the requirements as identified in the new gTLD Application Guidebook.

The SRS is the central component of any registry implementation and its quality, reliability and capabilities are essential to the overall stability of the TLD. Neustar has a documented history of deploying SRS implementations with proven and verifiable performance, reliability and availability. The SRS adheres to all industry standards and protocols. By leveraging an existing SRS platform, Amazon EU S.à r.l. is mitigating the significant risks and costs associated with the development of a new system. Highlights of the SRS include:

- State-of-the-art, production proven multi-layer design
- Ability to rapidly and easily scale from low to high volume as a TLD grows
- Fully redundant architecture at two sites
- Support for IDN registrations in compliance with all standards
- Use by over 300 Registrars
- EPP connectivity over IPV6
- Performance being measured using 100% of all production transactions (not sampling).

SRS Systems, Software, Hardware, and Interoperability

The systems and software that the registry operates on are a critical element to providing a high quality of service. If the systems are of poor quality, if they are difficult to maintain and operate, or if the registry personnel are unfamiliar with them, the registry will be prone to outages. Neustar has a decade of experience operating registry infrastructure to extremely high service level requirements. The

infrastructure is designed using best of breed systems and software. Much of the application software that performs registry-specific operations was developed by the current engineering team and as a result the team is intimately familiar with its operations.

The architecture is highly scalable and provides the same high level of availability and performance as volumes increase. It combines load balancing technology with scalable server technology to provide a cost effective and efficient method for scaling.

The Registry is able to limit the ability of any one registrar from adversely impacting other registrars by consuming too many resources due to excessive EPP transactions. The system uses network layer 2 level packet shaping to limit the number of simultaneous connections registrars can open to the protocol layer. All interaction with the Registry is recorded in log files. Log files are generated at each layer of the system. These log files record at a minimum:

- The IP address of the client
- Timestamp
- Transaction Details
- Processing Time.

In addition to logging of each and every transaction with the SRS Neustar maintains audit records, in the database, of all transformational transactions. These audit records allow the Registry, in support of Amazon EU S.à r.l., to produce a complete history of changes for any domain name.

SRS Design

The SRS incorporates a multi-layer architecture that is designed to mitigate risks and easily scale as volumes increase. The three layers of the SRS are:

- Protocol Layer
- Business Policy Layer
- Database.

Each of the layers is described below.

Protocol Layer

The first layer is the protocol layer, which includes the EPP interface to registrars. It consists of a high availability farm of load-balanced EPP servers. The servers are designed to be fast processors of transactions. The servers perform basic validations and then feed information to the business policy engines as described below. The protocol layer is horizontally scalable as dictated by volume. The EPP servers authenticate against a series of security controls before granting service, as follows:

- The registrar's host exchanges keys to initiate a TLS handshake session with the EPP server.

- The registrar's host must provide credentials to determine proper access levels.

- The registrar's IP address must be preregistered in the network firewalls and traffic-shapers.

Business Policy Layer

The Business Policy Layer is the "brain" of the registry system. Within this layer, the policy engine servers perform rules-based processing as defined through configurable attributes. This process takes individual transactions, applies various validation and policy rules, persists data and dispatches notification through the central database in order to publish to various external systems. External systems fed by the Business Policy Layer include backend processes such as dynamic update of DNS, WHOIS and Billing.

Similar to the EPP protocol farm, the SRS consists of a farm of application servers within this layer. This design ensures that there is sufficient capacity to process every transaction in a manner that meets or exceeds all service level requirements. Some registries couple the business logic layer directly in the protocol layer or within the database. This architecture limits the ability to scale the registry. Using a decoupled architecture enables the load to be distributed among farms of inexpensive servers that can be scaled up or down as demand changes.

The SRS today processes over 30 million EPP transactions daily.

Database

The database is the third core components of the SRS. The primary function of the SRS database is to provide highly reliable, persistent storage for all registry

information required for domain registration services. The database is highly secure, with access limited to transactions from authenticated registrars, trusted application-server processes, and highly restricted access by the registry database administrators. A full description of the database can be found in response to Question 33.

Figure 24-1 depicts the overall SRS architecture including network components.

Number of Servers

As depicted in the SRS architecture diagram above Neustar operates a high availability architecture where at each level of the stack there are no single points of failures. Each of the network level devices run with dual pairs as do the databases. For the .亚马逊 registry, the SRS will operate with 8 protocol servers and 6 policy engine servers. These expand horizontally as volume increases due to additional TLDs, increased load, and through organic growth. In addition to the SRS servers described above, there are multiple backend servers for services such as DNS and WHOIS. These are discussed in detail within those respective response sections.

Description of Interconnectivity with Other Registry Systems

The core SRS service interfaces with other external systems via Neustar's external systems layer. The services that the SRS interfaces with include:

- WHOIS

- DNS

- Billing

- Data Warehouse (Reporting and Data Escrow).

Other external interfaces may be deployed to meet the unique needs of a TLD. At this time there are no additional interfaces planned for .亚马逊.

The SRS includes an "external notifier" concept in its business policy engine as a message dispatcher. This design allows time-consuming backend processing to be decoupled from critical online registrar transactions. Using an external notifier solution, the registry can utilize "control levers" that allow it to tune or to disable processes to ensure optimal performance at all times. For example, during the early minutes of a TLD launch, when unusually high volumes of transactions are expected, the registry can elect to suspend processing of one or more back end systems in order to ensure that greater processing power is available to handle the increased load requirements. This proven architecture has been used with numerous TLD launches, some of which have involved the processing of over tens of millions of transactions in the opening hours. The following are the standard three external notifiers used the SRS:

WHOIS External Notifier

The WHOIS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on WHOIS. It is important to note that, while the WHOIS external notifier feeds the WHOIS system, it intentionally does not have visibility into the actual contents of the WHOIS system. The WHOIS external notifier serves just as a tool to send a signal to the WHOIS system that a change is ready to occur. The WHOIS system possesses the intelligence and data visibility to know exactly what needs to change in WHOIS. See response to Question 26 for greater detail.

DNS External Notifier

The DNS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on DNS. Like the WHOIS external notifier, the DNS external notifier does not have visibility into the actual contents of the DNS zones. The work items that are generated by the notifier indicate to the dynamic DNS update sub-system that a change occurred that may impact DNS. That DNS system has the ability to decide what actual changes must be propagated out to the DNS constellation. See response to Question 35 for greater detail.

Billing External Notifier

The billing external notifier is responsible for sending all billable transactions to the downstream financial systems for billing and collection. This external notifier contains the necessary logic to determine what types of transactions are billable. The financial systems use this information to apply appropriate debits and credits based on registrar.

Data Warehouse

The data warehouse is responsible for managing reporting services, including registrar reports, business intelligence dashboards, and the processing of data escrow files. The Reporting Database is used to create both internal and external reports, primarily to support registrar billing and contractual reporting requirement. The data warehouse databases are updated on a daily basis with full copies of the production SRS data.

Frequency of Synchronization between Servers

The external notifiers discussed above perform updates in near real-time, well within the prescribed service level requirements. As transactions from registrars update the core SRS, update notifications are pushed to the external systems such as DNS and WHOIS. These updates are typically live in the external system within 2-3 minutes.

Synchronization Scheme (e.g., hot standby, cold standby)

Neustar operates two hot databases within the data center that is operating in primary mode. These two databases are kept in sync via synchronous replication. Additionally, there are two databases in the secondary data center. These databases are updated real time through asynchronous replication. This model allows for high performance while also ensuring protection of data. See response to Question 33 for greater detail.

Compliance with Specification 6 Section 1.2

The SRS implementation for .亚马逊 is fully compliant with Specification 6, including section 1.2. EPP Standards are described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. Extensible Provisioning Protocol or EPP is defined by a core set of RFCs that standardize the interface that make up the registry-registrar model. The SRS interface supports EPP 1.0 as defined in the following RFCs shown in Table 24-1.

Additional information on the EPP implementation and compliance with RFCs can be found in the response to Question 25.

Compliance with Specification 10

Specification 10 of the New TLD Agreement defines the performance specifications of the TLD, including service level requirements related to DNS, RDDS (WHOIS), and EPP. The requirements include both availability and transaction response time measurements. As an experienced registry operator, Neustar has a long and verifiable track record of providing registry services that consistently exceed the performance specifications stipulated in ICANN agreements. This same high level of service will be provided for the .亚马逊 Registry. The following section describes Neustar's experience and its capabilities to meet the requirements in the new agreement.

To properly measure the technical performance and progress of TLDs, Neustar collects data on key essential operating metrics. These measurements are key indicators of the performance and health of the registry. Neustar's current .biz SLA commitments are among the most stringent in the industry today, and exceed the requirements for new TLDs. Table 24-2 compares the current SRS performance levels compared to the requirements for new TLDs, and clearly demonstrates the ability of the SRS to exceed those requirements.

Their ability to commit and meet such high performance standards is a direct result of their philosophy towards operational excellence. See response to Question 31 for a full description of their philosophy for building and managing for performance.

24.3 Resourcing Plans

The development, customization, and on-going support of the SRS are the responsibility of a combination of technical and operational teams, including:

- Development/Engineering
- Database Administration
- Systems Administration
- Network Engineering.

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will be involved in the design and testing. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably.

The necessary resources will be pulled from the pool of operational resources described in detail in the response to Question 31. Neustar's SRS implementation is very mature, and has been in production for over 10 years. As such, very little new development related to the SRS will be required for the implementation of the .亚马逊 registry. The following resources are available from those teams:

Development/Engineering - 19 employees

Database Administration- 10 employees

Systems Administration - 24 employees

Network Engineering - 5 employees

The resources are more than adequate to support the SRS needs of all the TLDs operated by Neustar, including the .亚马逊 registry.

25. Extensible Provisioning Protocol (EPP)

25.1 Introduction

Amazon EU S.à r.l.'s back-end registry operator, Neustar, has over 10 years of experience operating EPP based registries. They deployed one of the first EPP registries in 2001 with the launch of .biz. In 2004, they were the first gTLD to implement EPP 1.0. Over the last ten years Neustar has implemented numerous extensions to meet various unique TLD requirements. Neustar will leverage its extensive experience to ensure Amazon EU S.à r.l. is provided with an unparalleled EPP based registry. The following discussion explains the EPP interface which will be used for the .亚马逊 registry. This interface exists within the protocol farm layer as described in Question 24 and is depicted in Figure 25-1.

25.2 EPP Interface

Registrars are provided with two different interfaces for interacting with the registry. Both are EPP based, and both contain all the functionality necessary to provision and manage domain names. The primary mechanism is an EPP interface to connect directly with the registry. This is the interface registrars will use for most of their interactions with the registry.

However, an alternative web GUI (Registry Administration Tool) that can also be used to perform EPP transactions will be provided. The primary use of the Registry Administration Tool is for performing administrative or customer support tasks. The main features of the EPP implementation are:

Standards Compliance: The EPP XML interface is compliant to the EPP RFCs. As future EPP RFCs are published or existing RFCs are updated, Neustar makes changes to the implementation keeping in mind of any backward compatibility issues.

Scalability: The system is deployed keeping in mind that it may be required to grow and shrink the footprint of the Registry system for a particular TLD.

Fault-tolerance: The EPP servers are deployed in two geographically separate data centers to provide for quick failover capability in case of a major outage in a particular data center. The EPP servers adhere to strict availability requirements defined in the SLAs.

Configurability: The EPP extensions are built in a way that they can be easily configured to turn on or off for a particular TLD.

Extensibility: The software is built ground up using object oriented design. This allows for easy extensibility of the software without risking the possibility of the change rippling through the whole application.

Auditable: The system stores detailed information about EPP transactions from provisioning to DNS and WHOIS publishing. In case of a dispute regarding a name registration, the Registry can provide comprehensive audit information on EPP transactions.

Security: The system provides IP address based access control, client credential-based authorization test, digital certificate exchange, and connection limiting to the protocol layer.

25.3 Compliance with RFCs and Specifications

The registry-registrar model is described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. As shown in Table

25-1, EPP is defined by the core set of RFCs that standardize the interface that registrars use to provision domains with the SRS. As a core component of the SRS architecture, the implementation is fully compliant with all EPP RFCs.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to EPP. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

Neustar has a long history of providing exceptional service that exceeds all performance specifications. The SRS and EPP interface have been designed to exceed the EPP specifications defined in Specification 10 of the Registry Agreement and profiled in Table 25-2. Evidence of Neustar's ability to perform at these levels can be found in the .biz monthly progress reports found on the ICANN website.

EPP Toolkits

Toolkits, under open source licensing, are freely provided to registrars for interfacing with the SRS. Both Java and C++ toolkits will be provided, along with the accompanying documentation. The Registrar Tool Kit (RTK) is a software development kit (SDK) that supports the development of a registrar software system for registering domain names in the registry using EPP. The SDK consists of software and documentation as described below.

The software consists of working Java and C++ EPP common APIs and samples that implement the EPP core functions and EPP extensions used to communicate between the registry and registrar. The RTK illustrates how XML requests (registration events) can be assembled and forwarded to the registry for processing. The software provides the registrar with the basis for a reference implementation that conforms to the EPP registry-registrar protocol. The software component of the SDK also includes XML schema definition files for all Registry EPP objects and EPP object extensions. The RTK also includes a "dummy" server to aid in the testing of EPP clients.

The accompanying documentation describes the EPP software package hierarchy, the object data model, and the defined objects and methods (including calling parameter lists and expected response behavior). New versions of the RTK are made available from time to time to provide support for additional features as they become available and support for other platforms and languages.

25.4 Proprietary EPP Extensions

The .亚马逊 registry will not include proprietary EPP extensions. Neustar has implemented various EPP extensions for both internal and external use in other TLD registries. These extensions use the standard EPP extension framework described in RFC 5730. Table 25-3 provides a list of extensions developed for other TLDs. Should the .亚马逊 registry require an EPP extension at some point in the future, the extension will be implemented in compliance with all RFC specifications including RFC 3735.

The full EPP schema to be used in the .亚马逊 registry is attached in the document titled "EPP Schema."

25.5 Resourcing Plans

The development and support of EPP is largely the responsibility of the Development/Engineering and Quality Assurance teams. As an experience registry operator with a fully developed EPP solution, on-going support is largely limited to periodic updates to the standard and the implementation of TLD specific extensions. The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Quality Assurance - 7 employees.

These resources are more than adequate to support any EPP modification needs of the .亚马逊 registry.

26. Whois

26.1 Introduction

Amazon EU S.à r.l. recognizes the importance of an accurate, reliable, and up-to-date WHOIS database to governments, law enforcement, intellectual property holders and the public as a whole and is firmly committed to complying with all of the applicable WHOIS specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement. Amazon EU S.à r.l.'s back-end registry services provider, Neustar, has extensive experience providing ICANN and RFC-compliant WHOIS services for each of the TLDs that it operates both as a Registry Operator for gTLDs, ccTLDs and back-end registry services provider. As one of the first "thick" registry operators in the gTLD space, Neustar's WHOIS service has been designed from the ground up to display as much information as required by a TLD and respond to a very stringent availability and performance requirement.

Some of the key features of .亚马逊's solution include:

- Fully compliant with all relevant RFCs including 3912
- Production proven, highly flexible, and scalable with a track record of 100% availability over the past 10 years
- Exceeds current and proposed performance specifications
- Supports dynamic updates with the capability of doing bulk updates
- Geographically distributed sites to provide greater stability and performance

In addition, .亚马逊's thick-WHOIS solution also provides for additional search capabilities and mechanisms to mitigate potential forms of abuse as discussed below. (e.g., IDN, registrant data).

26.2 Software Components

The WHOIS architecture comprises the following components:

An in-memory database local to each WHOIS node: To provide for the performance needs, the WHOIS data is served from an in-memory database indexed by searchable keys.

Redundant servers: To provide for redundancy, the WHOIS updates are propagated to a cluster of WHOIS servers that maintain an independent copy of the database.

Attack resistant: To ensure that the WHOIS system cannot be abused using malicious queries or DOS attacks, the WHOIS server is only allowed to query the local database and rate limits on queries based on IPs and IP ranges can be readily applied.

Accuracy auditor: To ensure the accuracy of the information served by the WHOIS servers, a daily audit is done between the SRS information and the WHOIS responses for the domain names which are updated during the last 24-hour period. Any discrepancies are resolved proactively.

Modular design: The WHOIS system allows for filtering and translation of data elements between the SRS and the WHOIS database to allow for customizations.

Scalable architecture: The WHOIS system is scalable and has a very small footprint. Depending on the query volume, the deployment size can grow and shrink quickly.

Flexible: It is flexible enough to accommodate thin, thick, or modified thick models and can accommodate any future ICANN policy, such as different information display levels based on user categorization.

SRS master database: The SRS database is the main persistent store of the Registry information. The Update Agent computes what WHOIS updates need to be pushed out. A publish-subscribe mechanism then takes these incremental updates and pushes to all the WHOIS slaves that answer queries.

26.3 Compliance with RFC and Specifications 4 and 10

Neustar has been running thick-WHOIS Services for over 10+ years in full compliance with RFC 3912 and with Specifications 4 and 10 of the Registry Agreement. RFC 3912 is a simple text based protocol over TCP that describes the interaction between the server and client on port 43. Neustar built a home-grown solution for this service. It processes millions of WHOIS queries per day. Table 26-1 describes Neustar's compliance with Specifications 4 and 10.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to WHOIS. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

26.4 High-level WHOIS System Description

26.4.1 WHOIS Service (port 43)

The WHOIS service is responsible for handling port 43 queries. Our WHOIS is optimized for speed using an in-memory database and master-slave architecture between the SRS and WHOIS slaves.

The WHOIS service also has built-in support for IDN. If the domain name being queried is an IDN, the returned results include the language of the domain name, the domain name's UTF-8 encoded representation along with the Unicode code page.

26.4.2 Web Page for WHOIS queries

In addition to the WHOIS Service on port 43, Neustar provides a web based WHOIS application (www.whois.亚马逊). It is an intuitive and easy to use application for the general public to use. WHOIS web application provides all of the features available in the port 43 WHOIS. This includes full and partial search on:

- Domain names
- Nameservers
- Registrant, Technical and Administrative Contacts
- Registrars

It also provides features not available on the port 43 service. These include:

1. Redemption Grace Period calculation: Based on the registry's policy, domains in pendingDelete can be restorable or scheduled for release depending on the date/time the domain went into pendingDelete. For these domains, the web based WHOIS displays "Restorable" or "Scheduled for Release" to clearly show this additional status to the user.
2. Extensive support for international domain names (IDN)
3. Ability to perform WHOIS lookups on the actual Unicode IDN
4. Display of the actual Unicode IDN in addition to the ACE-encoded name
5. A Unicode to Punycode and Punycode to Unicode translator
6. An extensive FAQ
7. A list of upcoming domain deletions

26.5 IT and Infrastructure Resources

As described above the WHOIS architecture uses a workflow that decouples the update process from the SRS. This ensures SRS performance is not adversely affected by the load requirements of dynamic updates. It is also decoupled from the WHOIS lookup agent to ensure the WHOIS service is always available and performing well for users. Each of Neustar's geographically diverse WHOIS sites use:

- Firewalls, to protect this sensitive data
- Dedicated servers for MQ Series, to ensure guaranteed delivery of WHOIS updates
- Packetshaper for source IP address-based bandwidth limiting
- Load balancers to distribute query load
- Multiple WHOIS servers for maximizing the performance of WHOIS service.

The WHOIS service uses HP BL 460C servers, each with 2 X Quad Core CPU and a 64GB of RAM. The existing infrastructure has 6 servers, but is designed to be easily scaled with additional servers should it be needed.

Figure 26-1 depicts the different components of the WHOIS architecture.

26.6 Interconnectivity with Other Registry System

As described in Question 24 about the SRS and further in response to Question 31, "Technical Overview", when an update is made by a registrar that impacts WHOIS data, a trigger is sent to the WHOIS system by the external notifier layer. The update agent processes these updates, transforms the data if necessary and then uses messaging oriented middleware to publish all updates to each WHOIS slave. The local update agent accepts the update and applies it to the local in-memory database. A separate auditor compares the data in WHOIS and the SRS daily and monthly to ensure accuracy of the published data.

26.7 Frequency of Synchronization between Servers

Updates from the SRS, through the external notifiers, to the constellation of independent WHOIS slaves happens in real-time via an asynchronous publish/subscribe messaging architecture. The updates are guaranteed to be updated in each slave within the required SLA of $95\% \leq 60$ minutes. Please note that Neustar's current architecture is built towards the stricter SLAs ($95\% \leq 15$ minutes) of .BIZ. The vast majority of updates tend to happen within 2-3 minutes.

26.8 Provision for Searchable WHOIS Capabilities

Neustar will create a new web-based service to address the new search features based on requirements specified in Specification 4 Section 1.8. The application will enable users to search the WHOIS directory using any one or more of the following fields:

Domain name

Registrar ID

Contacts and registrant's name

Contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.)

Name server name and name server IP address

The system will also allow search using non-Latin character sets which are compliant with IDNA specification.

The user will choose one or more search criteria, combine them by Boolean operators (AND, OR, NOT) and provide partial or exact match regular expressions for each of the criterion name-value pairs. The domain names matching the search criteria will be returned to the user.

Figure 26-2 shows an architectural depiction of the new service.

Potential Forms of Abuse

As recognized by the Terms of Reference for Whois Misuse Studies, <http://gnso.icann.org/issues/whois/tor-whois-misuse-studies-25sep09-en.pdf>, a number of reported and recorded harmful acts, such as spam, phishing, identity theft, and stalking which Registrants believe were sent using WHOIS contact information. Although these Whois studies are still underway, there is a general belief that public access to Whois data may lead to a measurable degree of misuse - that is, to actions that cause actual harm, are illegal or illegitimate, or otherwise contrary to the stated legitimate purpose. One of the other key focuses of these studies will be to correlate the reported incidents of harmful acts with anti-harvesting measures that some Registrars and Registries apply to WHOIS queries (e.g., rate limiting, CAPTCHA, etc.).

Neustar firmly believes that adding the increased search capabilities, without appropriate controls could exacerbate the potential abuses associated with the Whois service. To mitigate the risk of this powerful search service being abused by unscrupulous data miners, a layer of security will be built around the query engine which will allow the registry to identify rogue activities and then take appropriate measures. Potential abuses include, but are not limited to:

- Data Mining
- Unauthorized Access
- Excessive Querying
- Denial of Service Attacks

To mitigate the abuses noted above, Neustar will implement any or all of these mechanisms as appropriate:

Username-password based authentication

Certificate based authentication

Data encryption

CAPTCHA mechanism to prevent robo invocation of Web query

Fee-based advanced query capabilities for premium customers.

The searchable WHOIS application will adhere to all privacy laws and policies of the .亚马逊 registry.

26.9 Resourcing Plans

As with the SRS, the development, customization, and on-going support of the WHOIS service is the responsibility of a combination of technical and operational teams. The primary groups responsible for managing the service include:

Development/Engineering - 19 employees

Database Administration - 10 employees

Systems Administration - 24 employees

Network Engineering - 5 employees

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will also be involved. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably. The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. Neustar's WHOIS implementation is very mature, and has been in production for over 10 years. As such, very little new development will be required to support the implementation of the .亚马逊 registry. The resources are more than adequate to support the WHOIS needs of all the TLDs operated by Neustar, including the .亚马逊 registry.

27. Registration Life Cycle

27.1 Registration Life Cycle

Introduction

.亚马逊 will follow the lifecycle and business rules found in the majority of gTLDs today. Our back-end operator, Neustar, has over ten years of experience managing numerous TLDs that utilize standard and unique business rules and lifecycles. This section describes the business rules, registration states, and the overall domain lifecycle that will be used for .亚马逊.

Domain Lifecycle - Description

The registry will use the EPP 1.0 standard for provisioning domain names, contacts and hosts. Each domain record is comprised of three registry object types: domain, contacts, and hosts

Domains, contacts and hosts may be assigned various EPP defined statuses indicating either a particular state or restriction placed on the object. Some statuses may be applied by the Registrar; other statuses may only be applied by the Registry.

Statuses are an integral part of the domain lifecycle and serve the dual purpose of indicating the particular state of the domain and indicating any restrictions placed on the domain. The EPP standard defines 17 statuses, however only 14 of these statuses will be used in the .亚马逊 registry per the defined .亚马逊 business rules.

The following is a brief description of each of the statuses. Server statuses may only be applied by the Registry, and client statuses may be applied by the Registrar.

OK - Default status applied by the Registry.

Inactive - Default status applied by the Registry if the domain has less than 2 nameservers.

PendingCreate - Status applied by the Registry upon processing a successful Create command, and indicates further action is pending. This status will not be used in the .亚马逊 registry.

PendingTransfer - Status applied by the Registry upon processing a successful Transfer request command, and indicates further action is pending.

PendingDelete - Status applied by the Registry upon processing a successful Delete command that does not result in the immediate deletion of the domain, and indicates further action is pending.

PendingRenew - Status applied by the Registry upon processing a successful

Renew command that does not result in the immediate renewal of the domain, and indicates further action is pending. This status will not be used in the .亚马逊 registry.

PendingUpdate - Status applied by the Registry if an additional action is expected to complete the update, and indicates further action is pending. This status will not be used in the .亚马逊 registry.

Hold - Removes the domain from the DNS zone.

UpdateProhibited - Prevents the object from being modified by an Update command.

TransferProhibited - Prevents the object from being transferred to another Registrar by the Transfer command.

RenewProhibited - Prevents a domain from being renewed by a Renew command.

DeleteProhibited - Prevents the object from being deleted by a Delete command.

The lifecycle of a domain begins with the registration of the domain. All registrations must follow the EPP standard, as well as the specific business rules described in the response to Question 18 above. Upon registration a domain will either be in an active or inactive state. Domains in an active state are delegated and have their delegation information published to the zone. Inactive domains either have no delegation information or their delegation information is not published in the zone. Following the initial registration of a domain, one of five actions may occur during its lifecycle:

Domain may be updated

Domain may be deleted, either within or after the add-grace period

Domain may be renewed at anytime during the term

Domain may be auto-renewed by the Registry

Domain may be transferred to another registrar.

Each of these actions may result in a change in domain state. This is described in more detail in the following section. Every domain must eventually be renewed, auto-renewed, transferred, or deleted. A registrar may apply EPP statuses described above to prevent specific actions such as updates, renewals, transfers, or deletions.

27.1.1 Registration States

Domain Lifecycle - Registration States

As described above the .亚马逊 registry will implement a standard domain lifecycle found in most gTLD registries today. There are five possible domain states:

Active

Inactive

Locked

Pending Transfer

Pending Delete.

All domains are always in either an Active or Inactive state, and throughout the course of the lifecycle may also be in a Locked, Pending Transfer, and Pending Delete state. Specific conditions such as applied EPP policies and registry business rules will determine whether a domain can be transitioned between states. Additionally, within each state, domains may be subject to various timed events such as grace periods, and notification periods.

Active State

The active state is the normal state of a domain and indicates that delegation data has been provided and the delegation information is published in the zone. A domain in an Active state may also be in the Locked or Pending Transfer states.

Inactive State

The Inactive state indicates that a domain has not been delegated or that the delegation data has not been published to the zone. A domain in an Inactive state may also be in the Locked or Pending Transfer states. By default all domain in the Pending Delete state are also in the Inactive state.

Locked State

The Locked state indicates that certain specified EPP transactions may not be performed to the domain. A domain is considered to be in a Locked state if at least one restriction has been placed on the domain; however up to eight restrictions may

be applied simultaneously. Domains in the Locked state will also be in the Active or Inactive, and under certain conditions may also be in the Pending Transfer or Pending Delete states.

Pending Transfer State

The Pending Transfer state indicates a condition in which there has been a request to transfer the domain from one registrar to another. The domain is placed in the Pending Transfer state for a period of time to allow the current (losing) registrar to approve (ack) or reject (nack) the transfer request. Registrars may only nack requests for reasons specified in the Inter-Registrar Transfer Policy.

Pending Delete State

The Pending Delete State occurs when a Delete command has been sent to the Registry after the first 5 days (120 hours) of registration. The Pending Delete period is 35-days during which the first 30-days the name enters the Redemption Grace Period (RGP) and the last 5-days guarantee that the domain will be purged from the Registry Database and available to public pool for registration on a first come, first serve basis.

27.1.2 Typical Registration Lifecycle Activities

Domain Creation Process

The creation (registration) of domain names is the fundamental registry operation. All other operations are designed to support or compliment a domain creation. The following steps occur when a domain is created.

1. Contact objects are created in the SRS database. The same contact object may be used for each contact type, or they may all be different. If the contacts already exist in the database this step may be skipped.
2. Nameservers are created in the SRS database. Nameservers are not required to complete the registration process; however any domain with less than 2 name servers will not be resolvable.
3. The domain is created using the each of the objects created in the previous steps. In addition, the term and any client statuses may be assigned at the time of creation.

The actual number of EPP transactions needed to complete the registration of a domain name can be as few as one and as many as 40. The latter assumes seven distinct contacts and 13 nameservers, with Check and Create commands submitted for each object.

Update Process

Registry objects may be updated (modified) using the EPP Modify operation. The Update transaction updates the attributes of the object.

For example, the Update operation on a domain name will only allow the following attributes to be updated:

- Domain statuses
- Registrant ID
- Administrative Contact ID
- Billing Contact ID
- Technical Contact ID
- Nameservers
- AuthInfo
- Additional Registrar provided fields.

The Update operation will not modify the details of the contacts. Rather it may be used to associate a different contact object (using the Contact ID) to the domain name. To update the details of the contact object the Update transaction must be applied to the contact itself. For example, if an existing registrant wished to update the postal address, the Registrar would use the Update command to modify the contact object, and not the domain object.

Renew Process

The term of a domain may be extended using the EPP Renew operation. ICANN policy general establishes the maximum term of a domain name to be 10 years, and Neustar recommends not deviating from this policy. A domain may be renewed/extended at any point time, even immediately following the initial registration. The only stipulation is that the overall term of the domain name may not exceed 10 years. If a Renew operation is performed with a term value will extend the domain beyond the 10 year limit, the Registry will reject the transaction entirely.

Transfer Process

The EPP Transfer command is used for several domain transfer related operations:

- Initiate a domain transfer
- Cancel a domain transfer
- Approve a domain transfer
- Reject a domain transfer.

To transfer a domain from one Registrar to another the following process is followed:

4. The gaining (new) Registrar submits a Transfer command, which includes the AuthInfo code of the domain name.
5. If the AuthInfo code is valid and the domain is not in a status that does not allow transfers the domain is placed into pendingTransfer status
6. A poll message notifying the losing Registrar of the pending transfer is sent to the Registrar's message queue
7. The domain remains in pendingTransfer status for up to 120 hours, or until the losing (current) Registrar Ack (approves) or Nack (rejects) the transfer request
8. If the losing Registrar has not Acked or Nacked the transfer request within the 120 hour timeframe, the Registry auto-approves the transfer
9. The requesting Registrar may cancel the original request up until the transfer has been completed.

A transfer adds an additional year to the term of the domain. In the event that a transfer will cause the domain to exceed the 10 year maximum term, the Registry will add a partial term up to the 10 year limit. Unlike with the Renew operation, the Registry will not reject a transfer operation.

Deletion Process

A domain may be deleted from the SRS using the EPP Delete operation. The Delete operation will result in either the domain being immediately removed from the database or the domain being placed in pendingDelete status. The outcome is dependent on when the domain is deleted. If the domain is deleted within the first five days (120 hours) of registration, the domain is immediately removed from the database. A deletion at any other time will result in the domain being placed in pendingDelete status and entering the Redemption Grace Period (RGP). Additionally, domains that are deleted within five days (120) hours of any billable (add, renew, transfer) transaction may be deleted for credit.

27.1.3 Applicable Time Elements

The following section explains the time elements that are involved.

Grace Periods

There are six grace periods:

- Add-Delete Grace Period (AGP)
- Renew-Delete Grace Period
- Transfer-Delete Grace Period
- Auto-Renew-Delete Grace Period
- Auto-Renew Grace Period
- Redemption Grace Period (RGP).

The first four grace periods listed above are designed to provide the Registrar with the ability to cancel a revenue transaction (add, renew, or transfer) within a certain period of time and receive a credit for the original transaction.

The following describes each of these grace periods in detail.

Add-Delete Grace Period

The APG is associated with the date the Domain was registered. Domains may be deleted for credit during the initial 120 hours of a registration, and the Registrar will receive a billing credit for the original registration. If the domain is deleted during the Add Grace Period, the domain is dropped from the database immediately and a credit is applied to the Registrar's billing account.

Renew-Delete Grace Period

The Renew-Delete Grace Period is associated with the date the Domain was renewed. Domains may be deleted for credit during the 120 hours after a renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly renewed. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP (see below).

Transfer-Delete Grace Period

The Transfer-Delete Grace Period is associated with the date the Domain was transferred to another Registrar. Domains may be deleted for credit during the 120 hours after a transfer. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP. A deletion of domain after a transfer is not the method used to correct a transfer mistake. Domains that have been erroneously transferred or hijacked by another party can be transferred back to the original registrar through various means including contacting the Registry.

Auto-Renew-Delete Grace Period

The Auto-Renew-Delete Grace Period is associated with the date the Domain was auto-renewed. Domains may be deleted for credit during the 120 hours after an auto-renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly auto-renewed. It should be noted that domains that are deleted during the auto-renew delete grace period will be placed into pendingDelete and will enter the RGP.

Auto-Renew Grace Period

The Auto-Renew Grace Period is a special grace period intended to provide registrants with an extra amount of time, beyond the expiration date, to renew their domain name. The grace period lasts for 45 days from the expiration date of the domain name. Registrars are not required to provide registrants with the full 45 days of the period.

Redemption Grace Period

The RGP is a special grace period that enables Registrars to restore domains that have been inadvertently deleted but are still in pendingDelete status within the Redemption Grace Period. All domains enter the RGP except those deleted during the AGP.

The RGP period is 30 days, during which time the domain may be restored using the EPP RenewDomain command as described below. Following the 30day RGP period the domain will remain in pendingDelete status for an additional five days, during which time the domain may NOT be restored. The domain is released from the SRS, at the end of the 5 day non-restore period. A restore fee applies and is detailed in the Billing Section. A renewal fee will be automatically applied for any domain past expiration.

Neustar has created a unique restoration process that uses the EPP Renew transaction to restore the domain and fulfill all the reporting obligations required under ICANN policy. The following describes the restoration process.

27.2 State Diagram

Figure 27-1 provides a description of the registration lifecycle.

The different states of the lifecycle are active, inactive, locked, pending transfer, and pending delete. Please refer to section 27.1.1 for detail description of each of these states. The lines between the states represent triggers that transition a domain from one state to another.

The details of each trigger are described below:

Create: Registry receives a create domain EPP command.

WithNS: The domain has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

WithoutNS: The domain has not met the minimum number of nameservers required by registry policy. The domain will not be in the DNS zone.

Remove Nameservers: Domain's nameserver(s) is removed as part of an update domain EPP command. The total nameserver is below the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

Add Nameservers: Nameserver(s) has been added to domain as part of an update domain EPP command. The total number of nameservers has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.

Delete: Registry receives a delete domain EPP command.

DeleteAfterGrace: Domain deletion does not fall within the add grace period.

DeleteWithinAddGrace: Domain deletion falls within add grace period.

Restore: Domain is restored. Domain goes back to its original state prior to the delete command.

Transfer: Transfer request EPP command is received.

Transfer Approve/Cancel/Reject: Transfer requested is approved or cancel or rejected.

TransferProhibited: The domain is in clientTransferProhibited and/or serverTransferProhibited status. This will cause the transfer request to fail. The domain goes back to its original state.

DeleteProhibited: The domain is in clientDeleteProhibited and/or serverDeleteProhibited status. This will cause the delete command to fail. The domain goes back to its original state.

Note: the locked state is not represented as a distinct state on the diagram as a domain may be in a locked state in combination with any of the other states: inactive, active, pending transfer, or pending delete.

27.2.1 EPP RFC Consistency

As described above, the domain lifecycle is determined by ICANN policy and the EPP RFCs. Neustar has been operating ICANN TLDs for the past 10 years consistent and compliant with all the ICANN policies and related EPP RFCs.

27.3 Resources

The registration lifecycle and associated business rules are largely determined by policy and business requirements; as such the Product Management and Policy teams will play a critical role in working with Amazon EU S.à r.l. to determine the precise rules that meet the requirements of the TLD. Implementation of the lifecycle rules will be the responsibility of Development/Engineering team, with testing performed by the Quality Assurance team. Neustar's SRS implementation is very flexible and configurable, and in many case development is not required to support business rule changes.

The .亚马逊 registry will be using standard lifecycle rules, and as such no customization is anticipated. However should modifications be required in the future, the necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Registry Product Management - 4 employees

These resources are more than adequate to support the development needs of all the TLDs operated by Neustar, including the .亚马逊 registry.

28. Abuse Prevention and Mitigation

28.1 Abuse Prevention and Mitigation

Amazon EU S.à r.l. and its registry service provider, Neustar, recognize that preventing and mitigating abuse and malicious conduct in the .亚马逊 registry is an important and significant responsibility. Amazon EU S.à r.l. will leverage Neustar's extensive experience in establishing and implementing registration policies to prevent and mitigate abusive and malicious domain activity within the proposed .亚马逊 space.

.亚马逊 will be a single entity registry, with all domains registered to Amazon for use in pursuit of Amazon's business goals. There will be no re-sellers in .亚马逊 and there will be no market in .亚马逊 domains. Amazon will strictly control the use of .亚马逊 domains. Opportunities for abusive and malicious domain activity in .亚马逊 are therefore very restricted but we will nonetheless abide by our obligations to ICANN. A responsible domain name registry works towards the eradication of abusive domain name registrations and malicious activity, which may include conduct such as:

Illegal or fraudulent actions

Spam

Phishing

Pharming

Distribution of malware

Fast flux hosting

Botnets
Malicious hacking
Distribution of child pornography
Online sale or distribution of illegal pharmaceuticals.

By taking an active role in researching and monitoring abusive domain name registration and malicious conduct, Neustar has developed the ability to efficiently work with various law enforcement and security communities to mitigate fast flux DNS-using botnets.

Policies and Procedures to Minimize Abusive Registrations

A registry must have the policies, resources, personnel, and expertise in place to combat such abusive registration and malicious conduct. Neustar, Amazon EU S.à r.l.'s registry services provider, has played a leading role in preventing of such abusive practices, and has developed and implemented a "domain takedown" policy. Amazon EU S.à r.l. also believes that combating abusive use of the DNS is important in protecting registrants.

Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution. Because removing a domain name from the zone will stop all activity associated with the domain name, including websites and e-mail, the decision to remove a domain name from the DNS must follow a documented process, culminating in a determination that the domain name to be removed poses a threat to the security and stability of the Internet or the registry. Amazon EU S.à r.l., via Neustar, has an extensive, defined, and documented process for taking the necessary action of removing a domain from the zone when its presence in the zone poses a threat to the security and stability of the infrastructure of the Internet or the registry.

Abuse Point of Contact

As required by the Registry Agreement, Amazon EU S.à r.l. will establish and publish on its website a single abuse point of contact responsible for addressing inquiries from law enforcement and the public related to malicious and abusive conduct. Amazon EU S.à r.l. will also provide such information to ICANN before delegating any domain names in .亚马逊. This information shall consist of, at a minimum, a valid e-mail address dedicated solely to the handling of malicious conduct complaints, and a telephone number and mailing address for the primary contact. Amazon EU S.à r.l. will ensure that this information is accurate and current, and that updates are provided to ICANN if and when changes are made. In addition, the registry services provider for .亚马逊, Neustar, shall continue to have an additional point of contact for requests from registrars related to abusive domain name practices.

28.2 Policies Regarding Abuse Complaints

Amazon EU S.à r.l. will adopt an Acceptable Use Policy that (i) clearly defines the types of activities that will not be permitted in .亚马逊; (ii) reserves Amazon EU S.à r.l.'s right to lock, cancel, transfer or otherwise suspend or take down domain names violating the Acceptable Use Policy; and (iii) identify the circumstances under which Amazon EU S.à r.l. may share information with law enforcement. Amazon EU S.à r.l. will incorporate its .亚马逊 Acceptable User Policy into its Registry-Registrar Agreement.

Under the .亚马逊 Acceptable Use Policy, which is set forth below, Amazon EU S.à r.l. may lock down the domain name to prevent any changes to the domain name contact and nameserver information, place the domain name "on hold" rendering the domain name non-resolvable, transfer the domain name to another registrar and/or in cases in which the domain name is associated with an ongoing law enforcement investigation, Amazon EU S.à r.l. will coordinate with law enforcement to assist in the investigation as described in more detail below.

It is Amazon EU S.à r.l.'s intention that all .亚马逊 domain names will be registered and used by it and its Affiliates and that only ICANN-accredited registrars that have signed a Registry-Registrar Agreement will be permitted to register .亚马逊 domain names. Accordingly, the potential for abusive registrations and malicious conduct in the .亚马逊 registry is expected to be limited. In the unlikely event that such abuse should occur, Amazon EU S.à r.l. will work with its registry

services provider, Neustar, to implement the following policies and processes to prevent and mitigate such activities. Below is initial Acceptable Use Policy for the .亚马逊 registry.

.亚马逊 Acceptable Use Policy

This Acceptable Use Policy gives the .亚马逊 registry the ability to quickly lock, cancel, transfer or take ownership of any .亚马逊 domain name, either temporarily or permanently, if the domain name is being used in a manner that appears to threaten the stability, integrity or security of the .亚马逊 registry, or any of its registrar partners - and/or that may put the safety and security of any registrant or user at risk. The process also allows the .亚马逊 registry to take preventive measures to avoid any such criminal or security threats.

The Acceptable Use Policy may be triggered through a variety of channels, including, among other things, private complaint, public alert, government or enforcement agency outreach, and the on-going monitoring by the .亚马逊 registry or its partners. In all cases, the .亚马逊 registry or its designees will alert .亚马逊 registry's registrar partners about any identified threats and will work closely with them to bring offending sites into compliance.

The following are some (but not all) activities that may be subject to rapid domain compliance:

Phishing: the attempt to acquire personally identifiable information by masquerading as a website other than .亚马逊's own.

Pharming: the redirection of Internet users to websites other than those the user intends to visit, usually through unauthorized changes to the Hosts file on a victim's computer or DNS records in DNS servers.

Dissemination of Malware: the intentional creation and distribution of "malicious" software designed to infiltrate a computer system without the owner's consent, including, without limitation, computer viruses, worms, key loggers, and Trojans.

Fast Flux Hosting: a technique used to shelter Phishing, Pharming and Malware sites and networks from detection and to frustrate methods employed to defend against such practices, whereby the IP address associated with fraudulent websites are changed rapidly so as to make the true location of the sites difficult to find.

Botnetting: the development and use of a command, agent, motor, service, or software which is implemented: (1) to remotely control the computer or computer system of an Internet user without their knowledge or consent, (2) to generate direct denial of service (DDOS) attacks.

Malicious Hacking: the attempt to gain unauthorized access (or exceed the level of authorized access) to a computer, information system, user account or profile, database, or security system.

Child Pornography: the storage, publication, display and/or dissemination of pornographic materials depicting individuals under the age of majority in the relevant jurisdiction.

The .亚马逊 registry reserves the right, in its sole discretion, to take any administrative and operational actions necessary, including the use of computer forensics and information security technological services, among other things, in order to implement the Acceptable Use Policy. In addition, the .亚马逊 registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of the .亚马逊 registry as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement, or (5) to correct mistakes made by the .亚马逊 registry or any Registrar in connection with a domain name registration. The .亚马逊 registry also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

Taking Action Against Abusive and/or Malicious Activity

The .亚马逊 registry is committed to acting in a timely manner against those domain names associated with abuse or malicious conduct in violation of the Acceptable Use

Policy. After a complaint is received from a trusted source or third-party, or detected by the .亚马逊 registry, the registry will use commercially reasonable efforts to verify the information in the complaint. If that information can be verified to the best of the registry's ability, the sponsoring registrar will be notified and have 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. If the registrar has not acted when the 12-hour period ends (i.e., is unresponsive to the request or refuses to take action), the .亚马逊 registry will place the domain on "ServerHold". (It is unlikely the registrar will not timely act because Amazon EU S.à r.l. intends to use a single, gateway registrar with which it has a contract reflecting these policies). ServerHold removes the domain name from the .亚马逊 zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement should they desire to get involved.

Coordination with Law Enforcement

Amazon EU S.à r.l. will obtain assistance from Neustar to meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the .亚马逊 registry. The .亚马逊 registry will respond to legitimate law enforcement inquiries promptly upon receiving the request.

The response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. for rapid resolution of the request. If the request involves any of the activities that can be validated by the registry and implicates activity covered by the .亚马逊 Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .亚马逊 Registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

Monitoring for Malicious Activity

Neustar, .亚马逊's registry services provider, has developed and implemented an active "domain takedown" policy in which the registry itself takes down abusive domain names.

Neustar targets domain names verified to be abusive and removes them within 12 hours regardless of whether the domain name registrar cooperated. Neustar has determined that the benefit in removing such threats outweighs any potential damage to the registrar/registrar relationship. Amazon EU S.à r.l.'s restrictions on registration eligibility make it unlikely that any .亚马逊 domains will be taken down. The .亚马逊 registry rules are anticipated to exclude third parties beyond Amazon EU S.à r.l. and its Affiliates. Moreover, only registrars that contractually agree to cooperate in stemming abusive behaviors will be permitted to register .亚马逊 domain names.

Neustar's active prevention policies stem from the notion that registrants in .亚马逊 have a reasonable expectation that they control the data associated with their domains, especially its presence in the DNS zone. Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution that harms not only the domain name registrant, but also potentially millions of unsuspecting Internet users.

Rapid Takedown Process

Since implementing the program, Neustar has developed two basic variations of the process. The more common process variation is a lightweight process that is triggered by "typical" notices. The less common variation is the full process that is triggered by unusual notices, which generally allege that a domain name is being used to threaten the stability and security of the TLD, or is part of a real-time investigation by law enforcement or security researchers. In these cases, accelerated action by the registry is necessary. These processes are described below, though it is important to note that .亚马逊 will be managed as a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon's

subsidiaries. Therefore, the potential for abusive registrations and other activities that have a negative impact on Internet users is minimal. In the unlikely event that such abuse should occur, Amazon with its registry operator, Neustar, will implement the following policies and processes to manage such activities.

Lightweight Process

In addition to having an active Information Security group that, on its own initiatives, seeks out abusive practices in the .亚马逊 registry, Neustar is an active member in a number of security organizations that have the expertise and experience in receiving and investigating reports of abusive DNS practices, including but not limited to, the Anti-Phishing Working Group, Castle Cops, NSP-SEC, the Registration Infrastructure Safety Group and others. Each of these sources is a well-known security organization that has a reputation for preventing abuse and malicious conduct on the Internet. Aside from these organizations, Neustar also actively participates in privately run security associations that operate based on trust and anonymity, making it much easier to obtain information regarding abusive DNS activity.

Once a complaint is received from a trusted source or third-party, or detected by Neustar's internal security group, information about the abusive practice is forwarded to an internal mail distribution list that includes members of Neustar's operations, legal, support, engineering, and security teams for immediate response ("CERT Team"). Although the impacted URL is included in the notification e-mail, the CERT Team is trained not to investigate the URLs themselves because the URLs in question often have scripts, bugs, etc. that can compromise the individual's own computer and the network safety. Rather, the investigation is conducted by CERT team members who can access the URLs in a laboratory environment to avoid compromising the Neustar network. The lab environment is designed specifically for these types of tests and is scrubbed on a regular basis to ensure that none of Neustar's internal or external network elements are harmed in any fashion. Once the complaint has been reviewed and the alleged abusive domain name activity is verified to the best of the ability of the CERT Team, the sponsoring registrar has 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone.

The .亚马逊 Registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

ServerHold removes the domain name from the .亚马逊 zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement.

Full Process

In the unlikely event with a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon's subsidiaries, that Neustar receives a complaint that claims that a domain name is being used to threaten the stability and security of the .亚马逊 registry, or is a part of a real-time investigation by law enforcement or security, Neustar follows a slightly different course of action. Upon initiation of this process, members of the CERT Team are paged and a teleconference bridge is immediately opened up for the CERT Team to assess whether the activity warrants immediate action. If the CERT Team determines the incident is not an immediate threat to the security and the stability of critical Internet infrastructure, the CERT Team provides documentation to the Neustar Network Operations Center to clearly capture the rationale for the decision and either refers the incident to the Lightweight process set forth above or closes the incident.

However, if the CERT TEAM determines that there is a reasonable likelihood that the incident warrants immediate action, a determination is made to immediately remove the domain from the zone. As such, Customer Support will contact Amazon EU S.à r.l.'s registrar immediately to communicate that there is a domain involved in a security and stability issue. The registrar is provided only the domain name in question and the broadly stated type of incident. As .亚马逊 is a Single Entity Registry using a single registrar whose work will be strictly controlled through a Service Level Agreement that includes the implementation of measures to prevent abusive registrations, the risk of evidence of abuse being compromised is minimized.

Coordination with Law Enforcement & Industry Groups

Neustar has a close working relationship with a number of law enforcement agencies, both in the United States and Internationally. For example, in the United States, Neustar is in constant communication with the Federal Bureau of Investigation, US CERT, Homeland Security, the Food and Drug Administration, and the National Center for Missing and Exploited Children.

Neustar also participates in a number of industry groups aimed at sharing information among key industry players about the abusive registration and use of domain names. These groups include the Anti-Phishing Working Group and the Registration Infrastructure Safety Group (where Neustar served for several years on the Board of Directors). Through these organizations and others, Neustar proactively shares information with other registries, registrars, ccTLDs, law enforcement, security professionals, etc. not only on abusive domain name registrations within its own TLDs, but also with respect to information uncovered with respect to domain names in other registries' TLDs. Neustar has often found that rarely are abuses found only in the TLDs for which it manages, but also within other TLDs, such as .com and .info. Neustar routinely provides this information to the other registries so that the relevant registry can take the appropriate action. With the assistance of Neustar as its registry services provider, Amazon EU S.à r.l. can meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of its .亚马逊 registry. Amazon EU S.à r.l. and/or Neustar will respond to legitimate law enforcement inquiries promptly upon receiving the request. Such response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. and/or Neustar for rapid resolution of the request. If the request involves any of the activities that can be validated by the registry and/or Neustar and implicates the type of activity set forth in the Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the activity further and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .亚马逊 registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

28.3 Measures for Removal of Orphan Glue Records

As the Security and Stability Advisory Committee of ICANN (SSAC) rightly acknowledges, although orphaned glue records may be used for abusive or malicious purposes, the "dominant use of orphaned glue supports the correct and ordinary operation of the DNS." See

<http://www.icann.org/en/committees/security/sac048.pdf>.

While orphan glue often support correct and ordinary operation of the DNS, such glue records can be used maliciously to point to name servers that host domains used in illegal phishing, bot-nets, malware, and other abusive behaviors. Problems occur when the parent domain of the glue record is deleted but its children glue records still remain in DNS. Therefore, when the .亚马逊 registry has written evidence of actual abuse of orphaned glue, the .亚马逊 registry will act to remove those records from the zone to mitigate such malicious conduct.

Neustar runs a daily audit of entries in its DNS systems and compares those with its provisioning system, which serves as an umbrella protection that items in the DNS zone are valid. Any DNS record that shows up in the DNS zone but not in the provisioning system is flagged for investigation and removed if necessary. This daily DNS audit prevents not only orphaned hosts but also other records that should not be in the zone.

In addition, if either Amazon EU S.à r.l. or Neustar becomes aware of actual abuse on orphaned glue after receiving written notification from a third party through its Abuse Contact or through its customer support, such glue records will be removed from the zone.

28.4 Measures to Promote WHOIS Accuracy

The .亚马逊 registry will implement several measures to promote Whois accuracy. Whois service for Amazon EU S.à r.l. will operate as follows. The registry will keep all basic contact details for each domain name in a unique internal system, which

facilitates access to the domain information. In addition, Amazon EU S.à r.l. will perform internal monitoring checks and procedures that will only allow accurate Whois information and remove outdated data.

28.4.1. Authentication of Registrant Information

Amazon EU S.à r.l. will guarantee the adequate authentication of registrant data, ensuring the highest levels of accuracy and diligence when dealing with Whois data. In doing so, Amazon EU S.à r.l.'s solid internal system will undertake, but not be limited to the following measures: running checks against Whois internal records and regular verification of all contact details and other relevant registrant information. The Amazon EU S.à r.l.'s registrar will also be charged with regularly checking Whois accuracy.

Amazon EU S.à r.l. will have a well-defined registration policy that will include a requirement that complete and accurate registrant details are provided by the requestor for a domain. These details will be validated by the Amazon EU S.à r.l. registrar who will have a contractual duty to comply with Amazon EU S.à r.l.'s registration policy. The full details of every domain requestor will be kept in Amazon EU S.à r.l.'s on-line registry management dashboard which can be accessed by Amazon EU S.à r.l.'s Domain Management Team at any time.

28.4.2. Regular Monitoring of Registration Data

Amazon EU S.à r.l. will comply with ICANN's Whois requirements. Among other measures, Amazon EU S.à r.l. will regularly remind its internal personnel to comply with ICANN's Whois information Policy through regularly checking Whois data against internal records, offering Whois accuracy services, evaluating claims of fraudulent Whois data, and cancelling domain name registrations with outdated Whois details.

28.4.3. Policies and Procedures ensuring compliance

Only Amazon EU S.à r.l. and its Affiliates will be permitted to register and use Amazon EU S.à r.l. domain names. Accordingly, the duties of the Amazon EU S.à r.l. registrar will be very limited and closely defined. Regardless, Amazon EU S.à r.l.'s Registry-Registrar Agreement will require Amazon EU S.à r.l.'s registrar to take steps necessary to ensure Whois data is complete and accurate and to implement the .亚马逊 registration policies.

28.5 Resourcing Plans

Responsibility for abuse mitigation rests with a variety of functional groups at Neustar. The Neustar Abuse Monitoring team is primarily responsible for providing analysis and conducting investigations of reports of abuse. The Neustar Customer Service team also plays an important role in assisting with investigations, responding to customers, and notifying registrars of abusive domains. Finally, the Neustar Policy/Legal team is responsible for developing the relevant policies and procedures.

The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Customer Support - 12 employees

Policy/Legal - Two employees

The resources are more than adequate to support the abuse mitigation procedures of the .亚马逊 registry.

Furthermore, Amazon EU S.à r.l. dedicates significant financial and personnel resources to combating malicious and abusive behavior in the DNS and across the internet. Amazon EU S.à r.l. will extend these resources to designating the unique abuse point of contact, regularly monitoring potential abusive and malicious activities with support from dedicated technical staff, analyzing reported abuse and malicious activity, and acting to address such reported activity.

The designated abuse prevention staff within Neustar and Amazon EU S.à r.l. will be subject to regular evaluations, receive adequate training and work under expert supervision. The abuse prevention resources will comprise both internal staff and external abuse prevention experts who would give extra advice and support when necessary. This external staff includes experts in Amazon EU S.à r.l.'s registrar

where one legal manager and four operational experts will be available to support Amazon EU S.à r.l.

Please note that in the above answer the terms "We", "Our" and "Amazon" may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent, or sometimes NeuStar, the registry services provider.

29. Rights Protection Mechanisms

29.1 Introduction

Amazon is applying for .亚马逊 to provide a dedicated platform for stable and secure online communication and interaction. Amazon has several thousand registered intellectual property assets of all types including trademarks, designs, and domain names - we place the protection of our intellectual property as a high priority and we respect the intellectual property of others.

29.1.1 Rights protection in gTLD registry operation is a core objective of Amazon. We will closely manage this TLD by registering domains through a single registrar. Although Amazon and its subsidiaries will be the only eligible registrants, we will nonetheless require our registrar to work with us on a four-step registration process featuring: (i) Eligibility Confirmation; (ii) Naming Convention Check; (iii) Acceptable Use Review; and (iv) Registration. As stated in our answer to Question 18, all domains in our registry will remain the property of Amazon and will be provisioned to support the business goals of Amazon. Because all domains will be registered and maintained by Amazon (for use that complements our strategic business goals), we can ensure that all domains in our registries will carry accurate and up-to-date registration records.

We believe that the above registration process will ensure that abusive registrations are prevented, but we will continue to monitor ICANN policy developments, and update our procedures as required.

29.2 Core measures to prevent abusive registrations

To further prevent abusive registration or cybersquatting, we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated for new gTLD operators by ICANN:

- A 30 day Sunrise process
- A 60 day Trademark Claims process

Generally, these RPMs are targeted at abusive registrations undertaken by third parties. However, domains in our registry will be registered only to Amazon or its subsidiaries through a single registrar who will be contractually required to ensure that stated rules covering eligibility and use of a domain are adhered to through a validation process. As a result, abusive registrations should be prevented. In the very unlikely circumstances that a domain is registered and used in an improper way, we acknowledge that we will be the respondent in related proceedings and we undertake to co-operate fully with ICANN and other appropriate agencies to resolve any concerns.

29.2.1 Sunrise Eligibility

Our Sunrise Eligibility Requirements will clearly state that eligible applicants must be members of the Amazon group of companies and its subsidiaries. Furthermore, all domain names must be used to support the business goals of Amazon. Nonetheless, notice of our Sunrise will be provided to third party holders of validated trademarks in the Trademark Clearinghouse as required by ICANN. Our Sunrise Eligibility Requirements will be published on the website of our registry.

29.2.2 Sunrise Window

As required in the Applicant Guidebook in section 7.1, our Sunrise window will recognize "all word marks: (i) nationally or regionally registered and for which proof of use - which can be a declaration and a single specimen of current use - was submitted to, and validated by, the Trademark

Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008".

Our Sunrise window will last for 30 days. Applications received from an ICANN-accredited registrar will be accepted for registration if they are (i) supported by an entry in the Trademark Clearinghouse (TMCH) during our Sunrise window and (ii) satisfy our Sunrise Eligibility Requirements. Once registered, those domain names will have a one year term of registration. Any domain names registered will be managed by our registrar.

29.2.3 Sunrise Dispute Resolution Policy

We will devise and publish the rules for our Sunrise Dispute Resolution Policy (SDRP) on our registry website. Our SDRP will apply to all our registries and will allow any party to raise a challenge on the following four grounds as required in the Applicant Guidebook (6.2.4):

- (i) At the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;
- (ii) The domain name is not identical to the mark on which the registrant based its Sunrise registration;
- (iii) The trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or
- (iv) The trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

Complaints can be submitted through our registry website within 30 days following the closure of the Sunrise, and will be initially processed by our registrar. Our registrar will promptly report to us: (i) the challenger; (ii) the challenged domain name; (iii) the grounds upon which the complaint is based; and (iv) why the challenger believes the grounds are satisfied.

29.2.4 Trademark Claims Service

Our Trademark Claims Service (TMCS) will run for a 60 day period following the closure of our 30 day Sunrise. Our TMCS will be supported by the Trademark Clearinghouse and will provide a notice to third parties interested in filing a character string in our registry of a registered trademark right that matches the character string in the TMCH.

We will honour and recognize in our TMCS the following types of marks as defined in the Applicant Guidebook section 7.1: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.

Once received from the TMCH, with which our registry provider will interface, a claim will be initially processed by our registrar who will provide a report to us on the eligibility of the applicant.

29.2.5 Implementation and Resourcing Plans of core services to prevent abusive registration

Our Sunrise and IP Claims service will be introduced with the following timetable:
Day One: Announcement of Registry Launch and publication of registry website with details of the Sunrise and Trademark Claim Service ("TMCS")

Day 30: Sunrise opens for 30 days on a first-come, first served basis. Once registrations are approved, they will be entered into the Shared Registry System (SRS) and published in our Thick-Whois database.

Day 60-75: Registry Open, domains applied for in the Sunrise registered and TMCS begins for a minimum of 60 days

Day 120-135: TMCS ends; normal operations continue.

Our Implementation Team will comprise the following:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years' experience with implementing registry launches including rights protection schemes such as the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests. The Implementation Team will create a formal Registry Launch plan by 1 October 2012. This plan will set out the exact process for the launch of each Amazon registry and will define responsibilities and budgets. The Registry website, which is budgeted for in the three year plans provided in our answers to Question 46, will be built by 1 December 2012 or within 30 days of pre-validation testing beginning, whichever is the sooner. It will feature Rules of Registration, Rules of Eligibility, Terms & Conditions of Registration, Acceptable Use Policies as well as the Rules of the Sunrise, the Rules of the Sunrise Dispute Resolution Policy and the Rules of the Trademark Claims Service.

Technical implementation between the registry and the Trademark Clearinghouse will be undertaken by the registry service provider as soon as practical after the Trademark Clearinghouse is operational and announces its integration process. As demonstrated in our answer to question 46, a budget has been set aside to pay fees charged by the Trademark Clearinghouse Operator for this integration. The contract we have with our registrar (the RAA) will require that the registrar uses the TMCH, adheres to the Terms & Conditions of the TMCH and will prohibit the registrar from filing domains in our registries on its own behalf or utilizing any data from the TMCH except in the provision of its duties as our registrar. When processing TMCS claims, our registrar will be required to use the specific form of notice provided by ICANN in the Applicant Guidebook.

We will also require our registrar to implement appropriate privacy policies reflecting local requirements. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

29.3 Mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

To prevent the abusive use of registered domain names on an ongoing basis we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated by ICANN:

- The Uniform Dispute Resolution Policy (UDRP) to address domain names that have been registered and used in bad faith in the TLD.
- The Uniform Rapid Suspension (URS) scheme which is a faster, more efficient alternative to the Uniform Dispute Resolution Policy to deal with clear-cut cases of cybersquatting.
- The Post Delegation Dispute Resolution Procedure (PDDRP).
- Implementation of a Thick WHOIS making it easier for rights holders to identify and locate infringing parties.

The UDRP and the URS are targeted at abusive registrations undertaken by third parties and the PDDRP at so called "Bad Actor" registries. As domains in our registry will be registered not to third parties but only to Amazon or its subsidiaries through a single registrar which will be required through contract to ensure that the rules covering eligibility and use of a domain are adhered to, we believe that abusive registrations by third parties should be completely prevented. Abusive behaviour by representatives of Amazon or our subsidiaries will be prevented by our internal processes, for example the pre-registration validation checks and monitoring of use of our registrar.

We acknowledge that we are subject to the UDRP, the URS and the PDDRP and we will co-operate fully with ICANN and appropriate registries in the unlikely circumstances that complaints against us, as the registrant, are made.

29.3.1 The Uniform Dispute Resolution Policy (UDRP)

The UDRP is an out-of-court dispute resolution mechanism for trademark owners to resolve clear cases of bad faith, abusive registration and use of domain names. The UDRP applies by contract to all domain name registrations in gTLDs. Standing to file a UDRP complaint is limited to trademark owners who must demonstrate their

rights. To prevail in a UDRP complaint, the complainant must further demonstrate that the domain name registrant has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. In the event of a successful claim, the infringing domain name registration is transferred to the complainant's control. Amazon or its subsidiaries will be the respondent in all UDRP complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no rights or legitimate interests" in a domain in our registry so the possibility of good faith UDRP complaints should be minimized. In the unlikely circumstances that a complaint is made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator. We will be applying for an exemption to Clause 1b of the Registry Operators Code of Conduct. This means that we will not be allowed to transfer domains to third parties as the only registrant will be Amazon or our subsidiaries. Therefore if a complaint against us is filed, the only possible remedy will be the cancellation of the domain instead of the transfer to the complainant. Should a successful complaint be made we will therefore place the cancelled domain that is the subject of the complaint on a list that prevents it from being registered again.

29.3.2 The URS

The URS is intended to be a lighter, quicker complement to the UDRP. Like the UDRP, it is intended for clear-cut cases of trademark abuse. Under the URS, the only remedy which a panel may grant is the temporary suspension of a domain name for the duration of the registration period (which may be extended by the prevailing complainant for one year, at commercial rates). URS substantive criteria mirror those of the UDRP but with a higher burden of proof for complainants, and additional registrant defences. Once a determination is rendered, a losing registrant has several appeal possibilities from 30 days up to one year. Either party may file a de novo appeal within 14 days of a decision. There are penalties for filing "abusive complaints" which may result in a ban on future URS filings.

As with the description of our UDRP process above, Amazon or its subsidiaries will be the respondent in all URS complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no legitimate right or interest in the domain name" and "that the domain name was registered and is being used in bad faith." Notwithstanding this, should a complaint be made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator.

Should a successful complaint be made, we will suspend the domain name for the duration of the registration period.

We will co-operate with the URS panel providers and panelists as we will co-operate with UDRP panel providers and panelists.

Being the only eligible registrant, we will not make changes to a domain in Locked Status or alter a registration record associated with a URS complaint as required in the Applicant Guidebook.

29.3.3 The Post-Delegation Dispute Resolution Procedure (PDDRP)

The PDDRP is an administrative option for trademark owners to file an objection against a registry whose "affirmative conduct" in its operation or use of its gTLD is alleged to cause or materially contribute to trademark abuse. In this way, the PDDRP is intended to act as a higher-level enforcement tool to assist ICANN compliance activities, where rights holders may not be able to continue to turn solely to lower-level multijurisdictional enforcement options in a vastly expanded DNS.

The PDDRP involves a number of procedural layers, such as an administrative compliance review, appointment of a "threshold review panel", an expert determination as to liability under the procedure (with implementation of any remedies at ICANN's discretion), a possible de novo appeal and further appeal to arbitration under ICANN's registry terms. The PDDRP requires specific bad faith conduct including profit from encouraging infringement in addition to "the typical registration fee."

As set out in the Applicant Guidebook in the appendix summarising the PDDRP, the

grounds for a complaint on a second level registration are that, "(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and (b) the registry operator's bad faith intent from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which (i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark or (ii) impairs the distinctive character or the reputation of the complainant's mark, or (iii) creates a likelihood of confusion with the complainant's mark."

Whilst we will co-operate with any complaints made under the PDDRP and we will abide by any determinations, we think it is highly improbable that any PDDRP complaints will succeed because the grounds set out above cannot be satisfied as domains in the registry will not be for sale and cannot be transferred to third parties.

29.3.4 Thick Whois

As required in Specification 4 of the Registry agreement, all Amazon registries will provide Thick Whois. A Thick WHOIS provides a centralized location of registrant information within the control of the registry (as opposed to thin Whois where the data is dispersed across registrars).

Thick Whois will provide rights owners and law enforcement with the ability to review the registration record easily.

We will place a requirement on our registrar to ensure that all registrations are filed with accurate Whois details and we will undertake reviews of Whois accuracy every three months to ensure that the integrity of data under our control is maintained.

Amazon will create and publish a Whois Query email address so that third parties can submit queries about any domains in our registry.

29.3.5 Implementation and Resourcing Plans for mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

Our post-launch rights protection mechanisms will be in place from Day One of the launch of the registry.

To ensure that we are compliant with our obligations as a registry operator, we will develop a section of our registry website to assist third parties involved in UDRP, URS and PDDRP complaints including third parties wishing to make a complaint, ICANN compliance staff and the providers of UDRP and URS panels. This will feature an email address for enquiries relating to disputes or seeking further information on specific domains. We will monitor this address for all of the following: Notice of Complaint, Notice of Default, URS Determination, UDRP Determination, Notice of Appeal and Appeal Panel Findings where appropriate.

As stated in our answer to Question 18, Amazon's Intellectual Property group will be responsible for the development, maintenance and enforcement of the Domain Management Policy. This will include ensuring that the following implementation targets are met:

- Locking domains that are the subject of URS complaints within 24 hours of receipt of a URS complaint, and ensuring our registrar locks domains that are the subject of UDRP complaints within 24 hours of receipt of a UDRP complaint.
- Confirming the implementation of the lock to the relevant URS provider, and ensure our registrar confirms the implementation of the lock to the relevant UDRP provider.
- Ensuring that our registrar cancels domain names that are the subject of a successful UDRP complaint within 24 hours
- Redirecting servers to a website with the ICANN mandated information following a successful URS within 24 hours

The human resources dedicated to managing post-launch RPM include:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years' experience with implementing registry launches including rights protection schemes including the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal

specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests.

We are confident that this staffing is more than adequate for a registry where the only registrant is Amazon or its subsidiaries. Of course, should business goals change requiring more resources, Amazon will closely review any expansion plans, and plan for additional financial, technical, and team-member support to put the Registry in the best position for success.

We will also require our registrar to implement appropriate privacy policies reflecting the high standards that we operate. For information on our Privacy Policies, please see:

http://www.amazon.com/gp/help/customer/display.html/ref=footer_privacy?ie=UTF8&nodeId=468496

29.4 Additional Mechanism that exceed requirements

Rights protection is at the core of Amazon's objective in applying for this registry. Therefore we are committed to providing the following additional mechanisms:

29.4.1 Registry Legal Manager

Amazon will appoint a Legal Manager to ensure that we are compliant with ICANN policies. The Legal Manager will also handle all disputes relating to RPMs. This will involve evaluating complaints, working with external legal counsel and law enforcement, and resolving disputes. The Legal Manager will also liaise with external stakeholders including URS and UDRP panel providers, the TMCH operator and trademark holders as needed.

29.4.2 Rights Protection Help Line

Amazon will maintain a Rights Protection Help Line. Calls to this line will be allocated a Case Number and the following details will be recorded: (i) the contact details of the complainant; (ii) the domain name that is the subject of the complaint or query; (iii) the registered right, if any, that is associated with the request; and (iv) an explanation of the concerns.

An initial response to a query or complaint will be made within 24 hours. The Rights Protection Help Line will be in place on Day One of the registry. The cost of the Rights Help Line is reflected in the Projections Templates provided at Question 46 as part of on-going registry maintenance costs.

The aim of the Rights Protection Help Line is to assist third parties in understanding the mission and purpose of our registry and to see if a resolution can be found that is quicker and easier than the filing of a UDRP or URS complaint.

The Legal Manager will oversee the Rights Protection Help Line.

29.4.3 Registrar Accreditation

Amazon will audit the performance of our registrar every six months and re-validate our Registry-Registrar Agreements annually. Our audits will include site visits to ensure the security of data etc.

29.4.4 Audits of registration records

Every three months, whichever is the most of 250 or 2% of the total of domain names registered in that period will be reviewed by our registrar to ensure accurate registration records and use that is compliant with our Acceptable Use guidelines.

29.4.5 Maintenance of Registry Website

Amazon will create a website for all our registries and we will make it easy for third parties including representatives of law enforcement to contact us by featuring our full contact details (physical, email address and phone number).

29.4.6 Click Wrapping our Terms & Conditions

Although only Amazon and its subsidiaries can register domain names in our registry, we will bring to the attention of requestors of domain names the Terms & Conditions of registration and, especially, Acceptable Use terms through Click Wrapping.

29.4.7 Annual Report

Amazon will publish an Annual Report on Rights Protection in our registries on our Registry Website. This will include relevant statistics and it will outline all cases and how they were resolved.

29.4.8 Contacts with WIPO and other DRS providers

Amazon will invite representatives of WIPO and other DRS providers to review our RPM and to make suggestions on any improvements that we might make after the first full year of operation.

29.4.9 Registrant Pre-Verification

All requests for registration will be verified by our registrar to ensure that they come from a legitimate representative of Amazon or our subsidiaries. A record of the request will be kept in our on-line domain management console including the requestor's email address and other contact information.

29.4.10 Take down Procedures

Amazon has described Takedown Procedures for domains supporting Abusive Behaviours in Question 28. We think this is very unlikely in a registry where only Amazon or its subsidiaries are registrants but we will reserve the right to terminate a registration and to take down all associated services after a review by our Legal Manager if a takedown for reasons of rights protection is requested by law enforcement, a representative of a court we recognise etc.

29.4.11 Speed of Response

Wherever possible, as outlined above, Amazon committed to a response within 24 hours of a complaint being made. This exceeds the guidelines for the UDRP and the URS. Please note that in the above answer the terms "We", "Our" and "Amazon" may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent.

30(a). Security Policy: Summary of the security policy for the proposed registry

Amazon EU S.à r.l. and our back-end operator, Neustar, recognize the vital need to secure the systems and the integrity of the data in commercial solutions. The .亚马逊 registry solution will leverage industry-best security practices including the consideration of physical, network, server, and application elements.

Neustar's approach to information security starts with comprehensive information security policies. These are based on the industry best practices for security including SANS (SysAdmin, Audit, Network, Security) Institute, NIST (National Institute of Standards and Technology), and Center for Internet Security (CIS). Policies are reviewed annually by Neustar's information security team.

The following is a summary of the security policies that will be used in the .亚马逊 registry, including:

1. Summary of the security policies used in the registry operations
2. Description of independent security assessments
3. Description of security features that are appropriate for .亚马逊
4. List of commitments made to registrants regarding security levels

All of the security policies and levels described in this section are appropriate for the .亚马逊 registry.

30.(a).1 Summary of Security Policies

Neustar, Inc. has developed a comprehensive Information Security Program in order to create effective administrative, technical, and physical safeguards for the protection of its information assets, and to comply with Neustar's obligations under applicable law, regulations, and contracts. This Program establishes Neustar's policies for accessing, collecting, storing, using, transmitting, and protecting electronic, paper, and other records containing sensitive information.

The Program defines:

The policies for internal users and our clients to ensure the safe, organized and fair use of information resources.

The rights that can be expected with that use.

The standards that must be met to effectively comply with policy.

The responsibilities of the owners, maintainers, and users of Neustar's information resources.

Rules and principles used at Neustar to approach information security issues

The following policies are included in the Program:

1. Acceptable Use Policy

The Acceptable Use Policy provides the "rules of behavior" covering all Neustar Associates for using Neustar resources or accessing sensitive information.

2. Information Risk Management Policy

The Information Risk Management Policy describes the requirements for the on-going information security risk management program, including defining roles and responsibilities for conducting and evaluating risk assessments, assessments of technologies used to provide information security and monitoring procedures used to measure policy compliance.

3. Data Protection Policy

The Data Protection Policy provides the requirements for creating, storing, transmitting, disclosing, and disposing of sensitive information, including data classification and labeling requirements, the requirements for data retention. Encryption and related technologies such as digital certificates are also covered under this policy.

4. Third Party Policy

The Third Party Policy provides the requirements for handling service provider contracts, including specifically the vetting process, required contract reviews, and on-going monitoring of service providers for policy compliance.

5. Security Awareness and Training Policy

The Security Awareness and Training Policy provide the requirements for managing the on-going awareness and training program at Neustar. This includes awareness and training activities provided to all Neustar Associates.

6. Incident Response Policy

The Incident Response Policy provides the requirements for reacting to reports of potential security policy violations. This policy defines the necessary steps for identifying and reporting security incidents, remediation of problems, and conducting "lessons learned" post-mortem reviews in order to provide feedback on the effectiveness of this Program. Additionally, this policy contains the requirement for reporting data security breaches to the appropriate authorities and to the public, as required by law, contractual requirements, or regulatory bodies.

7. Physical and Environmental Controls Policy

The Physical and Environment Controls Policy provides the requirements for securely storing sensitive information and the supporting information technology equipment and infrastructure. This policy includes details on the storage of paper records as well as access to computer systems and equipment locations by authorized personnel and visitors.

8. Privacy Policy

Neustar supports the right to privacy, including the rights of individuals to control the dissemination and use of personal data that describes them, their personal choices, or life experiences. Neustar supports domestic and international laws and regulations that seek to protect the privacy rights of such individuals.

9. Identity and Access Management Policy

The Identity and Access Management Policy covers user accounts (login ID naming convention, assignment, authoritative source) as well as ID lifecycle (request, approval, creation, use, suspension, deletion, review), including provisions for system/application accounts, shared/group accounts, guest/public accounts, temporary/emergency accounts, administrative access, and remote access. This policy also includes the user password policy requirements.

10. Network Security Policy

The Network Security Policy covers aspects of Neustar network infrastructure and the technical controls in place to prevent and detect security policy violations.

11. Platform Security Policy

The Platform Security Policy covers the requirements for configuration management of servers, shared systems, applications, databases, middle-ware, and desktops and laptops owned or operated by Neustar Associates.

12. Mobile Device Security Policy

The Mobile Device Policy covers the requirements specific to mobile devices with information storage or processing capabilities. This policy includes laptop standards, as well as requirements for PDAs, mobile phones, digital cameras and music players, and any other removable device capable of transmitting, processing or storing information.

13. Vulnerability and Threat Management Policy

The Vulnerability and Threat Management Policy provides the requirements for patch management, vulnerability scanning, penetration testing, threat management (modeling and monitoring) and the appropriate ties to the Risk Management Policy.

14. Monitoring and Audit Policy

The Monitoring and Audit Policy covers the details regarding which types of computer events to record, how to maintain the logs, and the roles and responsibilities for how to review, monitor, and respond to log information. This policy also includes the requirements for backup, archival, reporting, forensics use, and retention of audit logs.

15. Project and System Development and Maintenance Policy

The System Development and Maintenance Policy covers the minimum security requirements for all software, application, and system development performed by or on behalf of Neustar and the minimum security requirements for maintaining information systems.

30. (a).2 Independent Assessment Reports

Neustar IT Operations is subject to yearly Sarbanes-Oxley (SOX), Statement on Auditing Standards #70 (SAS70) and ISO audits. Testing of controls implemented by Neustar management in the areas of access to programs and data, change management and IT Operations are subject to testing by both internal and external SOX and SAS70 audit groups. Audit Findings are communicated to process owners, Quality Management Group and Executive Management. Actions are taken to make process adjustments where required and remediation of issues is monitored by internal audit and QM groups. External Penetration Test is conducted by a third party on a yearly basis. As authorized by Neustar, the third party performs an external Penetration Test to review potential security weaknesses of network devices and hosts and demonstrate the impact to the environment. The assessment is conducted remotely from the Internet with testing divided into four phases:

- A network survey is performed in order to gain a better knowledge of the network that was being tested

- Vulnerability scanning is initiated with all the hosts that are discovered in the previous phase

- Identification of key systems for further exploitation is conducted

- Exploitation of the identified systems is attempted.

Each phase of the audit is supported by detailed documentation of audit procedures and results. Identified vulnerabilities are classified as high, medium and low risk to facilitate management's prioritization of remediation efforts. Tactical and strategic recommendations are provided to management supported by reference to industry best practices.

30.(a).3 Augmented Security Levels and Capabilities

There are no increased security levels specific for .亚马逊. However, Neustar will provide the same high level of security provided across all of the registries it manages.

A key to Neustar's Operational success is Neustar's highly structured operations practices. The standards and governance of these processes:

- Include annual independent review of information security practices

- Include annual external penetration tests by a third party

- Conform to the ISO 9001 standard (Part of Neustar's ISO-based Quality Management System)

- Are aligned to Information Technology Infrastructure Library (ITIL) and CoBIT best practices

- Are aligned with all aspects of ISO IEC 17799

- Are in compliance with Sarbanes-Oxley (SOX) requirements (audited annually)

- Are focused on continuous process improvement (metrics driven with product scorecards reviewed monthly).

A summary view to Neustar's security policy in alignment with ISO 17799 can be found in section 30.(a).4 below.

30.(a).4 Commitments and Security Levels

The .亚马逊 registry commits to high security levels that are consistent with the needs of the TLD. These commitments include:

Compliance with High Security Standards

- Security procedures and practices that are in alignment with ISO 17799
- Annual SOC 2 Audits on all critical registry systems
- Annual 3rd Party Penetration Tests
- Annual Sarbanes Oxley Audits

Highly Developed and Document Security Policies

Compliance with all provisions described in section 30.(a).4 below and in the attached security policy document.

- Resources necessary for providing information security
- Fully documented security policies
- Annual security training for all operations personnel

High Levels of Registry Security

- Multiple redundant data centers
- High Availability Design
- Architecture that includes multiple layers of security
- Diversified firewall and networking hardware vendors
- Multi-factor authentication for accessing registry systems
- Physical security access controls
- A 24x7 manned Network Operations Center that monitors all systems and applications
- A 24x7 manned Security Operations Center that monitors and mitigates DDoS attacks
- DDoS mitigation using traffic scrubbing technologies

EXHIBIT C-019



New gTLD Application Submitted to ICANN by: Amazon EU S.à r.l.

String: アマゾン

Originally Posted: 13 June 2012

Application ID: 1-1318-83995

Applicant Information

1. Full legal name

Amazon EU S.à r.l.

2. Address of the principal place of business

**5 rue Plaetis
Luxembourg L-2338
LU**

3. Phone number

+352 26733 300

4. Fax number

+352 26733 335

5. If applicable, website or URL

<http://www.amazon.com/>

Primary Contact

6(a). Name

Ms. Lorna Jean Gradden

6(b). Title

Operations Director

6(c). Address

6(d). Phone Number

+442074218250

6(e). Fax Number

+448700118187

6(f). Email Address

lorna.gradden.am3@valideus.com

Secondary Contact

7(a). Name

Ms. Dana Brown Northcott

7(b). Title

Associate General Counsel, IP

7(c). Address

7(d). Phone Number

+1 2062667260

7(e). Fax Number

+1 2062667010

7(f). Email Address

danan@amazon.com

Proof of Legal Establishment

8(a). Legal form of the Applicant

Corporation (Société à responsabilité limitée)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Luxembourg

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.**9(b). If the applying entity is a subsidiary, provide the parent company.**

Amazon Europe Holding Technologies S.C.S. (AEHT) owns 100% of Amazon EU S.à r.l. AEHT is held by one unlimited partner, Amazon Europe Holdings, Inc. and two limited partners, Amazon.com, Inc. and Amazon.com Int'l Sales, Inc.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Amazon EU S.à r.l. is not a joint venture.

Applicant Background**11(a). Name(s) and position(s) of all directors**

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(b). Name(s) and position(s) of all officers and partners

Allan Lyall	Manager
Eric Laurent Broussard	Manager
Eva Charlotte Gehlin	Manager
Gregory William Greeley	Manager
John Timothy Leslie	Manager

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Amazon Europe Holding Technologies S.C.S.	Not Applicable
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11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

アマゾン

14(a). If an IDN, provide the A-label (beginning with "xn--").

xn--cckwcxetd

14(b). If an IDN, provide the meaning or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

Amazon

14(c). If an IDN, provide the language of the label (in English).

Japanese

14(c). If an IDN, provide the language of the label (as referenced by ISO-639-1).

JA

14(d). If an IDN, provide the script of the label (in English).

Katakana

14(d). If an IDN, provide the script of the label (as referenced by ISO 15924).

KANA

14(e). If an IDN, list all code points contained in the U-label according to Unicode form.

U+30A2 U+30DE
U+30BE U+30F3

15(a). If an IDN, Attach IDN Tables for the proposed registry.

Attachments are not displayed on this form.

15(b). Describe the process used for development of the IDN tables submitted, including consultations and sources used.

Wherever possible, well-established language tables that have been published in IANA Repository of IDN Practices are adopted. Published tables, especially from a ccTLD that primarily uses the given language or script, represent valuable research and deployment experience. In the interest of interoperability, we reuse these tables in our IDN implementation.

In some instances, multiple language tables for the same language may exist, with material differences in their content. In order to determine the best approach that fits our needs and specific target audience, we may conduct research and consult reference sources such as omniglot.com and everytype.com for clarity and understand the reason for the differences.

The Japanese IDN table is based on the .biz table found on in the IANA Repository. This table has been in use for nearly five years. When it was created in 2007, it was derived from the following sources:

IDN Character Table for JPRS: <http://www.iana.org/assignments/idn/jp-japanese.html>

When constructing the table, Neustar consulted with various experts including representatives at JPRS.

15(c). List any variant strings to the applied-for gTLD string according to

the relevant IDN tables.

N/A

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

Amazon EU S.à r.l. (AEU) foresees no known rendering issues in connection with the .アマゾン TLD. This is based upon consultation with AEU's backend provider, Neustar, which has successfully launched a number of new gTLDs over the last decade. In reaching this determination, the following data points were analyzed:

- ICANN's Security Stability Advisory Committee DSV009, Alternative TLD Name Systems and Roots: Conflict, Control & Consequences
- IAB - RFC3696 Application Techniques for Checking & Transformation of Names
- Known software issues which Neustar has encountered from launching new gTLDs
- Character type and length
- ICANN supplemental notes to Q16
- ICANN presentation during its Costa Rica regional meeting on TLD Universal Acceptance;

The following sections discuss the potential operational or rendering problems that can arise, and how mitigated.

Compliance & Interoperability

The applied-for string conforms to all relevant RFCs, as well as the string requirements set forth in s2.2.1.3.2 Applicant Guidebook.

Mixing Scripts

A domain name label with characters from different scripts has a higher likelihood of encountering rendering issues. If the mixing of scripts occurs within the top-level label, any rendering issue would affect all domain names registered under it. If occurring within second level labels, its ill-effects are confined to the domain names with such labels.

All characters in the applied-for gTLD string are taken from a single script. The IDN policies are conservative and compliant with ICANN Guidelines for the Implementation of IDN V3.0. Specifically, mixed-script labels may not be registered at the 2nd level, except for languages with established orthographies and conventions that require the commingled use of multiple scripts, e.g. Japanese.

Interaction between Labels

Even with the above issue appropriately restricted, it is possible that a domain name composed of labels with different properties such as script and directionality may introduce unintended rendering behavior.

Only scripts and characters that would not pose a risk when combined with the top level label will be offered.

Immature Scripts

Scripts or characters added in Unicode versions newer than 3.2 (on which IDNA2003 was based) may encounter interoperability issues due to the lack of software support. We have no current plans to offer registration of labels containing such scripts or characters.

Other Issues

We are not offering the registration of domains that includes combining characters or characters that require IDNA contextual rules handling.

The following may be construed as operational or rendering issues, but consider them out of the scope of this question. Nevertheless, we will take reasonable steps to protect registrants and Internet users by working with vendors and relevant language communities to mitigate such issues.

- missing fonts causing string to fail to render correctly
- universal acceptance of the TLD

17. (OPTIONAL) Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

N/A

Mission/Purpose

18(a). Describe the mission/purpose of your proposed gTLD.

Founded in 1994, Amazon opened on the World Wide Web in July 1995 and today offers Earth's Biggest Selection. Amazon seeks to be Earth's most customer-centric company, where customers can find and discover anything they might want to buy online, and endeavors to offer its customers the lowest possible prices. Amazon and other sellers offer millions of unique new, refurbished and used items in categories such as Books; Movies, Music & Games; Digital Downloads; Electronics & Computers; Home & Garden; Toys, Kids & Baby; Grocery; Apparel, Shoes & Jewelry; Health & Beauty; Sports & Outdoors; and Tools, Auto & Industrial. Amazon Web Services provides Amazon's developer customers with access to in-the-cloud infrastructure services based on Amazon's own back-end technology platform, which developers can use to enable virtually any type of business. The new latest generation Kindle is the lightest, most compact Kindle ever and features the same 6-inch, most advanced electronic ink display that reads like real paper even in bright sunlight. Kindle Touch is a new addition to the Kindle family with an easy-to-use touch screen that makes it easier than ever to turn pages, search, shop, and take notes - still with all the benefits of the most advanced electronic ink display. Kindle Touch 3G is the top of the line e-reader and offers the same new design and features of Kindle Touch, with the unparalleled added convenience of free 3G. Kindle Fire is the Kindle for movies, TV shows, music, books, magazines, apps, games and web browsing with all the content, free storage in the Amazon Cloud, Whispersync, Amazon Silk (Amazon's new revolutionary cloud-accelerated web browser), vibrant color touch screen, and powerful dual-core processor.

The mission of the .アマゾン registry is:

To provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation.

A .アマゾン registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

18(b). How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

The .アマゾン registry will benefit registrants and internet users by offering a stable and secure foundation for online communication and interaction.

What is the goal of your proposed gTLD in terms of areas of specialty, service levels or reputation?

Amazon intends for its new .アマゾン gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction. The .アマゾン registry will be run in line with current industry standards of good registry practice.

What do you anticipate your proposed gTLD will add to the current space in terms of competition, differentiation or innovation?

Amazon values the opportunity to be one of the first companies to own a gTLD. A .アマゾン registry will:

- Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction.
- Provide Amazon a further platform for innovation.
- Enable Amazon to protect its intellectual property rights.

What goals does your proposed gTLD have in terms of user experience?

Amazon intends for its new .アマゾン gTLD to provide a unique and dedicated platform for stable and secure online communication and interaction.

Provide a complete description of the applicant's intended registration policies in support of the goals above

Amazon's Intellectual Property group will be responsible for the development, maintenance and enforcement of a Domain Management Policy. The Domain Management Policy will define (i) the rules associated with eligibility and domain name allocation, (ii) the license terms governing the use of a .アマゾン domain name, and (iii) the dispute resolution policies for the .アマゾン gTLD. Amazon will continually update the Domain Management Policy as needed to reflect Amazon's business goals and, where appropriate, ICANN consensus policies.

Registration of a domain name in the .アマゾン registry will be undertaken in four steps: (i) Eligibility Confirmation, (ii) Naming Convention Check, (iii) Acceptable Use Review, and (iv) Registration. All domains in the .アマゾン registry will remain the property of Amazon.

For example, on the rules of eligibility, each applied for character string must conform to the .アマゾン rules of eligibility. Each .アマゾン name must:

- be at least 3 characters and no more than 63 characters long
- not contain a hyphen on the 3rd and 4th position (tagged domains)
- contain only letters (a-z), numbers (0-9) and hyphens or a combination of these
- start and end with an alphanumeric character, not a hyphen
- not match any character strings reserved by ICANN
- not match any protected country names or geographical terms

Additionally:

- Internationalized domain names (IDN) may be supported in the .アマゾン registry at the second level.
- The .アマゾン registry will respect third party intellectual property rights.
- .アマゾン may not be delegated or assigned to third party organizations, institutions, or individuals.
- All .アマゾン domains will carry accurate and up-to-date registration records.

Amazon's Intellectual Property group reserves the right to revoke a license to use a .アマゾン domain name, at any time, if any use of a .アマゾン domain name violates the Domain Management

Policy.

Will your proposed gTLD impose any measures for protecting the privacy of confidential information of registrants or users?

Yes. Amazon will implement appropriate privacy policies respecting requirements of local jurisdictions. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

Describe whether and in what ways outreach and communications will help to achieve your projected benefits?

There is no foreseeable reason for Amazon to undertake public outreach or mass communication about its new gTLD registry because domains will be provisioned in line with Amazon's business goals.

18(c). What operating rules will you adopt to eliminate or minimize social costs?

Amazon intends to initially provision a relatively small number of domains in the .アマゾン registry to support the business goals of Amazon. These initiatives should not impose social costs of any type on consumers.

How will multiple applications for a particular domain be resolved, for example, by auction or on a first come first served basis?

Applications from Amazon and its subsidiaries for domains in the .アマゾン registry will be considered by Amazon's Intellectual Property group and allocated in line with Amazon's business goals. The .アマゾン registry will not be promoted by hundreds of registrars simultaneously, so there will not be multiple-applications for a particular domain.

Explain any cost benefits for registrants you intend to implement (e.g. advantageous pricing, introductory discounts, bulk registration discounts).

Domains in the .アマゾン registry will be provisioned to support the business goals of Amazon. Accordingly, "cost benefits" may be explored depending on the business goals of Amazon. Amazon shares the goals of enhancing customer trust and choice.

The Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than 10 years. Additionally the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation?

The Domain Management Policy will include the costs and benefits of Amazon's unique and dedicated platform for stable and secure online communication and interaction.

Community-based Designation

19. Is the application for a community-based TLD?

No

20(a). Provide the name and full description of the community that the applicant is committing to serve.

20(b). Explain the applicant's relationship to the community identified in 20(a).

20(c). Provide a description of the community-based purpose of the applied-for gTLD.

20(d). Explain the relationship between the applied-for gTLD string and the community identified in 20(a).

20(e). Provide a description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD.

20(f). Attach any written endorsements from institutions/groups representative of the community identified in 20(a).

Attachments are not displayed on this form.

Geographic Names

21(a). Is the application for a geographic name?

No

Protection of Geographic Names

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD.

Amazon EU S.à r.l., with support of its ultimate parent company, Amazon.com, Inc. (collectively referred to in this response throughout as “Amazon”), is committed to managing the .アマゾン registry in full compliance with all applicable laws, consensus policies, ICANN guidelines, RFCs and the Specifications of the Registry Agreement. In the management of domain names in the .アマゾン registry, based on GAC advice and Specification 5, Amazon intends to block from initial registration those country and territory names contained in the following lists:

1. The short form (in English) of all country and territory names contained on the ISO 3166- 1 list, as updated from time to time, including the European Union; and
2. The United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
3. The list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names.

The process for reserving these names, and hence blocking them from registration, will be agreed to with our technical service provider Neustar.

Because the .アマゾン registry will be a single entity registry and for purposes which serve Amazon’s strategic business aims, the reserved names cannot be offered to Governments or other official bodies for their own use as this would conflict with the mission and purpose of the gTLD. However, for the same reason, they will not be offered to third parties.

The .アマゾン registry only provides for the registration of names at the second level. No third level domains will be delegated at the registry level. It is consistent with GAC advice that Amazon may choose to create sub domains using country names or abbreviations at the third level. For example, Amazon may register information.アマゾン and its internal users may create sub domains such as jp.information.アマゾン.

Amazon may also use a folder structure to represent country names in its URLs, while the block exists at the second level. For example, information.アマゾン/japan.

We imagine that over time, there will be demand from brand gTLDs leading to the development of a standardized process for requesting GAC review and ICANN approval for the release of country and territory names for registration by the Registry Operator when the registry is a single entity registry. When such a process is in place, Amazon expects to apply for the release of country and territory names within .アマゾン.

Registry Services

23. Provide name and full description of all the Registry Services to be provided.

23.1 Introduction

Amazon EU S.à r.l. has elected to partner with Neustar, Inc. to provide back-end services for the .アマゾン registry. In making this decision, Amazon EU S.à r.l. recognized that Neustar already possesses a production-proven registry system that can be quickly deployed and smoothly operated over its robust, flexible, and scalable world-class infrastructure. The existing registry services will be leveraged for the .アマゾン registry. The following section describes the registry services to be provided.

23.2 Standard Technical and Business Components

Neustar will provide the highest level of service while delivering a secure, stable and comprehensive registry platform. Amazon EU S.à r.l. will use Neustar's Registry Services platform to deploy the .アマゾン registry, by providing the following Registry Services (none of these services are offered in a manner that is unique to .アマゾン).

- Registry-Registrar Shared Registration Service (SRS)
- Extensible Provisioning Protocol (EPP)
- Domain Name System (DNS)
- WHOIS
- DNSSEC
- Data Escrow
- Dissemination of Zone Files using Dynamic Updates
- Access to Bulk Zone Files
- Dynamic WHOIS Updates
- IPv6 Support
- Rights Protection Mechanisms
- Internationalized Domain Names (IDN).

The following is a description of each of the services.

SRS

Neustar's secure and stable SRS is a production-proven, standards-based, highly reliable, and high-performance domain name registration and management system. The SRS includes an EPP interface for receiving data from registrars for the purpose of provisioning and managing domain names and name servers. The response to Question 24 provides specific SRS information.

EPP

The .アマゾン registry will use the Extensible Provisioning Protocol (EPP) for the provisioning of domain names. The EPP implementation will be fully compliant with all RFCs. Registrars are provided with access via an EPP API and an EPP based Web GUI. With more than 10 gTLD, ccTLD, and private TLDs implementations, Neustar has extensive experience building EPP-based registries. Additional discussion on the EPP approach is presented in the response to Question 25.

DNS

Amazon EU S.à r.l. will leverage Neustar's world-class DNS network of geographically distributed nameserver sites to provide the highest level of DNS service. The service utilizes "Anycast" routing technology, and supports both IPv4 and IPv6. The DNS network is highly proven, and currently provides service to over 20 TLDs and thousands of enterprise companies. Additional information on the DNS solution is presented in the response to Questions 35.

WHOIS

Neustar's existing standard WHOIS solution will be used for .アマゾン. The service provides supports for near real-time dynamic updates. The design and construction is agnostic with regard to data display policy is flexible enough to accommodate any data model. In addition, a searchable WHOIS service that complies with all ICANN requirements will be provided. The following WHOIS options will be provided:

- Standard WHOIS (Port 43)
- Standard WHOIS (Web)
- Searchable WHOIS (Web)

DNSSEC

An RFC compliant DNSSEC implementation will be provided using existing DNSSEC capabilities. Neustar is an experienced provider of DNSSEC services, and currently manages signed zones for three large top level domains: .biz, .us, and .co. Registrars are provided with the ability to submit and manage DS records using EPP, or through a web GUI. Additional information on DNSSEC, including the management of security extensions is found in the response to Question 43.

Data Escrow

Data escrow will be performed in compliance with all ICANN requirements in conjunction with an approved data escrow provider. The data escrow service will:

- Protect against data loss
- Follow industry best practices
- Ensure easy, accurate, and timely retrieval and restore capability in the event of a hardware failure
- Minimizes the impact of software or business failure.

Additional information on the Data Escrow service is provided in the response to Question 38.

Dissemination of Zone Files using Dynamic Updates

Dissemination of zone files will be provided through a dynamic, near real-time process. Updates will be performed within the specified performance levels. The proven technology ensures that updates pushed to all nodes within a few minutes of the changes being received by the SRS. Additional information on the DNS updates may be found in the response to Question 35.

Access to Bulk Zone Files

Amazon EU S.à r.l. will provide third party access to the bulk zone file in accordance with specification 4, Section 2 of the Registry Agreement. Credentialing and dissemination of the zone files will be facilitated through the Central Zone Data Access Provider.

Dynamic WHOIS Updates

Updates to records in the WHOIS database will be provided via dynamic, near real-time updates. Guaranteed delivery message oriented middleware is used to ensure each individual WHOIS server is refreshed with dynamic updates. This component ensures that all WHOIS servers are kept current as changes occur in the SRS, while also decoupling WHOIS from the SRS. Additional information on WHOIS updates is presented in response to Question 26.

IPv6 Support

The .アマゾン registry will provide IPv6 support in the following registry services: SRS, WHOIS, and DNS/DNSSEC. In addition, the registry supports the provisioning of IPv6 AAAA records. A detailed description on IPv6 is presented in the response to Question 36.

Required Rights Protection Mechanisms

Amazon EU S.à r.l. will provide all ICANN required Rights Mechanisms, including:

- Trademark Claims Service
- Trademark Post-Delegation Dispute Resolution Procedure (PDDRP)
- Registration Restriction Dispute Resolution Procedure (RRDRP)
- UDRP
- URS
- Sunrise service.

More information is presented in the response to Question 29.

Internationalized Domain Names (IDN)

IDN registrations are provided in full compliance with the IDNA protocol. Neustar possesses extensive experience offering IDN registrations in numerous TLDs, and its IDN implementation uses advanced technology to accommodate the unique bundling needs of certain languages. Character mappings are easily constructed to block out characters that may be deemed as confusing to users. A detailed description of the IDN implementation is presented in response to Question 44.

23.3 Unique Services

Amazon EU S.à r.l. will not be offering services that are unique to .アマゾン.

23.4 Security or Stability Concerns

All services offered are standard registry services that have no known security or stability concerns. Neustar has demonstrated a strong track record of security and stability within the industry.

Demonstration of Technical & Operational Capability

24. Shared Registration System (SRS) Performance

24.1 Introduction

Amazon EU S.à r.l. has partnered with Neustar, Inc., an experienced TLD registry operator, for the operation of the .アマゾン Registry. Amazon EU S.à r.l. is confident that the plan in place

for the operation of a robust and reliable Shared Registration System (SRS) as currently provided by Neustar will satisfy the criterion established by ICANN. Neustar built its SRS from the ground up as an EPP based platform and has been operating it reliably and at scale since 2001. The software currently provides registry services to five TLDs (.BIZ, .US, TEL, .CO and .TRAVEL) and is used to provide gateway services to the .CN and .TW registries. Neustar's state of the art registry has a proven track record of being secure, stable, and robust. It manages more than 6 million domains, and has over 300 registrars connected today. The following describes a detailed plan for a robust and reliable SRS that meets all ICANN requirements including compliance with Specifications 6 and 10.

24.2 The Plan for Operation of a Robust and Reliable SRS

High-level SRS System Description

The SRS to be used for .アマゾン will leverage a production-proven, standards-based, highly reliable and high-performance domain name registration and management system that fully meets or exceeds the requirements as identified in the new gTLD Application Guidebook. The SRS is the central component of any registry implementation and its quality, reliability and capabilities are essential to the overall stability of the TLD. Neustar has a documented history of deploying SRS implementations with proven and verifiable performance, reliability and availability. The SRS adheres to all industry standards and protocols. By leveraging an existing SRS platform, Amazon EU S.à r.l. is mitigating the significant risks and costs associated with the development of a new system. Highlights of the SRS include:

- ☐ State-of-the-art, production proven multi-layer design
- ☐ Ability to rapidly and easily scale from low to high volume as a TLD grows
- ☐ Fully redundant architecture at two sites
- ☐ Support for IDN registrations in compliance with all standards
- ☐ Use by over 300 Registrars
- ☐ EPP connectivity over IPv6
- ☐ Performance being measured using 100% of all production transactions (not sampling).

SRS Systems, Software, Hardware, and Interoperability

The systems and software that the registry operates on are a critical element to providing a high quality of service. If the systems are of poor quality, if they are difficult to maintain and operate, or if the registry personnel are unfamiliar with them, the registry will be prone to outages. Neustar has a decade of experience operating registry infrastructure to extremely high service level requirements. The infrastructure is designed using best of breed systems and software. Much of the application software that performs registry-specific operations was developed by the current engineering team and as a result the team is intimately familiar with its operations.

The architecture is highly scalable and provides the same high level of availability and performance as volumes increase. It combines load balancing technology with scalable server technology to provide a cost effective and efficient method for scaling. The Registry is able to limit the ability of any one registrar from adversely impacting other registrars by consuming too many resources due to excessive EPP transactions. The system uses network layer 2 level packet shaping to limit the number of simultaneous connections registrars can open to the protocol layer.

All interaction with the Registry is recorded in log files. Log files are generated at each layer of the system. These log files record at a minimum:

- ☐ The IP address of the client
- ☐ Timestamp
- ☐ Transaction Details
- ☐ Processing Time.

In addition to logging of each and every transaction with the SRS Neustar maintains audit records, in the database, of all transformational transactions. These audit records allow the Registry, in support of Amazon EU S.à r.l., to produce a complete history of changes for any domain name.

SRS Design

The SRS incorporates a multi-layer architecture that is designed to mitigate risks and easily scale as volumes increase. The three layers of the SRS are:

- ☐ Protocol Layer
- ☐ Business Policy Layer

☐ Database.

Each of the layers is described below.

Protocol Layer

The first layer is the protocol layer, which includes the EPP interface to registrars. It consists of a high availability farm of load-balanced EPP servers. The servers are designed to be fast processors of transactions. The servers perform basic validations and then feed information to the business policy engines as described below. The protocol layer is horizontally scalable as dictated by volume.

The EPP servers authenticate against a series of security controls before granting service, as follows:

- ☐ The registrar's host exchanges keys to initiate a TLS handshake session with the EPP server.
- ☐ The registrar's host must provide credentials to determine proper access levels.
- ☐ The registrar's IP address must be preregistered in the network firewalls and traffic-shapers.

Business Policy Layer

The Business Policy Layer is the "brain" of the registry system. Within this layer, the policy engine servers perform rules-based processing as defined through configurable attributes. This process takes individual transactions, applies various validation and policy rules, persists data and dispatches notification through the central database in order to publish to various external systems. External systems fed by the Business Policy Layer include backend processes such as dynamic update of DNS, WHOIS and Billing.

Similar to the EPP protocol farm, the SRS consists of a farm of application servers within this layer. This design ensures that there is sufficient capacity to process every transaction in a manner that meets or exceeds all service level requirements. Some registries couple the business logic layer directly in the protocol layer or within the database. This architecture limits the ability to scale the registry. Using a decoupled architecture enables the load to be distributed among farms of inexpensive servers that can be scaled up or down as demand changes.

The SRS today processes over 30 million EPP transactions daily.

Database

The database is the third core components of the SRS. The primary function of the SRS database is to provide highly reliable, persistent storage for all registry information required for domain registration services. The database is highly secure, with access limited to transactions from authenticated registrars, trusted application-server processes, and highly restricted access by the registry database administrators. A full description of the database can be found in response to Question 33.

Figure 24-1 depicts the overall SRS architecture including network components.

Number of Servers

As depicted in the SRS architecture diagram above Neustar operates a high availability architecture where at each level of the stack there are no single points of failures. Each of the network level devices run with dual pairs as do the databases. For the .アマゾン registry, the SRS will operate with 8 protocol servers and 6 policy engine servers. These expand horizontally as volume increases due to additional TLDs, increased load, and through organic growth. In addition to the SRS servers described above, there are multiple backend servers for services such as DNS and WHOIS. These are discussed in detail within those respective response sections.

Description of Interconnectivity with Other Registry Systems

The core SRS service interfaces with other external systems via Neustar's external systems layer. The services that the SRS interfaces with include:

- ☐ WHOIS
- ☐ DNS
- ☐ Billing
- ☐ Data Warehouse (Reporting and Data Escrow).

Other external interfaces may be deployed to meet the unique needs of a TLD. At this time there are no additional interfaces planned for .アマゾン.

The SRS includes an "external notifier" concept in its business policy engine as a message dispatcher. This design allows time-consuming backend processing to be decoupled from critical online registrar transactions. Using an external notifier solution, the registry

can utilize “control levers” that allow it to tune or to disable processes to ensure optimal performance at all times. For example, during the early minutes of a TLD launch, when unusually high volumes of transactions are expected, the registry can elect to suspend processing of one or more back end systems in order to ensure that greater processing power is available to handle the increased load requirements. This proven architecture has been used with numerous TLD launches, some of which have involved the processing of over tens of millions of transactions in the opening hours. The following are the standard three external notifiers used the SRS:

WHOIS External Notifier

The WHOIS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on WHOIS. It is important to note that, while the WHOIS external notifier feeds the WHOIS system, it intentionally does not have visibility into the actual contents of the WHOIS system. The WHOIS external notifier serves just as a tool to send a signal to the WHOIS system that a change is ready to occur. The WHOIS system possesses the intelligence and data visibility to know exactly what needs to change in WHOIS. See response to Question 26 for greater detail.

DNS External Notifier

The DNS external notifier dispatches a work item for any EPP transaction that may potentially have an impact on DNS. Like the WHOIS external notifier, the DNS external notifier does not have visibility into the actual contents of the DNS zones. The work items that are generated by the notifier indicate to the dynamic DNS update sub-system that a change occurred that may impact DNS. That DNS system has the ability to decide what actual changes must be propagated out to the DNS constellation. See response to Question 35 for greater detail.

Billing External Notifier

The billing external notifier is responsible for sending all billable transactions to the downstream financial systems for billing and collection. This external notifier contains the necessary logic to determine what types of transactions are billable. The financial systems use this information to apply appropriate debits and credits based on registrar.

Data Warehouse

The data warehouse is responsible for managing reporting services, including registrar reports, business intelligence dashboards, and the processing of data escrow files. The Reporting Database is used to create both internal and external reports, primarily to support registrar billing and contractual reporting requirement. The data warehouse databases are updated on a daily basis with full copies of the production SRS data.

Frequency of Synchronization between Servers

The external notifiers discussed above perform updates in near real-time, well within the prescribed service level requirements. As transactions from registrars update the core SRS, update notifications are pushed to the external systems such as DNS and WHOIS. These updates are typically live in the external system within 2-3 minutes.

Synchronization Scheme (e.g., hot standby, cold standby)

Neustar operates two hot databases within the data center that is operating in primary mode. These two databases are kept in sync via synchronous replication. Additionally, there are two databases in the secondary data center. These databases are updated real time through asynchronous replication. This model allows for high performance while also ensuring protection of data. See response to Question 33 for greater detail.

Compliance with Specification 6 Section 1.2

The SRS implementation for .アマゾン is fully compliant with Specification 6, including section 1.2. EPP Standards are described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. Extensible Provisioning Protocol or EPP is defined by a core set of RFCs that standardize the interface that make up the registry-registrar model. The SRS interface supports EPP 1.0 as defined in the following RFCs shown in Table 24-1.

Additional information on the EPP implementation and compliance with RFCs can be found in the response to Question 25.

Compliance with Specification 10

Specification 10 of the New TLD Agreement defines the performance specifications of the TLD, including service level requirements related to DNS, RDDS (WHOIS), and EPP. The requirements include both availability and transaction response time measurements. As an experienced registry operator, Neustar has a long and verifiable track record of providing registry services that consistently exceed the performance specifications stipulated in ICANN

agreements. This same high level of service will be provided for the .アマゾン Registry. The following section describes Neustar's experience and its capabilities to meet the requirements in the new agreement.

To properly measure the technical performance and progress of TLDs, Neustar collects data on key essential operating metrics. These measurements are key indicators of the performance and health of the registry. Neustar's current .biz SLA commitments are among the most stringent in the industry today, and exceed the requirements for new TLDs. Table 24-2 compares the current SRS performance levels compared to the requirements for new TLDs, and clearly demonstrates the ability of the SRS to exceed those requirements.

Their ability to commit and meet such high performance standards is a direct result of their philosophy towards operational excellence. See response to Question 31 for a full description of their philosophy for building and managing for performance.

24.3 Resourcing Plans

The development, customization, and on-going support of the SRS are the responsibility of a combination of technical and operational teams, including:

- ☐ Development/Engineering
- ☐ Database Administration
- ☐ Systems Administration
- ☐ Network Engineering.

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will be involved in the design and testing. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably.

The necessary resources will be pulled from the pool of operational resources described in detail in the response to Question 31. Neustar's SRS implementation is very mature, and has been in production for over 10 years. As such, very little new development related to the SRS will be required for the implementation of the .アマゾン registry. The following resources are available from those teams:

Development/Engineering - 19 employees
 Database Administration- 10 employees
 Systems Administration - 24 employees
 Network Engineering - 5 employees

The resources are more than adequate to support the SRS needs of all the TLDs operated by Neustar, including the .アマゾン registry.

25. Extensible Provisioning Protocol (EPP)

25.1 Introduction

Amazon EU S.à r.l.'s back-end registry operator, Neustar, has over 10 years of experience operating EPP based registries. They deployed one of the first EPP registries in 2001 with the launch of .biz. In 2004, they were the first gTLD to implement EPP 1.0. Over the last ten years Neustar has implemented numerous extensions to meet various unique TLD requirements. Neustar will leverage its extensive experience to ensure Amazon EU S.à r.l. is provided with an unparalleled EPP based registry. The following discussion explains the EPP interface which will be used for the .アマゾン registry. This interface exists within the protocol farm layer as described in Question 24 and is depicted in Figure 25-1.

25.2 EPP Interface

Registrars are provided with two different interfaces for interacting with the registry. Both are EPP based, and both contain all the functionality necessary to provision and manage domain names. The primary mechanism is an EPP interface to connect directly with the registry. This is the interface registrars will use for most of their interactions with the registry. However, an alternative web GUI (Registry Administration Tool) that can also be used to perform EPP transactions will be provided. The primary use of the Registry Administration Tool is for performing administrative or customer support tasks.

The main features of the EPP implementation are:

- ☐ Standards Compliance: The EPP XML interface is compliant to the EPP RFCs. As future EPP RFCs are published or existing RFCs are updated, Neustar makes changes to the implementation keeping in mind of any backward compatibility issues.
- ☐ Scalability: The system is deployed keeping in mind that it may be required to grow and shrink the footprint of the Registry system for a particular TLD.
- ☐ Fault-tolerance: The EPP servers are deployed in two geographically separate data centers to provide for quick failover capability in case of a major outage in a particular data center. The EPP servers adhere to strict availability requirements defined in the SLAs.
- ☐ Configurability: The EPP extensions are built in a way that they can be easily configured to turn on or off for a particular TLD.
- ☐ Extensibility: The software is built ground up using object oriented design. This allows for easy extensibility of the software without risking the possibility of the change rippling through the whole application.
- ☐ Auditable: The system stores detailed information about EPP transactions from provisioning to DNS and WHOIS publishing. In case of a dispute regarding a name registration, the Registry can provide comprehensive audit information on EPP transactions.
- ☐ Security: The system provides IP address based access control, client credential-based authorization test, digital certificate exchange, and connection limiting to the protocol layer.

25.3 Compliance with RFCs and Specifications

The registry-registrar model is described and embodied in a number of IETF RFCs, ICANN contracts and practices, and registry-registrar agreements. As shown in Table 25-1, EPP is defined by the core set of RFCs that standardize the interface that registrars use to provision domains with the SRS. As a core component of the SRS architecture, the implementation is fully compliant with all EPP RFCs.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to EPP. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

Neustar has a long history of providing exceptional service that exceeds all performance specifications. The SRS and EPP interface have been designed to exceed the EPP specifications defined in Specification 10 of the Registry Agreement and profiled in Table 25-2. Evidence of Neustar's ability to perform at these levels can be found in the .biz monthly progress reports found on the ICANN website.

EPP Toolkits

Toolkits, under open source licensing, are freely provided to registrars for interfacing with the SRS. Both Java and C++ toolkits will be provided, along with the accompanying documentation. The Registrar Tool Kit (RTK) is a software development kit (SDK) that supports the development of a registrar software system for registering domain names in the registry using EPP. The SDK consists of software and documentation as described below. The software consists of working Java and C++ EPP common APIs and samples that implement the EPP core functions and EPP extensions used to communicate between the registry and registrar. The RTK illustrates how XML requests (registration events) can be assembled and forwarded to the registry for processing. The software provides the registrar with the basis for a reference implementation that conforms to the EPP registry-registrar protocol. The software component of the SDK also includes XML schema definition files for all Registry EPP objects and EPP object extensions. The RTK also includes a "dummy" server to aid in the testing of EPP clients.

The accompanying documentation describes the EPP software package hierarchy, the object data model, and the defined objects and methods (including calling parameter lists and expected response behavior). New versions of the RTK are made available from time to time to provide support for additional features as they become available and support for other platforms and languages.

25.4 Proprietary EPP Extensions

The .アマゾン registry will not include proprietary EPP extensions. Neustar has implemented various EPP extensions for both internal and external use in other TLD registries. These extensions use the standard EPP extension framework described in RFC 5730. Table 25-3 provides a list of extensions developed for other TLDs. Should the .アマゾン registry require an EPP extension at some point in the future, the extension will be implemented in compliance with all RFC specifications including RFC 3735.

The full EPP schema to be used in the .アマゾン registry is attached in the document titled “EPP Schema.”

25.5 Resourcing Plans

The development and support of EPP is largely the responsibility of the Development/Engineering and Quality Assurance teams. As an experience registry operator with a fully developed EPP solution, on-going support is largely limited to periodic updates to the standard and the implementation of TLD specific extensions.

The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Quality Assurance - 7 employees.

These resources are more than adequate to support any EPP modification needs of the .アマゾン registry.

26. Whois

26.1 Introduction

Amazon EU S.à r.l. recognizes the importance of an accurate, reliable, and up-to-date WHOIS database to governments, law enforcement, intellectual property holders and the public as a whole and is firmly committed to complying with all of the applicable WHOIS specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement. Amazon EU S.à r.l.’s back-end registry services provider, Neustar, has extensive experience providing ICANN and RFC-compliant WHOIS services for each of the TLDs that it operates both as a Registry Operator for gTLDs, ccTLDs and back-end registry services provider. As one of the first “thick” registry operators in the gTLD space, Neustar’s WHOIS service has been designed from the ground up to display as much information as required by a TLD and respond to a very stringent availability and performance requirement.

Some of the key features of .アマゾン’s solution include:

- ☐ Fully compliant with all relevant RFCs including 3912
- ☐ Production proven, highly flexible, and scalable with a track record of 100% availability over the past 10 years
- ☐ Exceeds current and proposed performance specifications
- ☐ Supports dynamic updates with the capability of doing bulk updates
- ☐ Geographically distributed sites to provide greater stability and performance
- ☐ In addition, .アマゾン’s thick-WHOIS solution also provides for additional search capabilities and mechanisms to mitigate potential forms of abuse as discussed below. (e.g., IDN, registrant data).

26.2 Software Components

The WHOIS architecture comprises the following components:

- ☐ An in-memory database local to each WHOIS node: To provide for the performance needs, the WHOIS data is served from an in-memory database indexed by searchable keys.
- ☐ Redundant servers: To provide for redundancy, the WHOIS updates are propagated to a cluster of WHOIS servers that maintain an independent copy of the database.
- ☐ Attack resistant: To ensure that the WHOIS system cannot be abused using malicious queries or DOS attacks, the WHOIS server is only allowed to query the local database and rate limits on queries based on IPs and IP ranges can be readily applied.
- ☐ Accuracy auditor: To ensure the accuracy of the information served by the WHOIS servers, a daily audit is done between the SRS information and the WHOIS responses for the

domain names which are updated during the last 24-hour period. Any discrepancies are resolved proactively.

☐ Modular design: The WHOIS system allows for filtering and translation of data elements between the SRS and the WHOIS database to allow for customizations.

☐ Scalable architecture: The WHOIS system is scalable and has a very small footprint. Depending on the query volume, the deployment size can grow and shrink quickly.

☐ Flexible: It is flexible enough to accommodate thin, thick, or modified thick models and can accommodate any future ICANN policy, such as different information display levels based on user categorization.

☐ SRS master database: The SRS database is the main persistent store of the Registry information. The Update Agent computes what WHOIS updates need to be pushed out. A publish-subscribe mechanism then takes these incremental updates and pushes to all the WHOIS slaves that answer queries.

26.3 Compliance with RFC and Specifications 4 and 10

Neustar has been running thick-WHOIS Services for over 10+ years in full compliance with RFC 3912 and with Specifications 4 and 10 of the Registry Agreement. RFC 3912 is a simple text based protocol over TCP that describes the interaction between the server and client on port 43. Neustar built a home-grown solution for this service. It processes millions of WHOIS queries per day.

Table 26-1 describes Neustar's compliance with Specifications 4 and 10.

Neustar ensures compliance with all RFCs through a variety of processes and procedures. Members from the engineering and standards teams actively monitor and participate in the development of RFCs that impact the registry services, including those related to WHOIS. When new RFCs are introduced or existing ones are updated, the team performs a full compliance review of each system impacted by the change. Furthermore, all code releases include a full regression test that includes specific test cases to verify RFC compliance.

26.4 High-level WHOIS System Description

26.4.1 WHOIS Service (port 43)

The WHOIS service is responsible for handling port 43 queries. Our WHOIS is optimized for speed using an in-memory database and master-slave architecture between the SRS and WHOIS slaves.

The WHOIS service also has built-in support for IDN. If the domain name being queried is an IDN, the returned results include the language of the domain name, the domain name's UTF-8 encoded representation along with the Unicode code page.

26.4.2 Web Page for WHOIS queries

In addition to the WHOIS Service on port 43, Neustar provides a web based WHOIS application (www.whois.アマゾン). It is an intuitive and easy to use application for the general public to use. WHOIS web application provides all of the features available in the port 43 WHOIS. This includes full and partial search on:

- ☐ Domain names
- ☐ Nameservers
- ☐ Registrant, Technical and Administrative Contacts
- ☐ Registrars

It also provides features not available on the port 43 service. These include:

1. Redemption Grace Period calculation: Based on the registry's policy, domains in pendingDelete can be restorable or scheduled for release depending on the date/time the domain went into pendingDelete. For these domains, the web based WHOIS displays "Restorable" or "Scheduled for Release" to clearly show this additional status to the user.
2. Extensive support for international domain names (IDN)
3. Ability to perform WHOIS lookups on the actual Unicode IDN
4. Display of the actual Unicode IDN in addition to the ACE-encoded name
5. A Unicode to Punycode and Punycode to Unicode translator
6. An extensive FAQ
7. A list of upcoming domain deletions

26.5 IT and Infrastructure Resources

As described above the WHOIS architecture uses a workflow that decouples the update process from the SRS. This ensures SRS performance is not adversely affected by the load requirements of dynamic updates. It is also decoupled from the WHOIS lookup agent to ensure the WHOIS

service is always available and performing well for users. Each of Neustar's geographically diverse WHOIS sites use:

- ☐ Firewalls, to protect this sensitive data
- ☐ Dedicated servers for MQ Series, to ensure guaranteed delivery of WHOIS updates
- ☐ Packetshaper for source IP address-based bandwidth limiting
- ☐ Load balancers to distribute query load
- ☐ Multiple WHOIS servers for maximizing the performance of WHOIS service.

The WHOIS service uses HP BL 460C servers, each with 2 X Quad Core CPU and a 64GB of RAM. The existing infrastructure has 6 servers, but is designed to be easily scaled with additional servers should it be needed.

Figure 26-1 depicts the different components of the WHOIS architecture.

26.6 Interconnectivity with Other Registry System

As described in Question 24 about the SRS and further in response to Question 31, "Technical Overview", when an update is made by a registrar that impacts WHOIS data, a trigger is sent to the WHOIS system by the external notifier layer. The update agent processes these updates, transforms the data if necessary and then uses messaging oriented middleware to publish all updates to each WHOIS slave. The local update agent accepts the update and applies it to the local in-memory database. A separate auditor compares the data in WHOIS and the SRS daily and monthly to ensure accuracy of the published data.

26.7 Frequency of Synchronization between Servers

Updates from the SRS, through the external notifiers, to the constellation of independent WHOIS slaves happens in real-time via an asynchronous publish/subscribe messaging architecture. The updates are guaranteed to be updated in each slave within the required SLA of $95\% \leq 60$ minutes. Please note that Neustar's current architecture is built towards the stricter SLAs ($95\% \leq 15$ minutes) of .BIZ. The vast majority of updates tend to happen within 2-3 minutes.

26.8 Provision for Searchable WHOIS Capabilities

Neustar will create a new web-based service to address the new search features based on requirements specified in Specification 4 Section 1.8. The application will enable users to search the WHOIS directory using any one or more of the following fields:

- ☐ Domain name
- ☐ Registrar ID
- ☐ Contacts and registrant's name
- ☐ Contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.)
- ☐ Name server name and name server IP address
- ☐ The system will also allow search using non-Latin character sets which are compliant with IDNA specification.

The user will choose one or more search criteria, combine them by Boolean operators (AND, OR, NOT) and provide partial or exact match regular expressions for each of the criterion name-value pairs. The domain names matching the search criteria will be returned to the user. Figure 26-2 shows an architectural depiction of the new service.

Potential Forms of Abuse

As recognized by the Terms of Reference for Whois Misuse Studies, <http://gnso.icann.org/issues/whois/tor-whois-misuse-studies-25sep09-en.pdf>, a number of reported and recorded harmful acts, such as spam, phishing, identity theft, and stalking which Registrants believe were sent using WHOIS contact information. Although these Whois studies are still underway, there is a general belief that public access to Whois data may lead to a measurable degree of misuse - that is, to actions that cause actual harm, are illegal or illegitimate, or otherwise contrary to the stated legitimate purpose. One of the other key focuses of these studies will be to correlate the reported incidents of harmful acts with anti-harvesting measures that some Registrars and Registries apply to WHOIS queries (e.g., rate limiting, CAPTCHA, etc.).

Neustar firmly believes that adding the increased search capabilities, without appropriate controls could exacerbate the potential abuses associated with the Whois service. To mitigate the risk of this powerful search service being abused by unscrupulous data miners, a layer of security will be built around the query engine which will allow the registry to identify rogue activities and then take appropriate measures. Potential abuses include, but are not limited

to:

- Data Mining
- Unauthorized Access
- Excessive Querying
- Denial of Service Attacks

To mitigate the abuses noted above, Neustar will implement any or all of these mechanisms as appropriate:

- Username-password based authentication
- Certificate based authentication
- Data encryption
- CAPTCHA mechanism to prevent robo invocation of Web query
- Fee-based advanced query capabilities for premium customers.

The searchable WHOIS application will adhere to all privacy laws and policies of the .アマゾン registry.

26.9 Resourcing Plans

As with the SRS, the development, customization, and on-going support of the WHOIS service is the responsibility of a combination of technical and operational teams. The primary groups responsible for managing the service include:

- Development/Engineering - 19 employees
- Database Administration - 10 employees
- Systems Administration - 24 employees
- Network Engineering - 5 employees

Additionally, if customization or modifications are required, the Product Management and Quality Assurance teams will also be involved. Finally, the Network Operations and Information Security play an important role in ensuring the systems involved are operating securely and reliably. The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. Neustar's WHOIS implementation is very mature, and has been in production for over 10 years. As such, very little new development will be required to support the implementation of the .アマゾン registry. The resources are more than adequate to support the WHOIS needs of all the TLDs operated by Neustar, including the .アマゾン registry.

27. Registration Life Cycle

27.1 Registration Life Cycle

Introduction

.アマゾン will follow the lifecycle and business rules found in the majority of gTLDs today. Our back-end operator, Neustar, has over ten years of experience managing numerous TLDs that utilize standard and unique business rules and lifecycles. This section describes the business rules, registration states, and the overall domain lifecycle that will be used for .アマゾン.

Domain Lifecycle - Description

The registry will use the EPP 1.0 standard for provisioning domain names, contacts and hosts. Each domain record is comprised of three registry object types: domain, contacts, and hosts. Domains, contacts and hosts may be assigned various EPP defined statuses indicating either a particular state or restriction placed on the object. Some statuses may be applied by the Registrar; other statuses may only be applied by the Registry. Statuses are an integral part of the domain lifecycle and serve the dual purpose of indicating the particular state of the domain and indicating any restrictions placed on the domain. The EPP standard defines 17 statuses, however only 14 of these statuses will be used in the .アマゾン registry per the defined .アマゾン business rules.

The following is a brief description of each of the statuses. Server statuses may only be applied by the Registry, and client statuses may be applied by the Registrar.

- OK - Default status applied by the Registry.
- Inactive - Default status applied by the Registry if the domain has less than 2 nameservers.
- PendingCreate - Status applied by the Registry upon processing a successful Create command, and indicates further action is pending. This status will not be used in the .アマゾン

registry.

☐ PendingTransfer – Status applied by the Registry upon processing a successful Transfer request command, and indicates further action is pending.

☐ PendingDelete – Status applied by the Registry upon processing a successful Delete command that does not result in the immediate deletion of the domain, and indicates further action is pending.

☐ PendingRenew – Status applied by the Registry upon processing a successful Renew command that does not result in the immediate renewal of the domain, and indicates further action is pending. This status will not be used in the .アマゾン registry.

☐ PendingUpdate – Status applied by the Registry if an additional action is expected to complete the update, and indicates further action is pending. This status will not be used in the .アマゾン registry.

☐ Hold – Removes the domain from the DNS zone.

☐ UpdateProhibited – Prevents the object from being modified by an Update command.

☐ TransferProhibited – Prevents the object from being transferred to another Registrar by the Transfer command.

☐ RenewProhibited – Prevents a domain from being renewed by a Renew command.

☐ DeleteProhibited – Prevents the object from being deleted by a Delete command.

The lifecycle of a domain begins with the registration of the domain. All registrations must follow the EPP standard, as well as the specific business rules described in the response to Question 18 above. Upon registration a domain will either be in an active or inactive state. Domains in an active state are delegated and have their delegation information published to the zone. Inactive domains either have no delegation information or their delegation information is not published in the zone. Following the initial registration of a domain, one of five actions may occur during its lifecycle:

☐ Domain may be updated

☐ Domain may be deleted, either within or after the add-grace period

☐ Domain may be renewed at anytime during the term

☐ Domain may be auto-renewed by the Registry

☐ Domain may be transferred to another registrar.

Each of these actions may result in a change in domain state. This is described in more detail in the following section. Every domain must eventually be renewed, auto-renewed, transferred, or deleted. A registrar may apply EPP statuses described above to prevent specific actions such as updates, renewals, transfers, or deletions.

27.1.1 Registration States

Domain Lifecycle – Registration States

☐ As described above the .アマゾン registry will implement a standard domain lifecycle found in most gTLD registries today. There are five possible domain states:

☐ Active

☐ Inactive

☐ Locked

☐ Pending Transfer

☐ Pending Delete.

All domains are always in either an Active or Inactive state, and throughout the course of the lifecycle may also be in a Locked, Pending Transfer, and Pending Delete state. Specific conditions such as applied EPP policies and registry business rules will determine whether a domain can be transitioned between states. Additionally, within each state, domains may be subject to various timed events such as grace periods, and notification periods.

Active State

The active state is the normal state of a domain and indicates that delegation data has been provided and the delegation information is published in the zone. A domain in an Active state may also be in the Locked or Pending Transfer states.

Inactive State

The Inactive state indicates that a domain has not been delegated or that the delegation data has not been published to the zone. A domain in an Inactive state may also be in the Locked or Pending Transfer states. By default all domain in the Pending Delete state are also in the Inactive state.

Locked State

The Locked state indicates that certain specified EPP transactions may not be performed to the domain. A domain is considered to be in a Locked state if at least one restriction has been

placed on the domain; however up to eight restrictions may be applied simultaneously. Domains in the Locked state will also be in the Active or Inactive, and under certain conditions may also be in the Pending Transfer or Pending Delete states.

Pending Transfer State

The Pending Transfer state indicates a condition in which there has been a request to transfer the domain from one registrar to another. The domain is placed in the Pending Transfer state for a period of time to allow the current (losing) registrar to approve (ack) or reject (nack) the transfer request. Registrars may only nack requests for reasons specified in the Inter-Registrar Transfer Policy.

Pending Delete State

The Pending Delete State occurs when a Delete command has been sent to the Registry after the first 5 days (120 hours) of registration. The Pending Delete period is 35-days during which the first 30-days the name enters the Redemption Grace Period (RGP) and the last 5-days guarantee that the domain will be purged from the Registry Database and available to public pool for registration on a first come, first serve basis.

27.1.2 Typical Registration Lifecycle Activities

Domain Creation Process

The creation (registration) of domain names is the fundamental registry operation. All other operations are designed to support or compliment a domain creation. The following steps occur when a domain is created.

1. Contact objects are created in the SRS database. The same contact object may be used for each contact type, or they may all be different. If the contacts already exist in the database this step may be skipped.
2. Nameservers are created in the SRS database. Nameservers are not required to complete the registration process; however any domain with less than 2 name servers will not be resolvable.
3. The domain is created using the each of the objects created in the previous steps. In addition, the term and any client statuses may be assigned at the time of creation. The actual number of EPP transactions needed to complete the registration of a domain name can be as few as one and as many as 40. The latter assumes seven distinct contacts and 13 nameservers, with Check and Create commands submitted for each object.

Update Process

Registry objects may be updated (modified) using the EPP Modify operation. The Update transaction updates the attributes of the object.

For example, the Update operation on a domain name will only allow the following attributes to be updated:

- Domain statuses
- Registrant ID
- Administrative Contact ID
- Billing Contact ID
- Technical Contact ID
- Nameservers
- AuthInfo
- Additional Registrar provided fields.

The Update operation will not modify the details of the contacts. Rather it may be used to associate a different contact object (using the Contact ID) to the domain name. To update the details of the contact object the Update transaction must be applied to the contact itself. For example, if an existing registrant wished to update the postal address, the Registrar would use the Update command to modify the contact object, and not the domain object.

Renew Process

The term of a domain may be extended using the EPP Renew operation. ICANN policy general establishes the maximum term of a domain name to be 10 years, and Neustar recommends not deviating from this policy. A domain may be renewed/extended at any point time, even immediately following the initial registration. The only stipulation is that the overall term of the domain name may not exceed 10 years. If a Renew operation is performed with a term value will extend the domain beyond the 10 year limit, the Registry will reject the transaction entirely.

Transfer Process

The EPP Transfer command is used for several domain transfer related operations:

- Initiate a domain transfer

- Cancel a domain transfer
- Approve a domain transfer
- Reject a domain transfer.

To transfer a domain from one Registrar to another the following process is followed:

4. The gaining (new) Registrar submits a Transfer command, which includes the AuthInfo code of the domain name.
5. If the AuthInfo code is valid and the domain is not in a status that does not allow transfers the domain is placed into pendingTransfer status
6. A poll message notifying the losing Registrar of the pending transfer is sent to the Registrar's message queue
7. The domain remains in pendingTransfer status for up to 120 hours, or until the losing (current) Registrar Acknowledges (approves) or Nacks (rejects) the transfer request
8. If the losing Registrar has not Acknowledged or Nacked the transfer request within the 120 hour timeframe, the Registry auto-approves the transfer
9. The requesting Registrar may cancel the original request up until the transfer has been completed.

A transfer adds an additional year to the term of the domain. In the event that a transfer will cause the domain to exceed the 10 year maximum term, the Registry will add a partial term up to the 10 year limit. Unlike with the Renew operation, the Registry will not reject a transfer operation.

Deletion Process

A domain may be deleted from the SRS using the EPP Delete operation. The Delete operation will result in either the domain being immediately removed from the database or the domain being placed in pendingDelete status. The outcome is dependent on when the domain is deleted. If the domain is deleted within the first five days (120 hours) of registration, the domain is immediately removed from the database. A deletion at any other time will result in the domain being placed in pendingDelete status and entering the Redemption Grace Period (RGP). Additionally, domains that are deleted within five days (120) hours of any billable (add, renew, transfer) transaction may be deleted for credit.

27.1.3 Applicable Time Elements

The following section explains the time elements that are involved.

Grace Periods

There are six grace periods:

- Add-Delete Grace Period (AGP)
- Renew-Delete Grace Period
- Transfer-Delete Grace Period
- Auto-Renew-Delete Grace Period
- Auto-Renew Grace Period
- Redemption Grace Period (RGP).

The first four grace periods listed above are designed to provide the Registrar with the ability to cancel a revenue transaction (add, renew, or transfer) within a certain period of time and receive a credit for the original transaction.

The following describes each of these grace periods in detail.

Add-Delete Grace Period

The APG is associated with the date the Domain was registered. Domains may be deleted for credit during the initial 120 hours of a registration, and the Registrar will receive a billing credit for the original registration. If the domain is deleted during the Add Grace Period, the domain is dropped from the database immediately and a credit is applied to the Registrar's billing account.

Renew-Delete Grace Period

The Renew-Delete Grace Period is associated with the date the Domain was renewed. Domains may be deleted for credit during the 120 hours after a renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly renewed. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP (see below).

Transfer-Delete Grace Period

The Transfer-Delete Grace Period is associated with the date the Domain was transferred to another Registrar. Domains may be deleted for credit during the 120 hours after a transfer. It should be noted that domains that are deleted during the renew grace period will be placed into pendingDelete and will enter the RGP. A deletion of domain after a transfer is not the method used to correct a transfer mistake. Domains that have been erroneously transferred or

hijacked by another party can be transferred back to the original registrar through various means including contacting the Registry.

Auto-Renew-Delete Grace Period

The Auto-Renew-Delete Grace Period is associated with the date the Domain was auto-renewed. Domains may be deleted for credit during the 120 hours after an auto-renewal. The grace period is intended to allow Registrars to correct domains that were mistakenly auto-renewed. It should be noted that domains that are deleted during the auto-renew delete grace period will be placed into pendingDelete and will enter the RGP.

Auto-Renew Grace Period

The Auto-Renew Grace Period is a special grace period intended to provide registrants with an extra amount of time, beyond the expiration date, to renew their domain name. The grace period lasts for 45 days from the expiration date of the domain name. Registrars are not required to provide registrants with the full 45 days of the period.

Redemption Grace Period

The RGP is a special grace period that enables Registrars to restore domains that have been inadvertently deleted but are still in pendingDelete status within the Redemption Grace Period. All domains enter the RGP except those deleted during the AGP.

The RGP period is 30 days, during which time the domain may be restored using the EPP RenewDomain command as described below. Following the 30day RGP period the domain will remain in pendingDelete status for an additional five days, during which time the domain may NOT be restored. The domain is released from the SRS, at the end of the 5 day non-restore period. A restore fee applies and is detailed in the Billing Section. A renewal fee will be automatically applied for any domain past expiration.

Neustar has created a unique restoration process that uses the EPP Renew transaction to restore the domain and fulfill all the reporting obligations required under ICANN policy. The following describes the restoration process.

27.2 State Diagram

Figure 27-1 provides a description of the registration lifecycle.

The different states of the lifecycle are active, inactive, locked, pending transfer, and pending delete. Please refer to section 27.1.1 for detail description of each of these states. The lines between the states represent triggers that transition a domain from one state to another.

The details of each trigger are described below:

- ☒ Create: Registry receives a create domain EPP command.
- ☒ WithNS: The domain has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.
- ☒ WithoutNS: The domain has not met the minimum number of nameservers required by registry policy. The domain will not be in the DNS zone.
- ☒ Remove Nameservers: Domain's nameserver(s) is removed as part of an update domain EPP command. The total nameserver is below the minimum number of nameservers required by registry policy in order to be published in the DNS zone.
- ☒ Add Nameservers: Nameserver(s) has been added to domain as part of an update domain EPP command. The total number of nameservers has met the minimum number of nameservers required by registry policy in order to be published in the DNS zone.
- ☒ Delete: Registry receives a delete domain EPP command.
- ☒ DeleteAfterGrace: Domain deletion does not fall within the add grace period.
- ☒ DeleteWithinAddGrace: Domain deletion falls within add grace period.
- ☒ Restore: Domain is restored. Domain goes back to its original state prior to the delete command.
- ☒ Transfer: Transfer request EPP command is received.
- ☒ Transfer Approve/Cancel/Reject: Transfer requested is approved or cancel or rejected.
- ☒ TransferProhibited: The domain is in clientTransferProhibited and/or serverTransferProhibited status. This will cause the transfer request to fail. The domain goes back to its original state.
- ☒ DeleteProhibited: The domain is in clientDeleteProhibited and/or serverDeleteProhibited status. This will cause the delete command to fail. The domain goes back to its original state.

Note: the locked state is not represented as a distinct state on the diagram as a domain may be in a locked state in combination with any of the other states: inactive, active, pending transfer, or pending delete.

27.2.1 EPP RFC Consistency

As described above, the domain lifecycle is determined by ICANN policy and the EPP RFCs. Neustar has been operating ICANN TLDs for the past 10 years consistent and compliant with all the ICANN policies and related EPP RFCs.

27.3 Resources

The registration lifecycle and associated business rules are largely determined by policy and business requirements; as such the Product Management and Policy teams will play a critical role in working with Amazon EU S.à r.l. to determine the precise rules that meet the requirements of the TLD. Implementation of the lifecycle rules will be the responsibility of Development/Engineering team, with testing performed by the Quality Assurance team. Neustar's SRS implementation is very flexible and configurable, and in many case development is not required to support business rule changes.

The .アマゾン registry will be using standard lifecycle rules, and as such no customization is anticipated. However should modifications be required in the future, the necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Development/Engineering - 19 employees

Registry Product Management - 4 employees

These resources are more than adequate to support the development needs of all the TLDs operated by Neustar, including the .アマゾン registry.

28. Abuse Prevention and Mitigation

28.1 Abuse Prevention and Mitigation

Amazon EU S.à r.l. and its registry service provider, Neustar, recognize that preventing and mitigating abuse and malicious conduct in the .アマゾン registry is an important and significant responsibility. Amazon EU S.à r.l. will leverage Neustar's extensive experience in establishing and implementing registration policies to prevent and mitigate abusive and malicious domain activity within the proposed .アマゾン space.

.アマゾン will be a single entity registry, with all domains registered to Amazon for use in pursuit of Amazon's business goals. There will be no re-sellers in .アマゾン and there will be no market in .アマゾン domains. Amazon will strictly control the use of .アマゾン domains. Opportunities for abusive and malicious domain activity in .アマゾン are therefore very restricted but we will nonetheless abide by our obligations to ICANN. A responsible domain name registry works towards the eradication of abusive domain name registrations and malicious activity, which may include conduct such as:

- ☒ Illegal or fraudulent actions
- ☒ Spam
- ☒ Phishing
- ☒ Pharming
- ☒ Distribution of malware
- ☒ Fast flux hosting
- ☒ Botnets
- ☒ Malicious hacking
- ☒ Distribution of child pornography
- ☒ Online sale or distribution of illegal pharmaceuticals.

By taking an active role in researching and monitoring abusive domain name registration and malicious conduct, Neustar has developed the ability to efficiently work with various law enforcement and security communities to mitigate fast flux DNS-using botnets.

Policies and Procedures to Minimize Abusive Registrations

A registry must have the policies, resources, personnel, and expertise in place to combat such abusive registration and malicious conduct. Neustar, Amazon EU S.à r.l.'s registry services provider, has played a leading role in preventing of such abusive practices, and has developed and implemented a "domain takedown" policy. Amazon EU S.à r.l. also believes that combating

abusive use of the DNS is important in protecting registrants.

Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution. Because removing a domain name from the zone will stop all activity associated with the domain name, including websites and e-mail, the decision to remove a domain name from the DNS must follow a documented process, culminating in a determination that the domain name to be removed poses a threat to the security and stability of the Internet or the registry. Amazon EU S.à r.l., via Neustar, has an extensive, defined, and documented process for taking the necessary action of removing a domain from the zone when its presence in the zone poses a threat to the security and stability of the infrastructure of the Internet or the registry.

Abuse Point of Contact

As required by the Registry Agreement, Amazon EU S.à r.l. will establish and publish on its website a single abuse point of contact responsible for addressing inquiries from law enforcement and the public related to malicious and abusive conduct. Amazon EU S.à r.l. will also provide such information to ICANN before delegating any domain names in .アマゾン. This information shall consist of, at a minimum, a valid e-mail address dedicated solely to the handling of malicious conduct complaints, and a telephone number and mailing address for the primary contact. Amazon EU S.à r.l. will ensure that this information is accurate and current, and that updates are provided to ICANN if and when changes are made. In addition, the registry services provider for .アマゾン, Neustar, shall continue to have an additional point of contact for requests from registrars related to abusive domain name practices.

28.2 Policies Regarding Abuse Complaints

Amazon EU S.à r.l. will adopt an Acceptable Use Policy that (i) clearly defines the types of activities that will not be permitted in .アマゾン; (ii) reserves Amazon EU S.à r.l.'s right to lock, cancel, transfer or otherwise suspend or take down domain names violating the Acceptable Use Policy; and (iii) identify the circumstances under which Amazon EU S.à r.l. may share information with law enforcement. Amazon EU S.à r.l. will incorporate its .アマゾン Acceptable User Policy into its Registry-Registrar Agreement.

Under the .アマゾン Acceptable Use Policy, which is set forth below, Amazon EU S.à r.l. may lock down the domain name to prevent any changes to the domain name contact and nameserver information, place the domain name "on hold" rendering the domain name non-resolvable, transfer the domain name to another registrar and/or in cases in which the domain name is associated with an ongoing law enforcement investigation, Amazon EU S.à r.l. will coordinate with law enforcement to assist in the investigation as described in more detail below.

It is Amazon EU S.à r.l.'s intention that all .アマゾン domain names will be registered and used by it and its Affiliates and that only ICANN-accredited registrars that have signed a Registry-Registrar Agreement will be permitted to register .アマゾン domain names. Accordingly, the potential for abusive registrations and malicious conduct in the .アマゾン registry is expected to be limited. In the unlikely event that such abuse should occur, Amazon EU S.à r.l. will work with its registry services provider, Neustar, to implement the following policies and processes to prevent and mitigate such activities. Below is initial Acceptable Use Policy for the .アマゾン registry.

.アマゾン Acceptable Use Policy

This Acceptable Use Policy gives the .アマゾン registry the ability to quickly lock, cancel, transfer or take ownership of any .アマゾン domain name, either temporarily or permanently, if the domain name is being used in a manner that appears to threaten the stability, integrity or security of the .アマゾン registry, or any of its registrar partners - and/or that may put the safety and security of any registrant or user at risk. The process also allows the .アマゾン registry to take preventive measures to avoid any such criminal or security threats.

The Acceptable Use Policy may be triggered through a variety of channels, including, among other things, private complaint, public alert, government or enforcement agency outreach, and the on-going monitoring by the .アマゾン registry or its partners. In all cases, the .アマゾン registry or its designees will alert .アマゾン registry's registrar partners about any identified threats and will work closely with them to bring offending sites into compliance. The following are some (but not all) activities that may be subject to rapid domain compliance:

- ☒ Phishing: the attempt to acquire personally identifiable information by masquerading as a website other than .アマゾン's own.
- ☒ Pharming: the redirection of Internet users to websites other than those the user

intends to visit, usually through unauthorized changes to the Hosts file on a victim's computer or DNS records in DNS servers.

☐ Dissemination of Malware: the intentional creation and distribution of "malicious" software designed to infiltrate a computer system without the owner's consent, including, without limitation, computer viruses, worms, key loggers, and Trojans.

☐ Fast Flux Hosting: a technique used to shelter Phishing, Pharming and Malware sites and networks from detection and to frustrate methods employed to defend against such practices, whereby the IP address associated with fraudulent websites are changed rapidly so as to make the true location of the sites difficult to find.

☐ Botnetting: the development and use of a command, agent, motor, service, or software which is implemented: (1) to remotely control the computer or computer system of an Internet user without their knowledge or consent, (2) to generate direct denial of service (DDOS) attacks.

☐ Malicious Hacking: the attempt to gain unauthorized access (or exceed the level of authorized access) to a computer, information system, user account or profile, database, or security system.

☐ Child Pornography: the storage, publication, display and/or dissemination of pornographic materials depicting individuals under the age of majority in the relevant jurisdiction.

The .アマゾン registry reserves the right, in its sole discretion, to take any administrative and operational actions necessary, including the use of computer forensics and information security technological services, among other things, in order to implement the Acceptable Use Policy. In addition, the .アマゾン registry reserves the right to deny, cancel or transfer any registration or transaction, or place any domain name(s) on registry lock, hold or similar status, that it deems necessary, in its discretion (1) to protect the integrity and stability of the registry; (2) to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process; (3) to avoid any liability, civil or criminal, on the part of the .アマゾン registry as well as its affiliates, subsidiaries, officers, directors, and employees; (4) per the terms of the registration agreement, or (5) to correct mistakes made by the .アマゾン registry or any Registrar in connection with a domain name registration. The .アマゾン registry also reserves the right to place upon registry lock, hold or similar status a domain name during resolution of a dispute.

Taking Action Against Abusive and/or Malicious Activity

The .アマゾン registry is committed to acting in a timely manner against those domain names associated with abuse or malicious conduct in violation of the Acceptable Use Policy. After a complaint is received from a trusted source or third-party, or detected by the .アマゾン registry, the registry will use commercially reasonable efforts to verify the information in the complaint. If that information can be verified to the best of the registry's ability, the sponsoring registrar will be notified and have 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. If the registrar has not acted when the 12-hour period ends (i.e., is unresponsive to the request or refuses to take action), the .アマゾン registry will place the domain on "ServerHold". (It is unlikely the registrar will not timely act because Amazon EU S.à r.l. intends to use a single, gateway registrar with which it has a contract reflecting these policies). ServerHold removes the domain name from the .アマゾン zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement should they desire to get involved.

Coordination with Law Enforcement

Amazon EU S.à r.l. will obtain assistance from Neustar to meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the .アマゾン registry. The .アマゾン registry will respond to legitimate law enforcement inquiries promptly upon receiving the request.

The response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. for rapid resolution of the request. If the request involves any of the activities that can be validated by the registry and implicates activity covered by the .アマゾン Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the

activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .アマゾン Registry will place the domain on “ServerHold” if the registrar has not acted within the 12-hour period.

Monitoring for Malicious Activity

Neustar, .アマゾン’s registry services provider, has developed and implemented an active “domain takedown” policy in which the registry itself takes down abusive domain names.

Neustar targets domain names verified to be abusive and removes them within 12 hours regardless of whether the domain name registrar cooperated. Neustar has determined that the benefit in removing such threats outweighs any potential damage to the registrar/registrar relationship. Amazon EU S.à r.l.’s restrictions on registration eligibility make it unlikely that any .アマゾン domains will be taken down. The .アマゾン registry rules are anticipated to exclude third parties beyond Amazon EU S.à r.l. and its Affiliates. Moreover, only registrars that contractually agree to cooperate in stemming abusive behaviors will be permitted to register .アマゾン domain names.

Neustar’s active prevention policies stem from the notion that registrants in .アマゾン have a reasonable expectation that they control the data associated with their domains, especially its presence in the DNS zone. Removing a domain name from the DNS before it can cause harm is often the best preventative measure for thwarting certain malicious conduct such as botnets and malware distribution that harms not only the domain name registrant, but also potentially millions of unsuspecting Internet users.

Rapid Takedown Process

Since implementing the program, Neustar has developed two basic variations of the process. The more common process variation is a lightweight process that is triggered by “typical” notices. The less common variation is the full process that is triggered by unusual notices, which generally allege that a domain name is being used to threaten the stability and security of the TLD, or is part of a real-time investigation by law enforcement or security researchers. In these cases, accelerated action by the registry is necessary. These processes are described below, though it is important to note that .アマゾン will be managed as a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon’s subsidiaries. Therefore, the potential for abusive registrations and other activities that have a negative impact on Internet users is minimal. In the unlikely event that such abuse should occur, Amazon with its registry operator, Neustar, will implement the following policies and processes to manage such activities.

Lightweight Process

In addition to having an active Information Security group that, on its own initiatives, seeks out abusive practices in the .アマゾン registry, Neustar is an active member in a number of security organizations that have the expertise and experience in receiving and investigating reports of abusive DNS practices, including but not limited to, the Anti-Phishing Working Group, Castle Cops, NSP-SEC, the Registration Infrastructure Safety Group and others. Each of these sources is a well-known security organization that has a reputation for preventing abuse and malicious conduct on the Internet. Aside from these organizations, Neustar also actively participates in privately run security associations that operate based on trust and anonymity, making it much easier to obtain information regarding abusive DNS activity.

Once a complaint is received from a trusted source or third-party, or detected by Neustar’s internal security group, information about the abusive practice is forwarded to an internal mail distribution list that includes members of Neustar’s operations, legal, support, engineering, and security teams for immediate response (“CERT Team”). Although the impacted URL is included in the notification e-mail, the CERT Team is trained not to investigate the URLs themselves because the URLs in question often have scripts, bugs, etc. that can compromise the individual’s own computer and the network safety. Rather, the investigation is conducted by CERT team members who can access the URLs in a laboratory environment to avoid compromising the Neustar network. The lab environment is designed specifically for these types of tests and is scrubbed on a regular basis to ensure that none of Neustar’s internal or external network elements are harmed in any fashion.

Once the complaint has been reviewed and the alleged abusive domain name activity is verified to the best of the ability of the CERT Team, the sponsoring registrar has 12 hours to investigate the activity and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone.

The .アマゾン Registry will place the domain on “ServerHold” if the registrar has not acted

within the 12-hour period.

ServerHold removes the domain name from the .アマゾン zone, but the domain name record still appears in the TLD WHOIS database so that the name and entities can be investigated by law enforcement.

Full Process

In the unlikely event with a single entity registry, whose registrants will be internal stakeholders of Amazon or Amazon's subsidiaries, that Neustar receives a complaint that claims that a domain name is being used to threaten the stability and security of the .アマゾン registry, or is a part of a real-time investigation by law enforcement or security, Neustar follows a slightly different course of action.

Upon initiation of this process, members of the CERT Team are paged and a teleconference bridge is immediately opened up for the CERT Team to assess whether the activity warrants immediate action. If the CERT Team determines the incident is not an immediate threat to the security and the stability of critical Internet infrastructure, the CERT Team provides documentation to the Neustar Network Operations Center to clearly capture the rationale for the decision and either refers the incident to the Lightweight process set forth above or closes the incident.

However, if the CERT TEAM determines that there is a reasonable likelihood that the incident warrants immediate action, a determination is made to immediately remove the domain from the zone. As such, Customer Support will contact Amazon EU S.à r.l.'s registrar immediately to communicate that there is a domain involved in a security and stability issue. The registrar is provided only the domain name in question and the broadly stated type of incident. As .アマゾン is a Single Entity Registry using a single registrar whose work will be strictly controlled through a Service Level Agreement that includes the implementation of measures to prevent abusive registrations, the risk of evidence of abuse being compromised is minimized.

Coordination with Law Enforcement & Industry Groups

Neustar has a close working relationship with a number of law enforcement agencies, both in the United States and Internationally. For example, in the United States, Neustar is in constant communication with the Federal Bureau of Investigation, US CERT, Homeland Security, the Food and Drug Administration, and the National Center for Missing and Exploited Children. Neustar also participates in a number of industry groups aimed at sharing information among key industry players about the abusive registration and use of domain names. These groups include the Anti-Phishing Working Group and the Registration Infrastructure Safety Group (where Neustar served for several years on the Board of Directors). Through these organizations and others, Neustar proactively shares information with other registries, registrars, ccTLDs, law enforcement, security professionals, etc. not only on abusive domain name registrations within its own TLDs, but also with respect to information uncovered with respect to domain names in other registries' TLDs. Neustar has often found that rarely are abuses found only in the TLDs for which it manages, but also within other TLDs, such as .com and .info. Neustar routinely provides this information to the other registries so that the relevant registry can take the appropriate action.

With the assistance of Neustar as its registry services provider, Amazon EU S.à r.l. can meet its obligations under Section 2.8 of the Registry Agreement to take reasonable steps to investigate and respond to reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of its .アマゾン registry. Amazon EU S.à r.l. and/or Neustar will respond to legitimate law enforcement inquiries promptly upon receiving the request. Such response shall include, at a minimum, an acknowledgement of receipt of the request, questions or comments concerning the request, and an outline of the next steps to be taken by Amazon EU S.à r.l. and/or Neustar for rapid resolution of the request.

If the request involves any of the activities that can be validated by the registry and/or Neustar and implicates the type of activity set forth in the Acceptable Use Policy, the sponsoring registrar will have 12 hours to investigate the activity further and either (a) take down the domain name through a hold or deletion, or (b) provide the registry with a compelling argument why to keep the domain name in the zone. The .アマゾン registry will place the domain on "ServerHold" if the registrar has not acted within the 12-hour period.

28.3 Measures for Removal of Orphan Glue Records

As the Security and Stability Advisory Committee of ICANN (SSAC) rightly acknowledges, although orphaned glue records may be used for abusive or malicious purposes, the "dominant use of orphaned glue supports the correct and ordinary operation of the DNS." See <http://www.icann.org/en/committees/security/sac048.pdf>.

While orphan glue often support correct and ordinary operation of the DNS, such glue records can be used maliciously to point to name servers that host domains used in illegal phishing, bot-nets, malware, and other abusive behaviors. Problems occur when the parent domain of the glue record is deleted but its children glue records still remain in DNS. Therefore, when the .アマゾン registry has written evidence of actual abuse of orphaned glue, the .アマゾン registry will act to remove those records from the zone to mitigate such malicious conduct.

Neustar runs a daily audit of entries in its DNS systems and compares those with its provisioning system, which serves as an umbrella protection that items in the DNS zone are valid. Any DNS record that shows up in the DNS zone but not in the provisioning system is flagged for investigation and removed if necessary. This daily DNS audit prevents not only orphaned hosts but also other records that should not be in the zone.

In addition, if either Amazon EU S.à r.l. or Neustar becomes aware of actual abuse on orphaned glue after receiving written notification from a third party through its Abuse Contact or through its customer support, such glue records will be removed from the zone.

28.4 Measures to Promote WHOIS Accuracy

The .アマゾン registry will implement several measures to promote Whois accuracy.

Whois service for Amazon EU S.à r.l. will operate as follows. The registry will keep all basic contact details for each domain name in a unique internal system, which facilitates access to the domain information. In addition, Amazon EU S.à r.l. will perform internal monitoring checks and procedures that will only allow accurate Whois information and remove outdated data.

28.4.1. Authentication of Registrant Information

Amazon EU S.à r.l. will guarantee the adequate authentication of registrant data, ensuring the highest levels of accuracy and diligence when dealing with Whois data. In doing so, Amazon EU S.à r.l.'s solid internal system will undertake, but not be limited to the following measures: running checks against Whois internal records and regular verification of all contact details and other relevant registrant information. The Amazon EU S.à r.l.'s registrar will also be charged with regularly checking Whois accuracy.

Amazon EU S.à r.l. will have a well-defined registration policy that will include a requirement that complete and accurate registrant details are provided by the requestor for a domain. These details will be validated by the Amazon EU S.à r.l. registrar who will have a contractual duty to comply with Amazon EU S.à r.l.'s registration policy. The full details of every domain requestor will be kept in Amazon EU S.à r.l.'s on-line registry management dashboard which can be accessed by Amazon EU S.à r.l.'s Domain Management Team at any time.

28.4.2. Regular Monitoring of Registration Data

Amazon EU S.à r.l. will comply with ICANN's Whois requirements. Among other measures, Amazon EU S.à r.l. will regularly remind its internal personnel to comply with ICANN's Whois information Policy through regularly checking Whois data against internal records, offering Whois accuracy services, evaluating claims of fraudulent Whois data, and cancelling domain name registrations with outdated Whois details.

28.4.3. Policies and Procedures ensuring compliance

Only Amazon EU S.à r.l. and its Affiliates will be permitted to register and use Amazon EU S.à r.l. domain names. Accordingly, the duties of the Amazon EU S.à r.l. registrar will be very limited and closely defined. Regardless, Amazon EU S.à r.l.'s Registry-Registrar Agreement will require Amazon EU S.à r.l.'s registrar to take steps necessary to ensure Whois data is complete and accurate and to implement the .アマゾン registration policies.

28.5 Resourcing Plans

Responsibility for abuse mitigation rests with a variety of functional groups at Neustar. The Neustar Abuse Monitoring team is primarily responsible for providing analysis and conducting investigations of reports of abuse. The Neustar Customer Service team also plays an important role in assisting with investigations, responding to customers, and notifying registrars of abusive domains. Finally, the Neustar Policy/Legal team is responsible for developing the relevant policies and procedures.

The necessary resources will be pulled from the pool of available resources described in detail in the response to Question 31. The following resources are available from those teams:

Customer Support - 12 employees

Policy/Legal - Two employees

The resources are more than adequate to support the abuse mitigation procedures of the .アマゾン registry.

Furthermore, Amazon EU S.à r.l. dedicates significant financial and personnel resources to combating malicious and abusive behavior in the DNS and across the internet. Amazon EU S.à r.l. will extend these resources to designating the unique abuse point of contact, regularly monitoring potential abusive and malicious activities with support from dedicated technical staff, analyzing reported abuse and malicious activity, and acting to address such reported activity.

The designated abuse prevention staff within Neustar and Amazon EU S.à r.l. will be subject to regular evaluations, receive adequate training and work under expert supervision. The abuse prevention resources will comprise both internal staff and external abuse prevention experts who would give extra advice and support when necessary. This external staff includes experts in Amazon EU S.à r.l.'s registrar where one legal manager and four operational experts will be available to support Amazon EU S.à r.l.

Please note that in the above answer the terms "We", "Our" and "Amazon" may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent, or sometimes NeuStar, the registry services provider.

29. Rights Protection Mechanisms

29.1 Introduction

Amazon is applying for .アマゾン to provide a dedicated platform for stable and secure online communication and interaction. Amazon has several thousand registered intellectual property assets of all types including trademarks, designs, and domain names - we place the protection of our intellectual property as a high priority and we respect the intellectual property of others.

29.1.1 Rights protection in gTLD registry operation is a core objective of Amazon We will closely manage this TLD by registering domains through a single registrar. Although Amazon and its subsidiaries will be the only eligible registrants, we will nonetheless require our registrar to work with us on a four-step registration process featuring: (i) Eligibility Confirmation; (ii) Naming Convention Check; (iii) Acceptable Use Review; and (iv) Registration. As stated in our answer to Question 18, all domains in our registry will remain the property of Amazon and will be provisioned to support the business goals of Amazon. Because all domains will be registered and maintained by Amazon (for use that complements our strategic business goals), we can ensure that all domains in our registries will carry accurate and up-to-date registration records.

We believe that the above registration process will ensure that abusive registrations are prevented, but we will continue to monitor ICANN policy developments, and update our procedures as required.

29.2 Core measures to prevent abusive registrations

To further prevent abusive registration or cybersquatting, we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated for new gTLD operators by ICANN:

- A 30 day Sunrise process
- A 60 day Trademark Claims process

Generally, these RPMs are targeted at abusive registrations undertaken by third parties. However, domains in our registry will be registered only to Amazon or its subsidiaries through a single registrar who will be contractually required to ensure that stated rules covering eligibility and use of a domain are adhered to through a validation process. As a result, abusive registrations should be prevented.

In the very unlikely circumstances that a domain is registered and used in an improper way, we acknowledge that we will be the respondent in related proceedings and we undertake to co-operate fully with ICANN and other appropriate agencies to resolve any concerns.

29.2.1 Sunrise Eligibility

Our Sunrise Eligibility Requirements will clearly state that eligible applicants must be members of the Amazon group of companies and its subsidiaries. Furthermore, all domain names must be used to support the business goals of Amazon. Nonetheless, notice of our Sunrise will be provided to third party holders of validated trademarks in the Trademark Clearinghouse as required by ICANN. Our Sunrise Eligibility Requirements will be published on the website of our registry.

29.2.2 Sunrise Window

As required in the Applicant Guidebook in section 7.1, our Sunrise window will recognize “all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008”.

Our Sunrise window will last for 30 days. Applications received from an ICANN-accredited registrar will be accepted for registration if they are (i) supported by an entry in the Trademark Clearinghouse (TMCH) during our Sunrise window and (ii) satisfy our Sunrise Eligibility Requirements. Once registered, those domain names will have a one year term of registration. Any domain names registered will be managed by our registrar.

29.2.3 Sunrise Dispute Resolution Policy

We will devise and publish the rules for our Sunrise Dispute Resolution Policy (SDRP) on our registry website. Our SDRP will apply to all our registries and will allow any party to raise a challenge on the following four grounds as required in the Applicant Guidebook (6.2.4):

- (i) At the time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty;
- (ii) The domain name is not identical to the mark on which the registrant based its Sunrise registration;
- (iii) The trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or
- (iv) The trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.

Complaints can be submitted through our registry website within 30 days following the closure of the Sunrise, and will be initially processed by our registrar. Our registrar will promptly report to us: (i) the challenger; (ii) the challenged domain name; (iii) the grounds upon which the complaint is based; and (iv) why the challenger believes the grounds are satisfied.

29.2.4 Trademark Claims Service

Our Trademark Claims Service (TMCS) will run for a 60 day period following the closure of our 30 day Sunrise. Our TMCS will be supported by the Trademark Clearinghouse and will provide a notice to third parties interested in filing a character string in our registry of a registered trademark right that matches the character string in the TMCH.

We will honour and recognize in our TMCS the following types of marks as defined in the Applicant Guidebook section 7.1: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.

Once received from the TMCH, with which our registry provider will interface, a claim will be initially processed by our registrar who will provide a report to us on the eligibility of the applicant.

29.2.5 Implementation and Resourcing Plans of core services to prevent abusive registration
Our Sunrise and IP Claims service will be introduced with the following timetable:

Day One: Announcement of Registry Launch and publication of registry website with details of the Sunrise and Trademark Claim Service (“TMCS”)

Day 30: Sunrise opens for 30 days on a first-come, first served basis. Once registrations are approved, they will be entered into the Shared Registry System (SRS) and published in our Thick-Whois database.

Day 60-75: Registry Open, domains applied for in the Sunrise registered and TMCS begins for a minimum of 60 days

Day 120-135: TMCS ends; normal operations continue.

Our Implementation Team will comprise the following:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years' experience with implementing registry launches including rights protection schemes such as the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests.

The Implementation Team will create a formal Registry Launch plan by 1 October 2012. This plan will set out the exact process for the launch of each Amazon registry and will define responsibilities and budgets. The Registry website, which is budgeted for in the three year plans provided in our answers to Question 46, will be built by 1 December 2012 or within 30 days of pre-validation testing beginning, whichever is the sooner. It will feature Rules of Registration, Rules of Eligibility, Terms & Conditions of Registration, Acceptable Use Policies as well as the Rules of the Sunrise, the Rules of the Sunrise Dispute Resolution Policy and the Rules of the Trademark Claims Service.

Technical implementation between the registry and the Trademark Clearinghouse will be undertaken by the registry service provider as soon as practical after the Trademark Clearinghouse is operational and announces its integration process.

As demonstrated in our answer to question 46, a budget has been set aside to pay fees charged by the Trademark Clearinghouse Operator for this integration.

The contract we have with our registrar (the RAA) will require that the registrar uses the TMCH, adheres to the Terms & Conditions of the TMCH and will prohibit the registrar from filing domains in our registries on its own behalf or utilizing any data from the TMCH except in the provision of its duties as our registrar.

When processing TMCS claims, our registrar will be required to use the specific form of notice provided by ICANN in the Applicant Guidebook.

We will also require our registrar to implement appropriate privacy policies reflecting local requirements. For example, Amazon is a participant in the Safe Harbor program developed by the U.S. Department of Commerce and the European Union.

29.3 Mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

To prevent the abusive use of registered domain names on an ongoing basis we will adopt the following Rights Protection Mechanisms (RPMs) which have been mandated by ICANN:

- The Uniform Dispute Resolution Policy (UDRP) to address domain names that have been registered and used in bad faith in the TLD.
- The Uniform Rapid Suspension (URS) scheme which is a faster, more efficient alternative to the Uniform Dispute Resolution Policy to deal with clear-cut cases of cybersquatting.
- The Post Delegation Dispute Resolution Procedure (PDDRP).
- Implementation of a Thick WHOIS making it easier for rights holders to identify and locate infringing parties.

The UDRP and the URS are targeted at abusive registrations undertaken by third parties and the PDDRP at so called "Bad Actor" registries. As domains in our registry will be registered not to third parties but only to Amazon or its subsidiaries through a single registrar which will be required through contract to ensure that the rules covering eligibility and use of a domain are adhered to, we believe that abusive registrations by third parties should be completely prevented.

Abusive behaviour by representatives of Amazon or our subsidiaries will be prevented by our internal processes, for example the pre-registration validation checks and monitoring of use of our registrar.

We acknowledge that we are subject to the UDRP, the URS and the PDDRP and we will co-operate fully with ICANN and appropriate registries in the unlikely circumstances that complaints

against us, as the registrant, are made.

29.3.1 The Uniform Dispute Resolution Policy (UDRP)

The UDRP is an out-of-court dispute resolution mechanism for trademark owners to resolve clear cases of bad faith, abusive registration and use of domain names. The UDRP applies by contract to all domain name registrations in gTLDs. Standing to file a UDRP complaint is limited to trademark owners who must demonstrate their rights. To prevail in a UDRP complaint, the complainant must further demonstrate that the domain name registrant has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith. In the event of a successful claim, the infringing domain name registration is transferred to the complainant's control.

Amazon or its subsidiaries will be the respondent in all UDRP complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no rights or legitimate interests" in a domain in our registry so the possibility of good faith UDRP complaints should be minimized. In the unlikely circumstances that a complaint is made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator.

We will be applying for an exemption to Clause 1b of the Registry Operators Code of Conduct.

This means that we will not be allowed to transfer domains to third parties as the only registrant will be Amazon or our subsidiaries. Therefore if a complaint against us is filed, the only possible remedy will be the cancellation of the domain instead of the transfer to the complainant.

Should a successful complaint be made we will therefore place the cancelled domain that is the subject of the complaint on a list that prevents it from being registered again.

29.3.2 The URS

The URS is intended to be a lighter, quicker complement to the UDRP. Like the UDRP, it is intended for clear-cut cases of trademark abuse. Under the URS, the only remedy which a panel may grant is the temporary suspension of a domain name for the duration of the registration period (which may be extended by the prevailing complainant for one year, at commercial rates). URS substantive criteria mirror those of the UDRP but with a higher burden of proof for complainants, and additional registrant defences. Once a determination is rendered, a losing registrant has several appeal possibilities from 30 days up to one year. Either party may file a de novo appeal within 14 days of a decision. There are penalties for filing "abusive complaints" which may result in a ban on future URS filings.

As with the description of our UDRP process above, Amazon or its subsidiaries will be the respondent in all URS complaints because we will be the only eligible registrants. Therefore we do not anticipate that there are any circumstances in which complainants can argue that we have "no legitimate right or interest to the domain name" and "that the domain name was registered and is being used in bad faith." Notwithstanding this, should a complaint be made, we will respond in a timely fashion, reflecting our contractual responsibility to ICANN as a registry operator.

Should a successful complaint be made, we will suspend the domain name for the duration of the registration period.

We will co-operate with the URS panel providers and panelists as we will co-operate with UDRP panel providers and panelists.

Being the only eligible registrant, we will not make changes to a domain in Locked Status or alter a registration record associated with a URS complaint as required in the Applicant Guidebook.

29.3.3 The Post-Delegation Dispute Resolution Procedure (PDDRP)

The PDDRP is an administrative option for trademark owners to file an objection against a registry whose "affirmative conduct" in its operation or use of its gTLD is alleged to cause or materially contribute to trademark abuse. In this way, the PDDRP is intended to act as a higher-level enforcement tool to assist ICANN compliance activities, where rights holders may not be able to continue to turn solely to lower-level multijurisdictional enforcement options in a vastly expanded DNS.

The PDDRP involves a number of procedural layers, such as an administrative compliance review, appointment of a "threshold review panel", an expert determination as to liability under the procedure (with implementation of any remedies at ICANN's discretion), a possible de novo appeal and further appeal to arbitration under ICANN's registry terms. The PDDRP requires specific bad faith conduct including profit from encouraging infringement in addition to "the typical registration fee."

As set out in the Applicant Guidebook in the appendix summarising the PDDRP, the grounds for a

complaint on a second level registration are that, “(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and (b) the registry operator’s bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant’s mark, which (i) takes unfair advantage of the distinctive character or the reputation of the complainant’s mark or (ii) impairs the distinctive character or the reputation of the complainant’s mark, or (iii) creates a likelihood of confusion with the complainant’s mark.”

Whilst we will co-operate with any complaints made under the PDDRP and we will abide by any determinations, we think it is highly improbable that any PDDRP complaints will succeed because the grounds set out above cannot be satisfied as domains in the registry will not be for sale and cannot be transferred to third parties.

29.3.4 Thick Whois

As required in Specification 4 of the Registry agreement, all Amazon registries will provide Thick Whois. A Thick WHOIS provides a centralized location of registrant information within the control of the registry (as opposed to thin Whois where the data is dispersed across registrars).

Thick Whois will provide rights owners and law enforcement with the ability to review the registration record easily.

We will place a requirement on our registrar to ensure that all registrations are filed with accurate Whois details and we will undertake reviews of Whois accuracy every three months to ensure that the integrity of data under our control is maintained.

Amazon will create and publish a Whois Query email address so that third parties can submit queries about any domains in our registry.

29.3.5 Implementation and Resourcing Plans for mechanisms to identify and address the abusive use of registered domain names on an ongoing basis

Our post-launch rights protection mechanisms will be in place from Day One of the launch of the registry.

To ensure that we are compliant with our obligations as a registry operator, we will develop a section of our registry website to assist third parties involved in UDRP, URS and PDDRP complaints including third parties wishing to make a complaint, ICANN compliance staff and the providers of UDRP and URS panels. This will feature an email address for enquiries relating to disputes or seeking further information on specific domains. We will monitor this address for all of the following: Notice of Complaint, Notice of Default, URS Determination, UDRP Determination, Notice of Appeal and Appeal Panel Findings where appropriate.

As stated in our answer to Question 18, Amazon’s Intellectual Property group will be responsible for the development, maintenance and enforcement of the Domain Management Policy. This will include ensuring that the following implementation targets are met:

- Locking domains that are the subject of URS complaints within 24 hours of receipt of a URS complaint, and ensuring our registrar locks domains that are the subject of UDRP complaints within 24 hours of receipt of a UDRP complaint.
- Confirming the implementation of the lock to the relevant URS provider, and ensure our registrar confirms the implementation of the lock to the relevant UDRP provider.
- Ensuring that our registrar cancels domain names that are the subject of a successful UDRP complaint within 24 hours
- Redirecting servers to a website with the ICANN mandated information following a successful URS within 24 hours

The human resources dedicated to managing post-launch RPM include:

From Amazon: the Director of IP will lead a team of up to seven experts with experience of domain name management and on-line legal dispute resolution, with access to other teams in Amazon Legal if required.

From NeuStar, registry service provider to Amazon: A Customer Support team of 12, a Product Management Team of four and a Development / Engineering Team of 19 will be available as required to support the legal team, led by Jeff Neuman. This team has over 10 years’ experience with implementing registry launches including rights protection schemes including the .biz Sunrise and IP Claims.

In addition, Amazon will be supported by its Registrar which will provide two legal specialists, four client managers and six operational staff. The operational staff will undertake the validation checks on registration requests.

We are confident that this staffing is more than adequate for a registry where the only registrant is Amazon or its subsidiaries. Of course, should business goals change requiring

more resources, Amazon will closely review any expansion plans, and plan for additional financial, technical, and team-member support to put the Registry in the best position for success.

We will also require our registrar to implement appropriate privacy policies reflecting the high standards that we operate. For information on our Privacy Policies, please see: http://www.amazon.com/gp/help/customer/display.html/ref=footer_privacy?ie=UTF8&nodeId=468496

29.4 Additional Mechanism that exceed requirements

Rights protection is at the core of Amazon's objective in applying for this registry.

Therefore we are committed to providing the following additional mechanisms:

29.4.1 Registry Legal Manager

Amazon will appoint a Legal Manager to ensure that we are compliant with ICANN policies. The Legal Manager will also handle all disputes relating to RPMs. This will involve evaluating complaints, working with external legal counsel and law enforcement, and resolving disputes. The Legal Manager will also liaise with external stakeholders including URS and UDRP panel providers, the TMCH operator and trademark holders as needed.

29.4.2 Rights Protection Help Line

Amazon will maintain a Rights Protection Help Line. Calls to this line will be allocated a Case Number and the following details will be recorded: (i) the contact details of the complainant; (ii) the domain name that is the subject of the complaint or query; (iii) the registered right, if any, that is associated with the request; and (iv) an explanation of the concerns.

An initial response to a query or complaint will be made within 24 hours. The Rights Protection Help Line will be in place on Day One of the registry. The cost of the Rights Help Line is reflected in the Projections Templates provided at Question 46 as part of on-going registry maintenance costs.

The aim of the Rights Protection Help Line is to assist third parties in understanding the mission and purpose of our registry and to see if a resolution can be found that is quicker and easier than the filing of a UDRP or URS complaint.

The Legal Manager will oversee the Rights Protection Help Line.

29.4.3 Registrar Accreditation

Amazon will audit the performance of our registrar every six months and re-validate our Registry-Registrar Agreements annually. Our audits will include site visits to ensure the security of data etc.

29.4.4 Audits of registration records

Every three months, whichever is the most of 250 or 2% of the total of domain names registered in that period will be reviewed by our registrar to ensure accurate registration records and use that is compliant with our Acceptable Use guidelines.

29.4.5 Maintenance of Registry Website

Amazon will create a website for all our registries and we will make it easy for third parties including representatives of law enforcement to contact us by featuring our full contact details (physical, email address and phone number).

29.4.6 Click Wrapping our Terms & Conditions

Although only Amazon and its subsidiaries can register domain names in our registry, we will bring to the attention of requestors of domain names the Terms & Conditions of registration and, especially, Acceptable Use terms through Click Wrapping.

29.4.7 Annual Report

Amazon will publish an Annual Report on Rights Protection in our registries on our Registry Website. This will include relevant statistics and it will outline all cases and how they were resolved.

29.4.8 Contacts with WIPO and other DRS providers

Amazon will invite representatives of WIPO and other DRS providers to review our RPM and to make suggestions on any improvements that we might make after the first full year of operation.

29.4.9 Registrant Pre-Verification

All requests for registration will be verified by our registrar to ensure that they come from a legitimate representative of Amazon or our subsidiaries. A record of the request will be kept in our on-line domain management console including the requestor's email address and other contact information.

29.4.10 Take down Procedures

Amazon has described Takedown Procedures for domains supporting Abusive Behaviours in Question 28. We think this is very unlikely in a registry where only Amazon or its subsidiaries are

registrants but we will reserve the right to terminate a registration and to take down all associated services after a review by our Legal Manager if a takedown for reasons of rights protection is requested by law enforcement, a representative of a court we recognise etc.

29.4.11 Speed of Response

Wherever possible, as outlined above, Amazon committed to a response within 24 hours of a complaint being made. This exceeds the guidelines for the UDRP and the URS.

Please note that in the above answer the terms “We”, “Our” and “Amazon” may refer to either the applicant Amazon EU S.à r.l. or Amazon.com Inc., the ultimate parent.

30(a). Security Policy: Summary of the security policy for the proposed registry

Amazon EU S.à r.l. and our back-end operator, Neustar, recognize the vital need to secure the systems and the integrity of the data in commercial solutions. The .アマゾン registry solution will leverage industry-best security practices including the consideration of physical, network, server, and application elements.

Neustar’s approach to information security starts with comprehensive information security policies. These are based on the industry best practices for security including SANS (SysAdmin, Audit, Network, Security) Institute, NIST (National Institute of Standards and Technology), and Center for Internet Security (CIS). Policies are reviewed annually by Neustar’s information security team.

The following is a summary of the security policies that will be used in the .アマゾン registry, including:

1. Summary of the security policies used in the registry operations
2. Description of independent security assessments
3. Description of security features that are appropriate for .アマゾン
4. List of commitments made to registrants regarding security levels

All of the security policies and levels described in this section are appropriate for the .アマゾン registry.

30.(a).1 Summary of Security Policies

Neustar, Inc. has developed a comprehensive Information Security Program in order to create effective administrative, technical, and physical safeguards for the protection of its information assets, and to comply with Neustar’s obligations under applicable law, regulations, and contracts. This Program establishes Neustar’s policies for accessing, collecting, storing, using, transmitting, and protecting electronic, paper, and other records containing sensitive information.

The Program defines:

- ☐ The policies for internal users and our clients to ensure the safe, organized and fair use of information resources.
- ☐ The rights that can be expected with that use.
- ☐ The standards that must be met to effectively comply with policy.
- ☐ The responsibilities of the owners, maintainers, and users of Neustar’s information resources.
- ☐ Rules and principles used at Neustar to approach information security issues

The following policies are included in the Program:

1. Acceptable Use Policy

The Acceptable Use Policy provides the “rules of behavior” covering all Neustar Associates for using Neustar resources or accessing sensitive information.

2. Information Risk Management Policy

The Information Risk Management Policy describes the requirements for the on-going information security risk management program, including defining roles and responsibilities for conducting

and evaluating risk assessments, assessments of technologies used to provide information security and monitoring procedures used to measure policy compliance.

3. Data Protection Policy

The Data Protection Policy provides the requirements for creating, storing, transmitting, disclosing, and disposing of sensitive information, including data classification and labeling requirements, the requirements for data retention. Encryption and related technologies such as digital certificates are also covered under this policy.

4. Third Party Policy

The Third Party Policy provides the requirements for handling service provider contracts, including specifically the vetting process, required contract reviews, and on-going monitoring of service providers for policy compliance.

5. Security Awareness and Training Policy

The Security Awareness and Training Policy provide the requirements for managing the on-going awareness and training program at Neustar. This includes awareness and training activities provided to all Neustar Associates.

6. Incident Response Policy

The Incident Response Policy provides the requirements for reacting to reports of potential security policy violations. This policy defines the necessary steps for identifying and reporting security incidents, remediation of problems, and conducting "lessons learned" post-mortem reviews in order to provide feedback on the effectiveness of this Program. Additionally, this policy contains the requirement for reporting data security breaches to the appropriate authorities and to the public, as required by law, contractual requirements, or regulatory bodies.

7. Physical and Environmental Controls Policy

The Physical and Environment Controls Policy provides the requirements for securely storing sensitive information and the supporting information technology equipment and infrastructure. This policy includes details on the storage of paper records as well as access to computer systems and equipment locations by authorized personnel and visitors.

8. Privacy Policy

Neustar supports the right to privacy, including the rights of individuals to control the dissemination and use of personal data that describes them, their personal choices, or life experiences. Neustar supports domestic and international laws and regulations that seek to protect the privacy rights of such individuals.

9. Identity and Access Management Policy

The Identity and Access Management Policy covers user accounts (login ID naming convention, assignment, authoritative source) as well as ID lifecycle (request, approval, creation, use, suspension, deletion, review), including provisions for system/application accounts, shared/group accounts, guest/public accounts, temporary/emergency accounts, administrative access, and remote access. This policy also includes the user password policy requirements.

10. Network Security Policy

The Network Security Policy covers aspects of Neustar network infrastructure and the technical controls in place to prevent and detect security policy violations.

11. Platform Security Policy

The Platform Security Policy covers the requirements for configuration management of servers, shared systems, applications, databases, middle-ware, and desktops and laptops owned or operated by Neustar Associates.

12. Mobile Device Security Policy

The Mobile Device Policy covers the requirements specific to mobile devices with information storage or processing capabilities. This policy includes laptop standards, as well as requirements for PDAs, mobile phones, digital cameras and music players, and any other removable device capable of transmitting, processing or storing information.

13. Vulnerability and Threat Management Policy

The Vulnerability and Threat Management Policy provides the requirements for patch management, vulnerability scanning, penetration testing, threat management (modeling and monitoring) and the appropriate ties to the Risk Management Policy.

14. Monitoring and Audit Policy

The Monitoring and Audit Policy covers the details regarding which types of computer events to record, how to maintain the logs, and the roles and responsibilities for how to review, monitor, and respond to log information. This policy also includes the requirements for backup, archival, reporting, forensics use, and retention of audit logs.

15. Project and System Development and Maintenance Policy

The System Development and Maintenance Policy covers the minimum security requirements for all software, application, and system development performed by or on behalf of Neustar and the minimum security requirements for maintaining information systems.

30. (a).2 Independent Assessment Reports

Neustar IT Operations is subject to yearly Sarbanes-Oxley (SOX), Statement on Auditing Standards #70 (SAS70) and ISO audits. Testing of controls implemented by Neustar management in the areas of access to programs and data, change management and IT Operations are subject to testing by both internal and external SOX and SAS70 audit groups. Audit Findings are communicated to process owners, Quality Management Group and Executive Management. Actions are taken to make process adjustments where required and remediation of issues is monitored by internal audit and QM groups.

External Penetration Test is conducted by a third party on a yearly basis. As authorized by Neustar, the third party performs an external Penetration Test to review potential security weaknesses of network devices and hosts and demonstrate the impact to the environment. The assessment is conducted remotely from the Internet with testing divided into four phases:

- A network survey is performed in order to gain a better knowledge of the network that was being tested
- Vulnerability scanning is initiated with all the hosts that are discovered in the previous phase
- Identification of key systems for further exploitation is conducted
- Exploitation of the identified systems is attempted.

Each phase of the audit is supported by detailed documentation of audit procedures and results. Identified vulnerabilities are classified as high, medium and low risk to facilitate management's prioritization of remediation efforts. Tactical and strategic recommendations are provided to management supported by reference to industry best practices.

30.(a).3 Augmented Security Levels and Capabilities

There are no increased security levels specific for .アマゾン. However, Neustar will provide the same high level of security provided across all of the registries it manages.

A key to Neustar's Operational success is Neustar's highly structured operations practices. The standards and governance of these processes:

- Include annual independent review of information security practices
- Include annual external penetration tests by a third party
- Conform to the ISO 9001 standard (Part of Neustar's ISO-based Quality Management System)
- Are aligned to Information Technology Infrastructure Library (ITIL) and CoBIT best practices
- Are aligned with all aspects of ISO IEC 17799
- Are in compliance with Sarbanes-Oxley (SOX) requirements (audited annually)
- Are focused on continuous process improvement (metrics driven with product scorecards reviewed monthly).

A summary view to Neustar's security policy in alignment with ISO 17799 can be found in section 30.(a).4 below.

30.(a).4 Commitments and Security Levels

The .アマゾン registry commits to high security levels that are consistent with the needs of the TLD. These commitments include:

Compliance with High Security Standards

- Security procedures and practices that are in alignment with ISO 17799
- Annual SOC 2 Audits on all critical registry systems
- Annual 3rd Party Penetration Tests
- Annual Sarbanes Oxley Audits

Highly Developed and Document Security Policies

- Compliance with all provisions described in section 30.(a).4 below and in the attached security policy document.
- Resources necessary for providing information security
- Fully documented security policies
- Annual security training for all operations personnel

High Levels of Registry Security

- Multiple redundant data centers
- High Availability Design
- Architecture that includes multiple layers of security
- Diversified firewall and networking hardware vendors
- Multi-factor authentication for accessing registry systems
- Physical security access controls
- A 24x7 manned Network Operations Center that monitors all systems and applications
- A 24x7 manned Security Operations Center that monitors and mitigates DDoS attacks
- DDoS mitigation using traffic scrubbing technologies

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EXHIBIT C-020

gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gns0.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

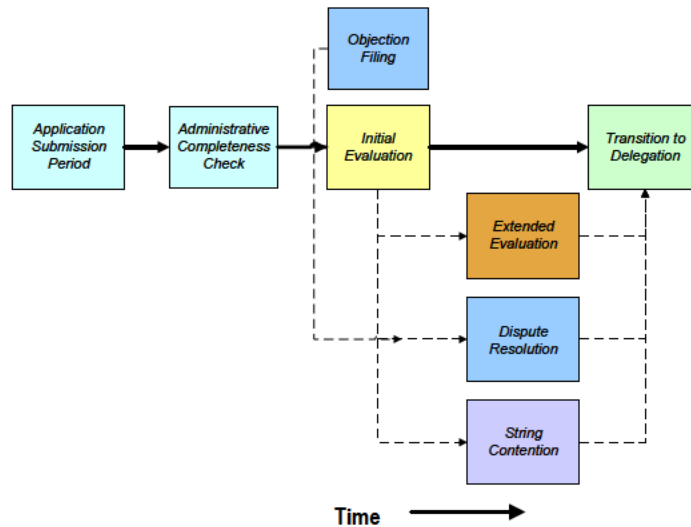


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN’s task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.¹ The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

¹ While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.²

1.1.2.6 *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

² See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9 Dispute Resolution

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C’s application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

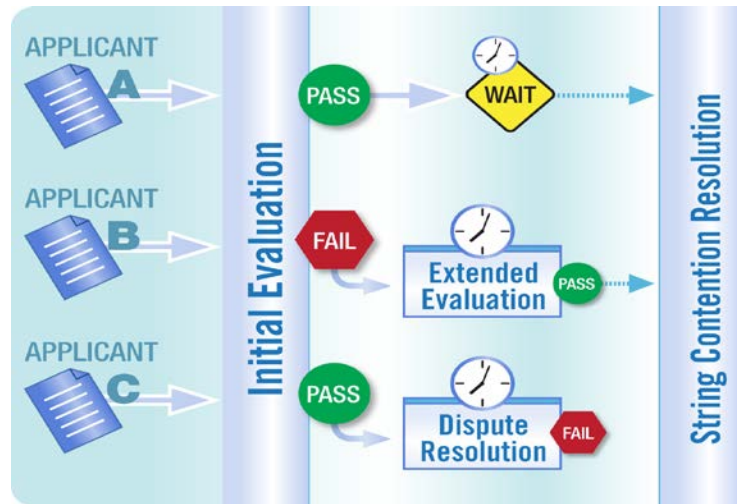


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

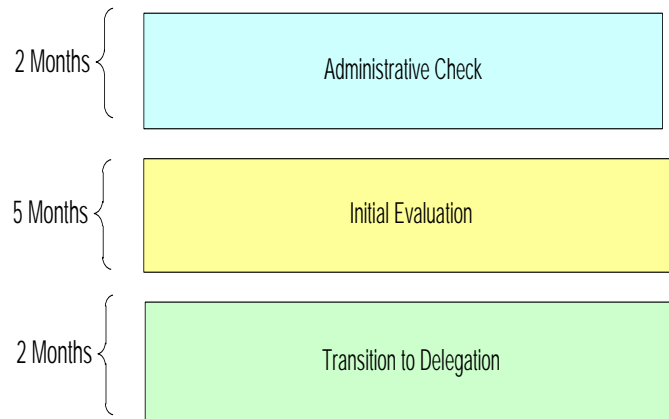


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

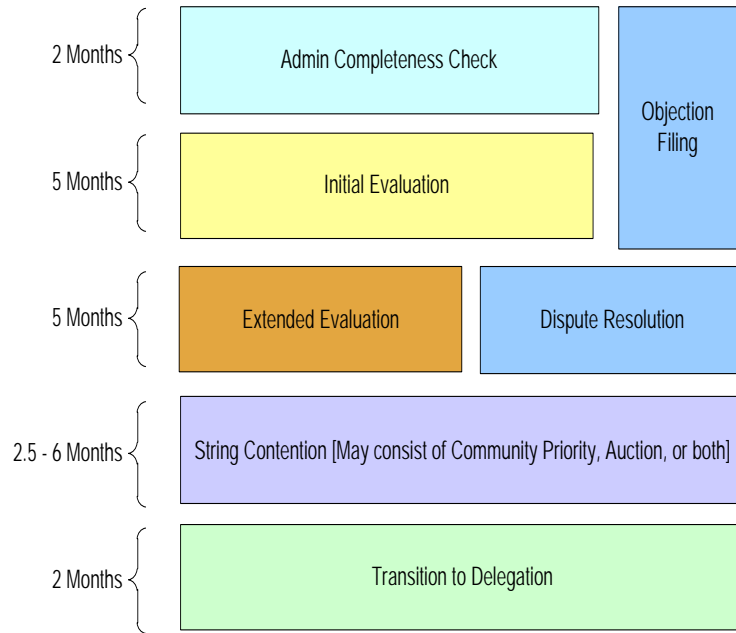


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 Subsequent Application Rounds

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2 Information for All Applicants

1.2.1 Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)^{4 5};
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

³ <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

⁴ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

⁵ It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁶ may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

⁶ http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1,00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2 Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1 Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2 Implications of Application Designation

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3 Changes to Application Designation

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review <http://www.icann.org/en/topics/TLD-acceptance/> for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

1.2.5 Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7 Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8 Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at <http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf>.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9 Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See <http://newgtlds.icann.org/applicants/candidate-support> for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at <http://icann.org/en/topics/idn/rfcs.htm>.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).⁷

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

⁷ See examples at <http://stupid.domain.name/node/683>

1.3.2 IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at <http://www.iana.org/procedures/idn-repository.html>.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines⁸ and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

⁸ See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at <http://iana.org/domains/idn-tables/>, and submission guidelines at <http://iana.org/procedures/idn-repository.html>.

1.3.3 IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.⁹ Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

⁹ The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

- a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a “Declared Variants List” that will be available on ICANN’s website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (<http://www.icann.org/en/topics/new-gtld-program.htm>), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012**.

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2 Customer Service during the Application Process

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

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

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

Note on 2000 proof-of-concept round applicants -- Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof-of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

¹⁰ The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider’s rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider’s rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel’s review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.¹¹

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider’s instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

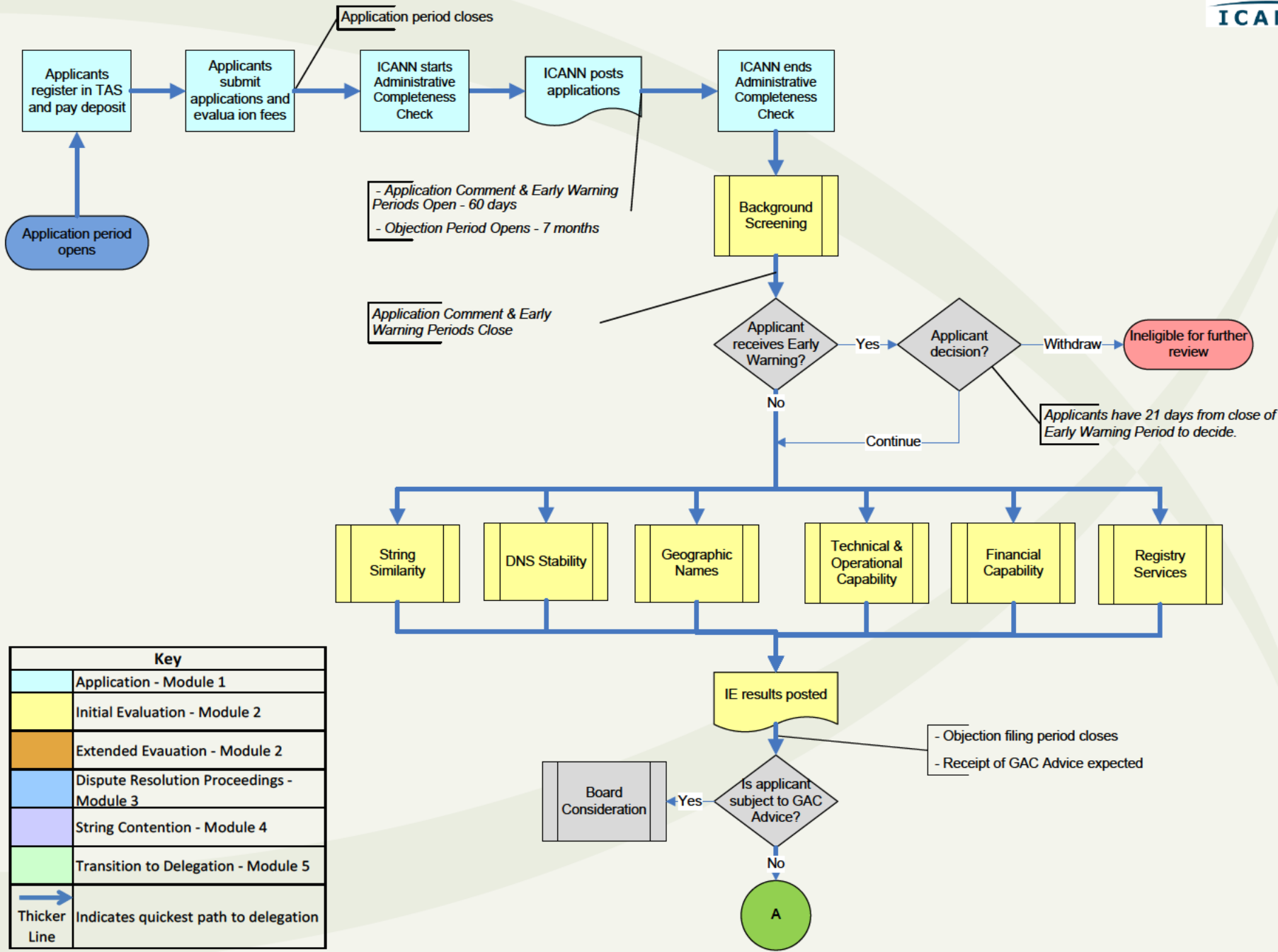
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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

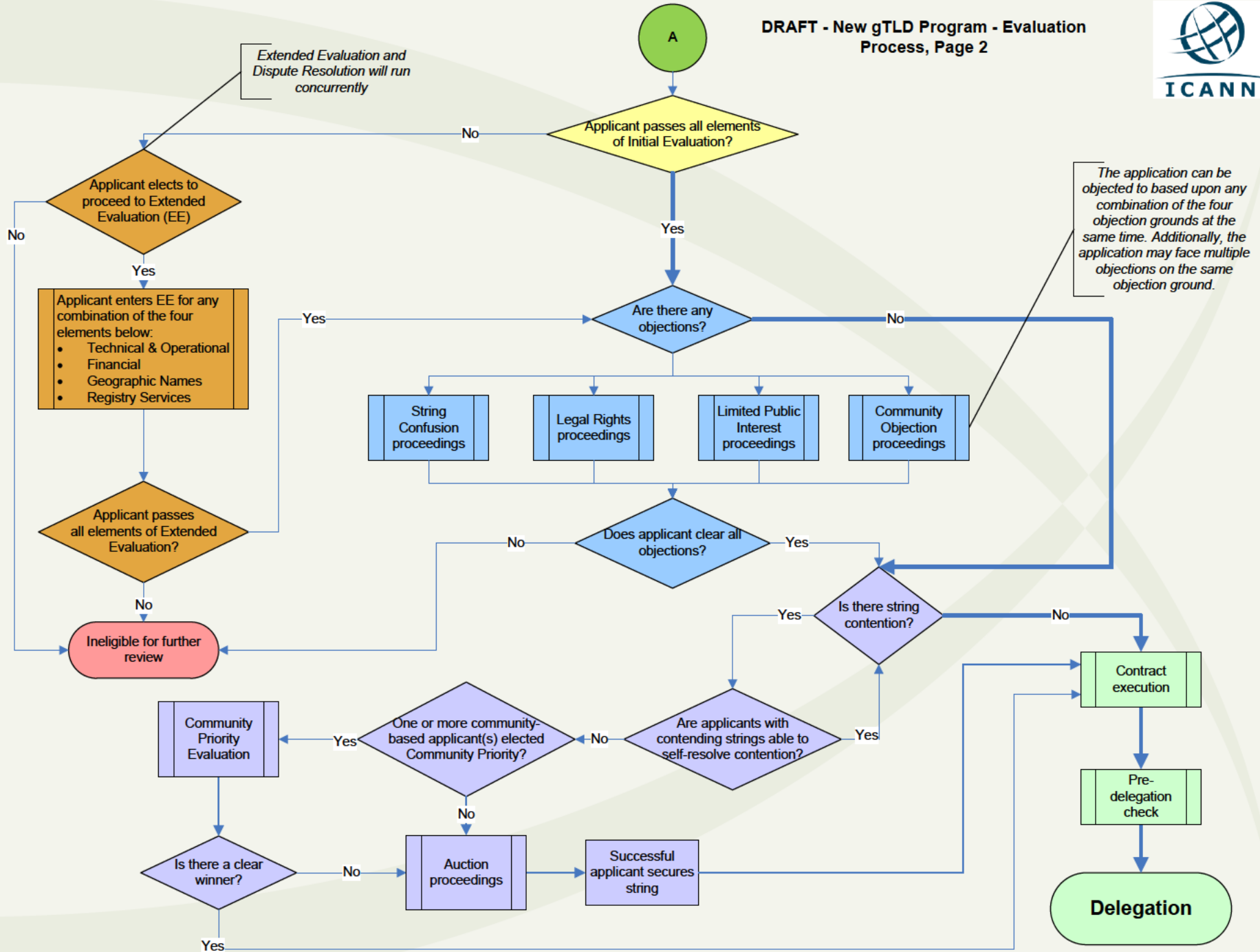
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process



Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation
	Thicker Line





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
 - String similarity
 - Reserved names
 - DNS stability
 - Geographic names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 Background Screening

Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.¹

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

¹ See <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization>

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 History of cybersquatting

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2 Initial Evaluation

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel’s task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
 - Every other single character.
 - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as “foo” and “Foo” are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

IDN tables that have been submitted to ICANN are available at <http://www.iana.org/domains/idn-tables/>.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN's website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term “validated” is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at <http://www.icann.org/en/topics/idn>.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.² Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.³

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

² See <http://icann.sword-group.com/algorithm/>

³ In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2 *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 *Reserved Names*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

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

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

2.2.1.2.2 *Declared Variants*

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3 *Strings Ineligible for Delegation*

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奥林匹克	奥林匹亚	奥林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح أبا بيلصل	لاله رمح أبا
ءارمحل ءرولبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)* (RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gnso.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator's delegation information or provisioning services.

2.2.3.2 *Customary Services*

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 *TLD Zone Contents*

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD's DNS servers.

- NS records and in-bailiwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>). This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation

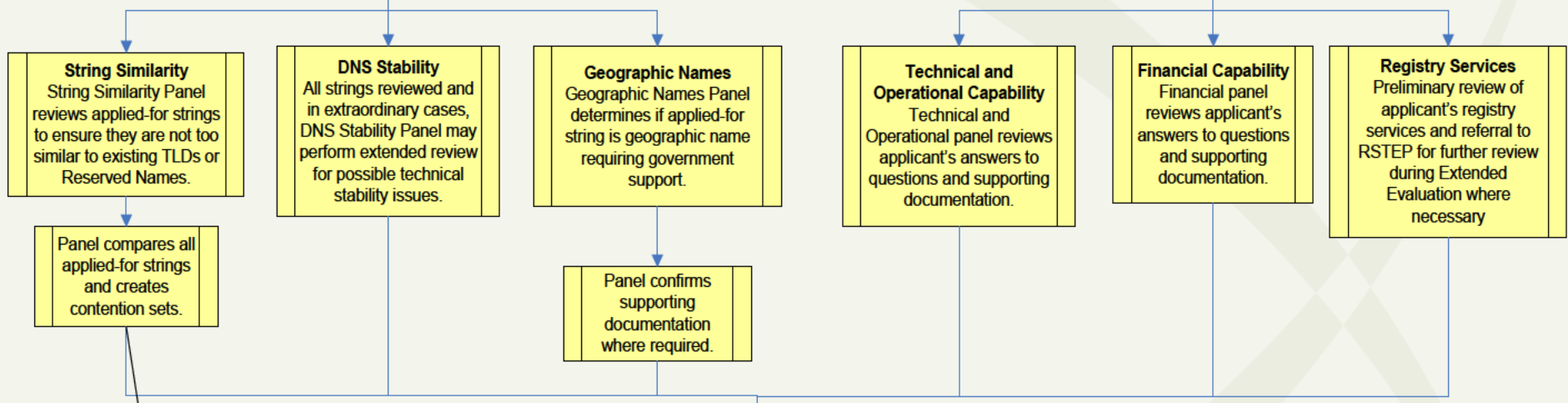


Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

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

Initial Evaluation – String Review

Initial Evaluation – Applicant Review



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

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation**?

Extended Evaluation process

Applicant continues to subsequent steps.

Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

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

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

But NOT for String Similarity or DNS Stability

No

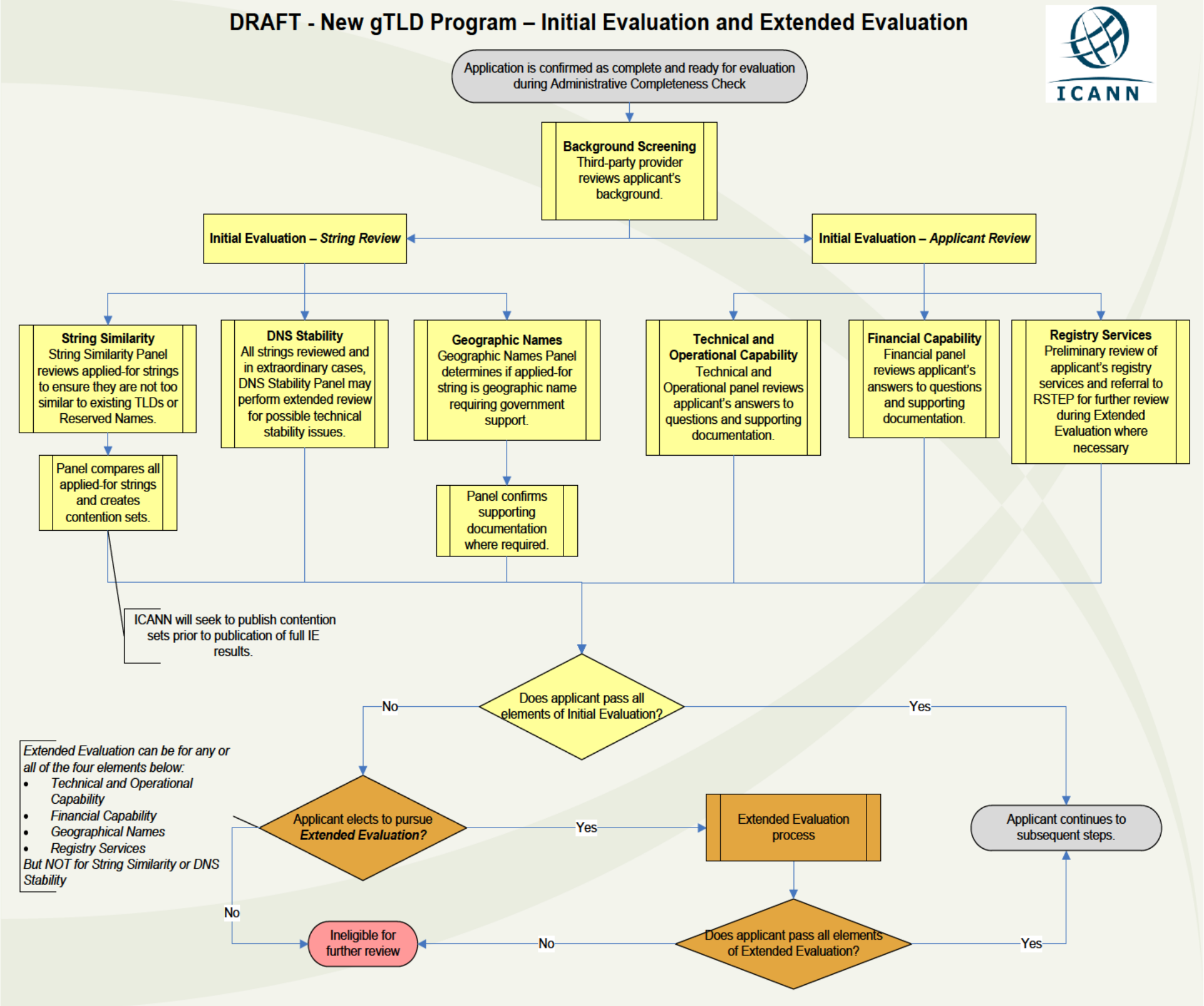
No

Yes

Yes

No

Yes



Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

Eligibility

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				The applicant's designation as standard or community-based cannot be changed once the application is submitted.			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community. 			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature. 			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> relationship to the identification of community members. any connotations the string may have beyond the community. 			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. Name selection: what types of second-level names may be registered in the gTLD. Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

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Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

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				authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). 	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> a plan for operating a robust and reliable SRS, one of the five critical registry functions; scalability and performance consistent with the overall business approach, and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of a well-developed plan to operate a robust and reliable SRS; SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; SRS is consistent with the technical, operational and financial approach described in the application; and Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

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		<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> • An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; • Policies for handling complaints regarding abuse; • Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	<p>Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

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		<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

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		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

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							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

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		<p>include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent</p>

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		A complete answer is expected to be no more than 5 pages.					with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). Demonstrate how the system will 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10;</p> <p>(3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

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		<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <ol style="list-style-type: none"> Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; IDN plans are consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement, and • letter of auditor or independent certification, if applicable. 				(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.	
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <ol style="list-style-type: none"> (1) Financial projections adequately describe the cost, funding and risks for the application (2) Demonstrates resources and plan for sustainable operations; and (3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported. <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an 	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <ol style="list-style-type: none"> (1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant; (2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and (3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p> <p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and • Costs of outsourcing, if any. 	<p>1 - meets requirements:</p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and</p> <p>VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and Describe the measures to mitigate the key risks as described in this question. <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <ol style="list-style-type: none"> Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); Response gives consideration to probability and resource impact of contingencies identified; and If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements:</p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>			
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a</p>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty 		<p>this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p> <p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> o Applicant's complete name and address. o LOC identifying number. o Exact amount in USD. o Expiry date. o Address, procedure, and required forms whereby presentation for payment is to be made. o Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. <p>(ii) <u>A deposit into an irrevocable cash escrow account held by a reputable financial institution.</u></p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> • The funds in the deposit escrow account are not considered to be an asset of ICANN. • Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. • The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. • The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. • Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

In local currency (unless noted otherwise)

Comments / Notes

Provide name of local currency used.

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume					
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
E) Total Cash Inflows		-	345 000	496 800	698 339
Projected Operating Cash Outflows					
F) Labor:					
i) Marketing Labor					
ii) Customer Support Labor		5 000	68 000	71 000	74 000
iii) Technical Labor		32 000	45 000	47 000	49 000
G) Marketing		40 000	44 000	26 400	31 680
H) Facilities		7 000	10 000	12 000	14 400
I) General & Administrative		14 000	112 000	122 500	136 000
J) Interest and Taxes		27 500	29 000	29 800	30 760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i) Hot site maintenance					
		5 000	7 500	7 500	7 500
ii) Partial Registry Functions					
		32 000	37 500	41 000	43 000
iii) (list type of activities being outsourced)					
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
w) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12 200	18 000	21 600	25 920
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079
Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs					
		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs					
		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260
Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS					
		5 000	5 500	6 050	
B) Provision of Whois					
		6 000	6 600	7 260	
C) DNS Resolution for Registered Domain Names					
		7 000	7 700	8 470	
D) Registry Data Escrow					
		8 000	8 800	9 680	
E) Maintenance of Zone in accordance with DNSSEC					
		9 000	9 900	10 890	
F) Other		-	-	-	-
G) Total Critical Function Cash Outflows		35 000	38 500	42 350	
III) Projected Capital Expenditures					
A) Hardware					
		98 000	21 000	16 000	58 000
B) Software					
		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment					
		43 000	22 000	14 000	16 000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):					
i)					
		-	-	-	-
ii)					
		-	-	-	-
iii)					
		-	-	-	-
iv)					
		-	-	-	-
v)					
		-	-	-	-
w)					
		-	-	-	-
E) Other Capital Expenditures		-	-	-	-
F) Total Capital Expenditures		173 000	61 000	54 000	85 000
IV) Projected Assets & Liabilities					
A) Cash					
		668 300	474 300	413 000	471 679
B) Accounts receivable					
		40 000	70 000	106 000	160 000
C) Other current assets					
		40 000	40 000	60 000	80 000
D) Total Current Assets		668 300	584 300	579 000	711 679
E) Accounts payable					
		41 000	110 000	113 000	125 300
F) Short-term Debt					
		-	-	-	-
G) Other Current Liabilities					
		-	-	-	-
H) Total Current Liabilities		41 000	110 000	113 000	125 300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
K) Other Long-term Assets					
		359 000	420 000	474 000	559 000
L) Total Long-term Assets		359 000	420 000	474 000	559 000
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000
V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows					
	= Sec. I) N	(199 700)	(92 000)	46 000	205 079
B) Capital expenditures					
	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)
C) Change in Non Cash Current Assets					
	= Sec. IV) (B) C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)
D) Change in Total Current Liabilities					
	= Sec. IV) H: Cur Yr - Prior Yr	41 000	69 000	3 000	12 300
E) Debt Adjustments					
	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments		-	-	-	-
G) Projected Net Cash flow		(331,700)	(194,000)	(61,000)	58,379
VI) Sources of funds					
A) Debt:					
i) On-hand at time of application					
		1 000 000	-	-	-
ii) Contingent and/or committed but not yet on-hand					
		-	-	-	-
B) Equity:					
i) On-hand at time of application					
		-	-	-	-
ii) Contingent and/or committed but not yet on-hand					
		-	-	-	-
C) Total Sources of funds		1 000 000	-	-	-

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function. Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support. Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown are adequate to fund our start-up phase.

Template 1 - Financial Projections: Most Likely

Comments / Notes

Provide name of local currency used

Sec.	In local currency (unless noted otherwise)	Reference / Formula	Live / Operational			
			Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash inflows and outflows						
	A) Forecasted registration volume					
	B) Registration fee					
	C) Registration cash inflows		-	-	-	-
	D) Other cash inflows					
	E) Total Cash Inflows		-	-	-	-
Projected Operating Cash Outflows						
	F) Labor:					
	i) Marketing Labor					
	ii) Customer Support Labor					
	iii) Technical Labor					
	G) Marketing					
	H) Facilities					
	I) General & Administrative					
	J) Interest and Taxes					
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
	i) (list type of activities being outsourced)					
	ii) (list type of activities being outsourced)					
	iii) (list type of activities being outsourced)					
	iv) (list type of activities being outsourced)					
	v) (list type of activities being outsourced)					
	vi) (list type of activities being outsourced)					
	L) Other Operating costs					
	M) Total Operating Cash Outflows		-	-	-	-
	N) Projected Net Operating Cash flow		-	-	-	-
IIa) Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs					
	B) Total Fixed Operating Costs					
	C) Total Operating Cash Outflows	CHECK	-	-	-	-
IIb) Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS					
	B) Provision of Whois					
	C) DNS Resolution for Registered Domain Names					
	D) Registry Data Escrow					
	E) Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows		-	-	-	-
	H) 3-year Total		-	-	-	-
III) Projected Capital Expenditures						
	A) Hardware					
	B) Software					
	C) Furniture & Other Equipment					
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
	i)					
	ii)					
	iii)					
	iv)					
	v)					
	vi)					
	E) Other Capital Expenditures					
	F) Total Capital Expenditures		-	-	-	-
IV) Projected Assets & Liabilities						
	A) Cash					
	B) Accounts receivable					
	C) Other current assets					
	D) Total Current Assets		-	-	-	-
	E) Accounts payable					
	F) Short-term Debt					
	G) Other Current Liabilities					
	H) Total Current Liabilities		-	-	-	-
	I) Total Property, Plant & Equipment (PP&E)		-	-	-	-
	J) 3-year Reserve		-	-	-	-
	K) Other Long-term Assets					
	L) Total Long-term Assets		-	-	-	-
	M) Total Long-term Debt					
V) Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows		-	-	-	-
	C) Capital expenditures		-	-	-	-
	D) Change in Non Cash Current Assets		n/a	-	-	-
	E) Change in Total Current Liabilities		n/a	-	-	-
	F) Debt Adjustments					
	G) Other Adjustments					
	H) Projected Net Cash flow		-	-	-	-
VI) Sources of funds						
	A) Debt:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	B) Equity:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds		-	-	-	-

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:

Template 2 - Financial Projections: Worst Case

Comments / Notes

In local currency (unless noted otherwise)

Provide name of local currency used

Sec.	Reference / Formula	Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
I) Projected Cash inflows and outflows					
A)	Forecasted registration volume				
B)	Registration fee				
C)	Registration cash inflows		-	-	-
D)	Other cash inflows				
E)	Total Cash inflows		-	-	-
Projected Operating Cash Outflows					
F)	Labor:				
i)	Marketing Labor				
ii)	Customer Support Labor				
iii)	Technical Labor				
G)	Marketing				
H)	Facilities				
I)	General & Administrative				
J)	Interest and Taxes				
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):				
i)	(list type of activities being outsourced)				
ii)	(list type of activities being outsourced)				
iii)	(list type of activities being outsourced)				
iv)	(list type of activities being outsourced)				
v)	(list type of activities being outsourced)				
vi)	(list type of activities being outsourced)				
L)	Other Operating costs				
M)	Total Operating Cash Outflows		-	-	-
N)	Projected Net Operating Cash flow		-	-	-
IIa) Break out of Fixed and Variable Operating Cash Outflows					
A)	Total Variable Operating Costs				
B)	Total Fixed Operating Costs				
C)	Total Operating Cash Outflows		-	-	-
		CHECK	-	-	-
IIb) Break out of Critical Function Operating Cash Outflows					
A)	Operation of SRS				
B)	Provision of Whois				
C)	DNS Resolution for Registered Domain Names				
D)	Registry Data Escrow				
E)	Maintenance of Zone in accordance with DNSSEC				
G)	Total Critical Registry Function Cash Outflows		-	-	-
H)	3-year Total		-	-	-
III) Projected Capital Expenditures					
A)	Hardware				
B)	Software				
C)	Furniture & Other Equipment				
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures):				
i)					
ii)					
iii)					
iv)					
v)					
vi)					
E)	Other Capital Expenditures				
F)	Total Capital Expenditures		-	-	-
IV) Projected Assets & Liabilities					
A)	Cash				
B)	Accounts receivable				
C)	Other current assets				
D)	Total Current Assets		-	-	-
E)	Accounts payable				
F)	Short-term Debt				
G)	Other Current Liabilities				
H)	Total Current Liabilities		-	-	-
I)	Total Property, Plant & Equipment (PP&E)		-	-	-
J)	3-year Reserve		-	-	-
K)	Other Long-term Assets				
L)	Total Long-term Assets		-	-	-
M)	Total Long-term Debt				
V) Projected Cash flow (excl. 3-year Reserve)					
A)	Net operating cash flows		-	-	-
C)	Capital expenditures		-	-	-
D)	Change in Non Cash Current Assets	n/a	-	-	-
E)	Change in Total Current Liabilities		-	-	-
F)	Debt Adjustments	n/a	-	-	-
G)	Other Adjustments				
H)	Projected Net Cash flow		-	-	-
VI) Sources of funds					
A)	Debt:				
i)	On-hand at time of application				
ii)	Contingent and/or committed but not yet on-hand				
B)	Equity:				
i)	On-hand at time of application				
ii)	Contingent and/or committed but not yet on-hand				
C)	Total Sources of funds		-	-	-

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

Comments regarding how the Applicant plans to Fund operations:

General Comments regarding contingencies:



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 *GAC Advice on New gTLDs*

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightsholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 *Legal Rights Objection*

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 *Limited Public Interest Objection*

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a “quick look” procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

¹ See also <http://www.iana.org/domains/int/policy/>.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 Filing Procedures

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>.

3.3.1 Objection Filing Procedures

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

A panel will consist of appropriately qualified experts appointed to each proceeding by the designated DRSP. Experts must be independent of the parties to a dispute resolution proceeding. Each DRSP will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an expert for lack of independence.

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6ter of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

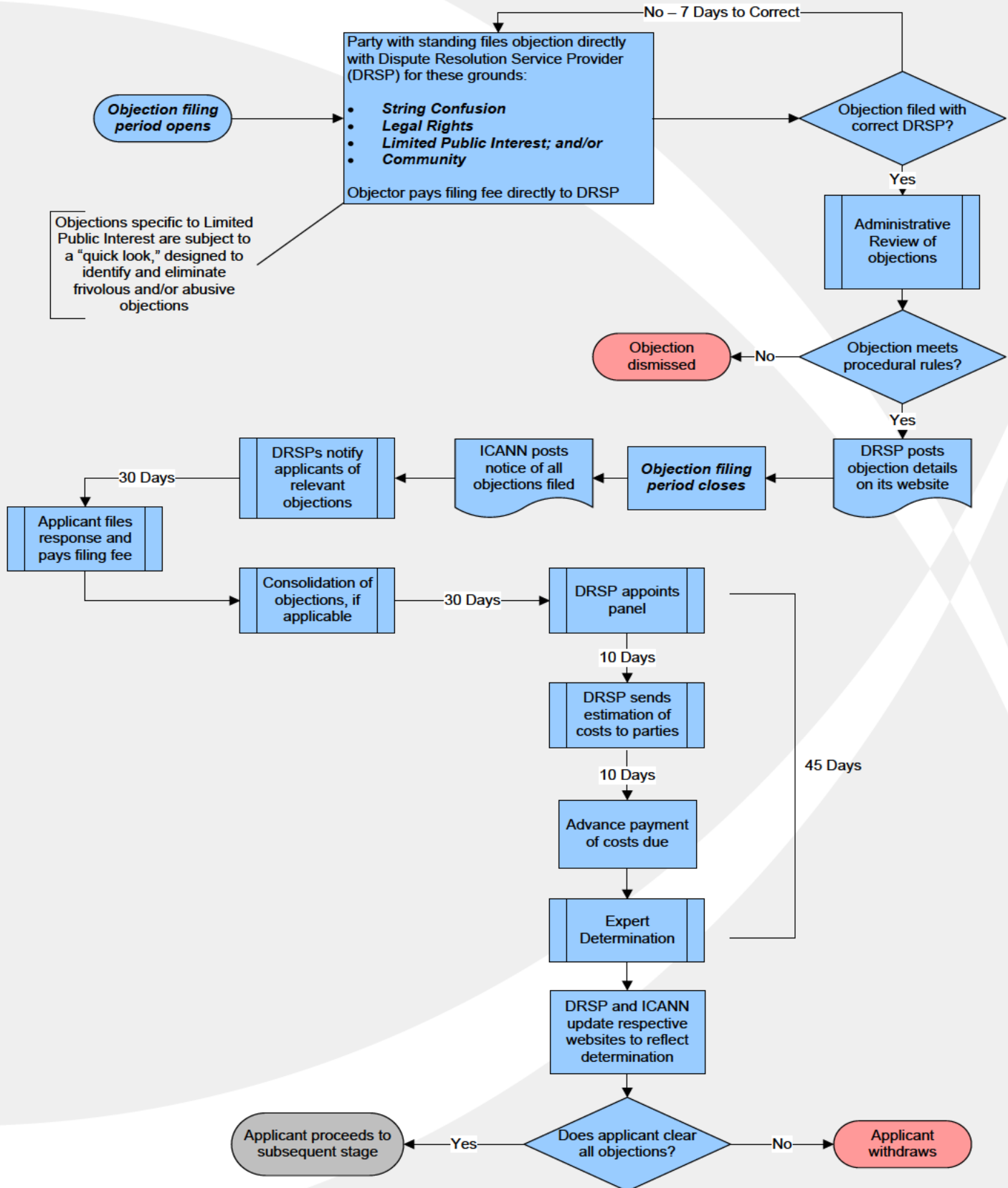
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) “Limited Public Interest Objection” refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) “Community Objection” refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.

(f) “DRSP Rules” are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN’s New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.



- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
- (iii) A Limited Public Interest Objection must be filed at: [●].
- (iv) A Community Objection must be filed at: [●].

(d) All Objections must be filed separately:

- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
- (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).

(e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

(a) The Objection shall contain, *inter alia*, the following information:

- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
- (ii) A statement of the Objector's basis for standing; and
- (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.

(b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.

(c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

(a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within



fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

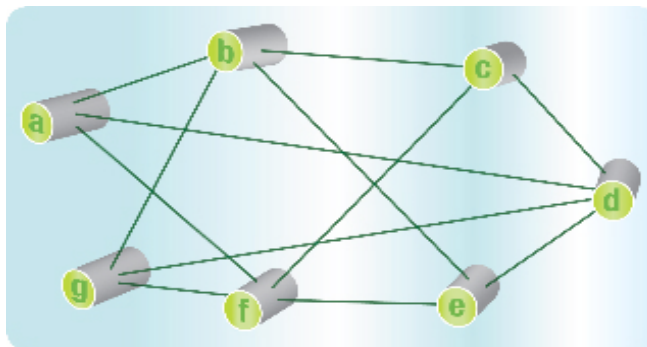


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

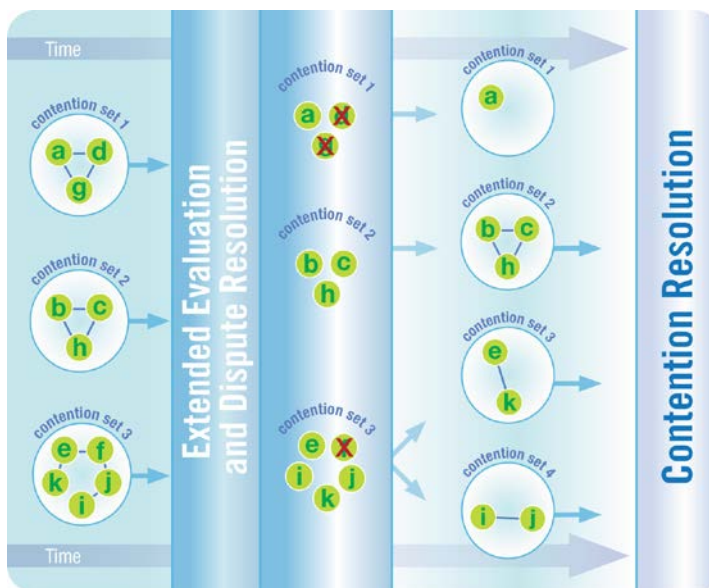


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 Impact of String Confusion Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

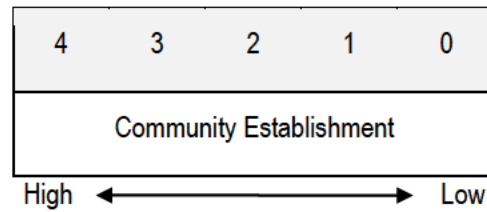
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

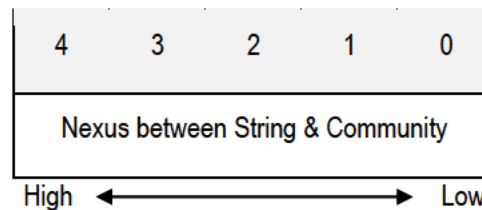
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

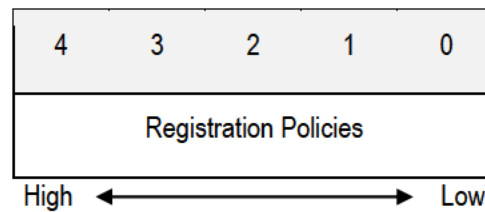
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

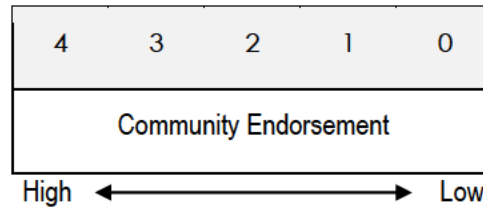
- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)



As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

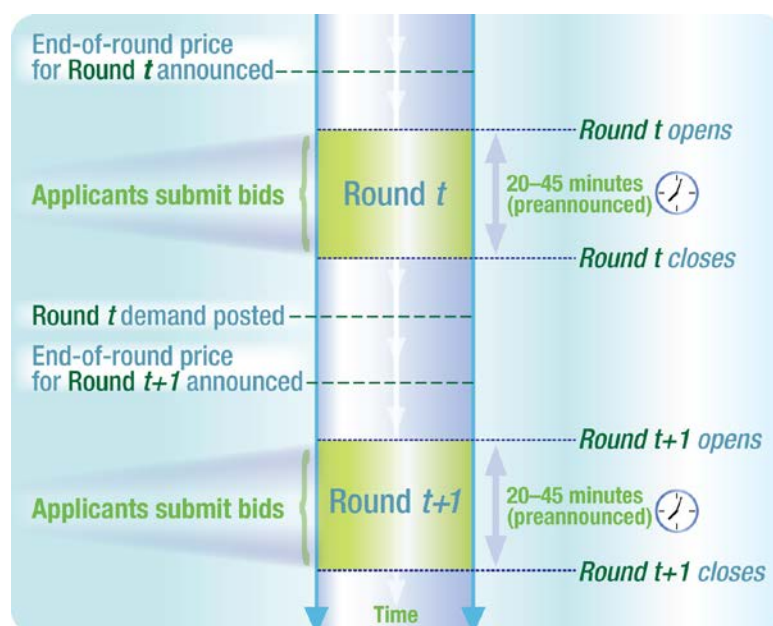


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

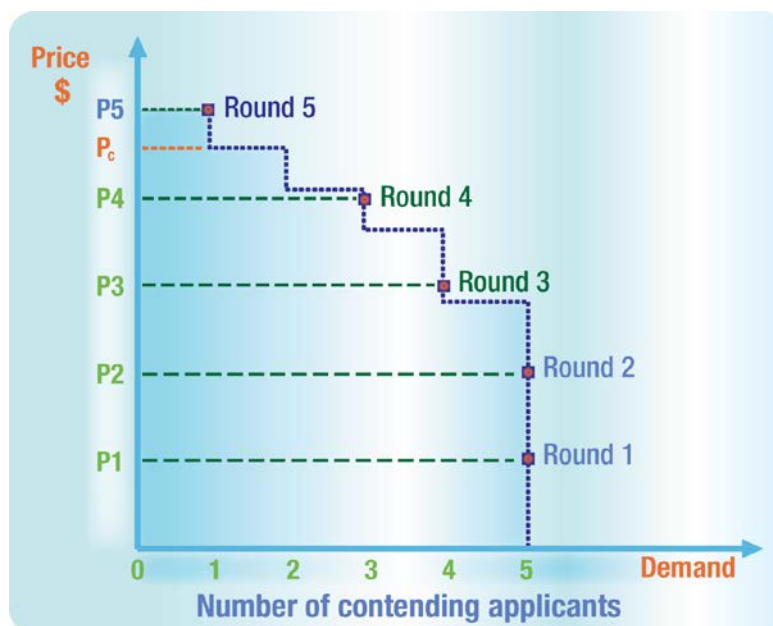


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.² Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

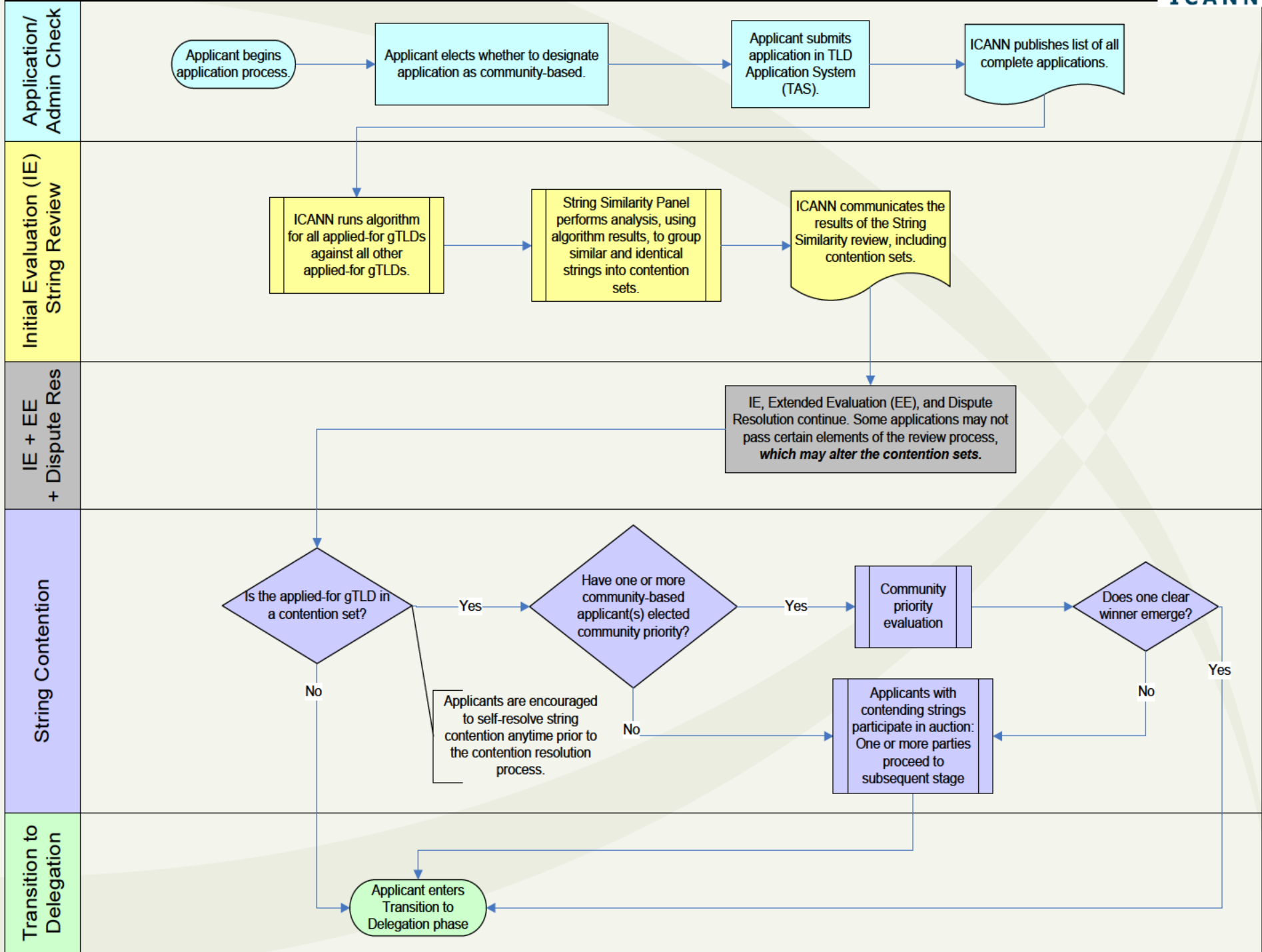
² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting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

4.4 *Contention Resolution and Contract Execution*

An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

DRAFT - New gTLD Program - String Contention





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 *Pre-Delegation Testing*

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 *Testing Procedures*

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a "Registry Operator." In being delegated the role of operating part of the Internet's domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator's obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

"The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 *What is Expected of ICANN*

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

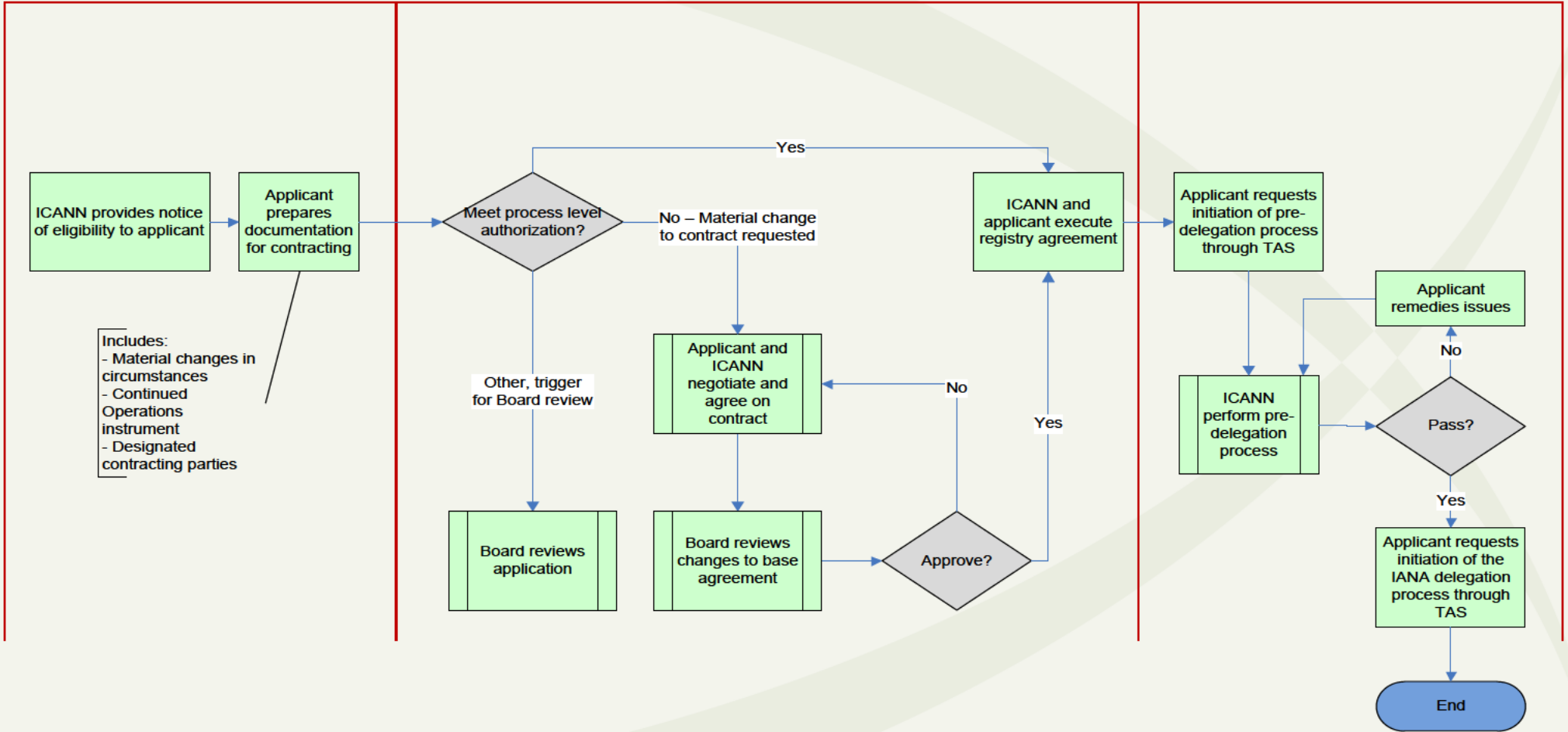
Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

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

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

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

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [insert applicable URL] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN's expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN's publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the "Term").

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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

7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the "Applicable Laws"). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator's compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, "ICANN Requirements"), may conflict with or violate Applicable Law (hereinafter, a "Potential Conflict"), Registry Operator shall provide detailed notice (a "Notice") of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an "ICANN Determination"). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN's complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator's compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____] President and CEO

Date:

[Registry Operator]

By: _____
[_____] _____
[_____]

Date:

EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
- 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
- 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
- 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
- 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.

2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
 - 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).
2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.
3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.
 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. Registration Data Directory Services. Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 Admin Contact: Joe Registrar
 Phone Number: +1.3105551213
 Fax Number: +1.3105551213
 Email: joeregistrar@example-registrar.tld
 Admin Contact: Jane Registrar
 Phone Number: +1.3105551214
 Fax Number: +1.3105551213
 Email: janeregistrar@example-registrar.tld
 Technical Contact: John Geek
 Phone Number: +1.3105551215
 Fax Number: +1.3105551216
 Email: johngeek@example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
 IP Address: 192.0.2.123
 IP Address: 2001:0DB8::1
 Registrar: Example Registrar, Inc.
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. Zone File Access Agreement. Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1. 2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. Credentialing Requirements. Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. Grant of Access. Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. File Format Standard. Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. Use of Data by User. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. Term of Use. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. No Fee for Access. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <<http://www.icann.org/en/topics/idn/implementation-guidelines.htm>>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. Registry Services. “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. Wildcard Prohibition. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. High Availability. Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. Extraordinary Event. Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. Business Continuity. Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquires related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
 5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
 6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. Measuring EPP parameters. Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. Collating the results from EPP probes. The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. Placement of EPP probes. Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. Emergency Thresholds

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. Emergency Escalation

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. Emergency Escalation initiated by ICANN

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. **Emergency Escalation initiated by Registrars**

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. **Notifications of Outages and Maintenance**

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. **Covenants of Performance Measurement**

- 8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).
- 8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

- 1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.
- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
 - b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2 6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

- 1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.
- 1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

- 2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.
- 2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

- 3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.
- 3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.
- 3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.
- 3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

- 4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").
- 4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
- 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(b) impairing the distinctive character or the reputation of the complainant's mark; or

(c) creating a likelihood of confusion with the complainant's mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do so shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel's own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.

16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.

16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).

18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.

18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:

18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:

- (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
- (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;

18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

- 2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.
- 2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

- 3.1 The language of all submissions and proceedings under the procedure will be English.
- 3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

- 4.1 All communications with the Provider must be filed electronically.
- 4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.
- 4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RRDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application – Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FOR A ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.
7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
 10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
 11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT C-021



The Internet Corporation for Assigned Names and Numbers

July 22, 2012

Heather Dryden
Chair, Governmental Advisory Committee

Re: Processing of applications for New Generic Top-Level Domains (gTLDs)

Dear Heather,

On 17 June 2012 the GAC sent a letter to the ICANN Board regarding three pieces of advice:

First: The GAC advises the Board to consult with the community as a matter of urgency to consider ways to improve its assessment and delegation processes in order to minimise the downside risks and uncertainty for applicants. In line with the concerns raised by the community, this should include a focus on competition and fairness with delegation timing. The GAC intends to address the issue of the digital archery and batching system at the Prague meeting with the Board.

Second: The GAC advises the Board that it is planning to issue any Early Warnings shortly after the Toronto ICANN meeting, in October 2012.

Third: The GAC advises the Board that it will not be in a position to offer any advice on new gTLD applications in 2012. For this reason, the GAC is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalised before the Asia-Pacific meeting in April 2013.

On the 20th June 2012, the Board responded in writing to the GAC regarding the first piece of advice.



ICANN

July 22, 2012
Page Two

In this letter of 27th July 2012, the Board informs the GAC that it accepts the second and third pieces of advice about the GAC new gTLD timelines. We look forward to receiving the results of your deliberations in a timely fashion. The Board has instructed the CEO of ICANN to develop an overall timeline for the new gTLD process, and he will be writing to you in the near future to seek further clarification of the GAC's intended timeframe for providing further advice on these two matters.

Thank you again for providing advice to the Board.

Sincerely,

Stephen D. Crocker,
Chair, ICANN Board

EXHIBIT C-022

GAC Early Warning – Submittal Amazon-BR-PE-58086

Application ID:	1-1315-58086
Entity/Applicant Name:	Amazon EU S.à r.l.
String:	AMAZON
Early Warning Issue Date:	20 November 2012

Early Warning Description – This will be posted publicly:**GAC Member(s) to indicate a description of the Early Warning being filed**

On behalf of the **Governments of Brazil and Peru**, we would like to express our concern regarding the application for the generic top-level domain (gTLD) “.AMAZON” by the private company "Amazon EU S.à.r.l.", a subsidiary of “Amazon.com Inc.”

Reason/Rationale for the Warning – This will be posted publicly:**GAC Member(s) to indicate the reason and rationale for the Early Warning being filed.**

The Amazon region constitutes an important part of the territory of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, due to its extensive biodiversity and incalculable natural resources. Granting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region.

In addition, this gTLD string requested by "Amazon EU S.à.r.l." matches part of the name, in English, of the “Amazon Cooperation Treaty Organization”, an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty, signed in July 1978 by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, and expedites the execution of its decisions through its Permanent Secretariat.

It should also be noted that the application for the “.AMAZON” gTLD has not received support from the governments of the countries in which the Amazon region is located. **Therefore, the Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also of the Government of Argentina**, would like to request that the “.AMAZON”

GAC Early Warning – Submittal Amazon-BR-PE-58086

gTLD application be included in the GAC early warning process.

Possible Remediation steps for Applicant – This will be posted publicly:

GAC Member(s) to identify possible remediation steps to be taken by the applicant

- The applicant should withdraw their application based on the information provided above

Further Notes from GAC Member(s) (Optional) – This will be posted publicly:

Further Notes from Peru

The Amazon region is also universally recognized by the rich biodiversity of the Amazon River. Born in Peru, the Amazon river is the largest in the world and before flowing into the Atlantic Ocean runs a distance of 5890 km, of which 2969 km runs in the Peruvian territory. In recognition of its importance, the Amazon has been declared one of the “Seven Wonders of Nature”, as can be seen on the following URL: <http://nature.n7w.com/?lang=es>

Regarding the “Amazon Cooperation Treaty Organization”, it should be noted that its main purpose is to promote the harmonious development of the Amazon while incorporating the countries’ Amazonian territories to their respective national economies, an essential condition for reconciling economic growth with environmental preservation.

The peruvian Amazon region comprises 61% of the total territory of Peru. The Amazon territory’s importance for Peru is reflected in the various international cooperation programs such as PNUMA, in the lively Peru’s participation in international environmental forums, and the permanent measures of the government of Peru in favor of sustainable development in the region Amazon trough 36 natural protected areas and all the development programs with social inclusion of its population.

GAC Early Warning – Submittal Amazon-BR-PE-58086

Also, in Peru one of our Regions has the Amazon name. For more information you can visit the following web page: <http://www.regionamazonas.gob.pe/sede/>

Further Note from Brazil

The principle of protection of geographic names that refer to regions that encompass peoples, communities, historic heritages and traditional social networks whose public interest could be affected by the assignment, to private entities, of gTLDs that directly refer to those spaces, is hereby registered with reference to the denomination in English of the Amazon region, but should not be limited to it. Rather, it shall be, in name of the public interest, applied by Brazil to possible future or existing applications in other languages, including IDN applications.

INFORMATION FOR APPLICANTS

About GAC Early Warning

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs or of a formal objection at a later stage in the process. Refer to section 1.1.2.4 of the Applicant Guidebook (<http://newgtlds.icann.org/en/applicants/agb>) for more information on GAC Early Warning.

Instructions if you receive the Early Warning

ICANN strongly encourages you work with relevant parties as soon as possible to address the concerns voiced in the GAC Early Warning.

Asking questions about your GAC Early Warning

If you have questions or need clarification about your GAC Early Warning, please contact gacearlywarning@gac.icann.org. As highlighted above, ICANN strongly encourages you to contact gacearlywarning@gac.icann.org as soon as practicable regarding the issues identified in the Early Warning.

Continuing with your application

If you choose to continue with the application, then the “Applicant’s Response” section below should be completed. In this section, you should notify the GAC of intended actions, including the expected completion date. This completed form should then be sent to gacearlywarning@gac.icann.org. If your remediation steps involve submitting requests for changes to your application, see the change request process at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.

GAC Early Warning – Submittal Amazon-BR-PE-58086

In the absence of a response, ICANN will continue to process the application as submitted.

Withdrawing your application

If you choose to withdraw your application within the 21-day window to be eligible for a refund of 80% of the evaluation fee (USD 148,000), please follow the withdrawal process published at <http://newgtlds.icann.org/en/applicants/customer-service/withdrawal-refund>. Note that an application can still be withdrawn after the 21-day time period; however, the available refund amount is reduced. See section 1.5 of the Applicant Guidebook.

For questions please contact: gacearlywarning@gac.icann.org

Applicant Response:

EXHIBIT C-023



International Chamber of Commerce

The world business organization

International Centre for Expertise Centre international d'expertise

NEW GENERIC TOP-LEVEL DOMAIN NAMES (“gTLD”) DISPUTE RESOLUTION PROCEDURE

OBJECTION FORM TO BE COMPLETED BY THE OBJECTOR

- *Objections to several Applications or Objections based on more than one ground must be filed separately*
- *Form must be filed in English and submitted by email to expertise@iccwbo.org*
- *The substantive part is limited to 5000 words or 20 pages, whichever is less*

Disclaimer: *This form is the template to be used by Objectors who wish to file an Objection. Objectors must review carefully the Procedural Documents listed below. This form may not be published or used for any purpose other than the proceedings pursuant to the New GTLD Dispute Resolution Procedure from ICANN administered by the ICC International Centre for Expertise (“Centre”).*

References to use for the Procedural Documents

Name	Abbreviation
Rules for Expertise of the ICC	“Rules”
Appendix III to the ICC Expertise Rules, Schedule of expertise costs for proceedings under the new gTLD dispute resolution procedure	“Appendix III”
ICC Practice Note on the Administration of Cases	“ICC Practice Note”
Attachment to Module 3 - New gTLD Dispute Resolution Procedure	“Procedure”
Module 3 of the gTLD Applicant Guidebook	“Guidebook”

ICC International Centre for ADR Centre international d'ADR de la CCI
 38 Cours Albert 1er, 75008 Paris, France
 Tel +33 (0)1 49 53 30 52 Fax +33 (0)1 49 53 30 49
 E-mail expertise@iccwbo.org Website www.iccexpertise.org

Identification of the Parties, their Representatives and related entities

Objector

Name	Prof. Alain Pellet, Independent Objector
Contact	
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	
Email	Contact Information Redacted

Objector's Representative(s)

Name	Ms Héloïse Bajer-Pellet
Contact	
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Name	Mr. Daniel Müller
Contact	
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Name	Mr. Phon van den Biesen
Contact	
Address	De Groene Bocht, Keizersgracht 253
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Name	Mr. Sam Wordsworth
Contact	
Address	24 Lincoln's Inn Fields
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Applicant

Name	Amazon EU S.à.r.l.
Contact	Ms. Lorna Jean Gradden
Address	Contact Information Redacted
City, Country	Contact Information Redacted
Telephone	Contact Information Redacted
Email	Contact Information Redacted

Other Relevant Entities

Name	-
Address	-
City, Country	-
Telephone	-
Email	-

Add separate tables for any additional relevant related entity

Disputed gTLD

gTLD Objector objects to [.example]

Name	.Amazon (Application ID: 1-1315-58086)
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If there is more than one gTLD you wish to object to, file separate Objections.

Objection

What is the ground for the Objection (Article 3.2.1 of the Guidebook and Article 2 of the Procedure)

Limited Public Interest Objection: the applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

or

Community Objection: there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

Check one of the two boxes as appropriate. If the Objection concerns more than one ground, file a separate Objection.

Objector's Standing to object (Article 3.2.2 of the Guidebook and Article 8 of the Procedure)

(Statement of the Objector's basis for standing to object, that is, why the Objector believes it meets the requirements to object.)

In accordance with Article 3.2.5 of the Guidebook, the Independent Objector (IO) is granted standing to file Community Objections “notwithstanding the regular standing requirements for such objections”. He is acting in the best interests of the public who use the global Internet and initiates and prosecutes the present objection in the public interest.

The Guidebook further states that “[i]n light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.” Comments in opposition to the Application of Amazon S.à.r.l. for the gTLD .Amazon have been made in the public sphere. The most important comments have been made by the governments of Peru and Brazil through a GAC Early Warning.¹

The Guidebook does not require that comments in opposition be made through ICANN's public comment mechanisms detailed under Article 1.1.2.3 of the Guidebook. It is only necessary that a comment has been made “in the public sphere”. Peru's and Brazil's GAC Early Warning clearly satisfies this requirement. A GAC Early Warning is not materially different from other public comments and governments “may elect to use [the] comment mechanism ..., in addition to or as an alternative to the GAC Early Warning procedure.” (Article 1.1.2.3) An Early Warning “typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities” (Article 1.1.2.4). It does not as such constitute a formal objection and is far from constituting a GAC Advice that needs to be decided by consensus between GAC members (Article 3.1). The IO's reliance on GAC Early Warnings does therefore neither prejudice nor duplicate the work and mission of GAC. Such Early Warnings are, like any other comments in the public sphere, elements, which can be taken into account in order to assess the necessity of an objection. In addition, if in principle an Early Warning can be issued for any reason, the Guidebook explains in footnote 1 at p. 1-8:

“While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that ‘purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)’ ...”

¹ <https://gacweb.icann.org/download/attachments/22938690/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000>.

In other words, governments could consider that strings raise sensitivity if they focus or target a particular community. It would be odd if the IO, acting in the best interests of the public who use the global Internet, could not rely on such indications in the event a community objection is warranted.

In addition, comments in opposition to Amazon's Application for .Amazon have also been expressed by individuals.²

According to Article 3.2.5 of the Guidebook "the IO must be and remain independent and unaffiliated with any of the gTLD applicants". The IO reassures that he has no link with any of the Applicants having applied for gTLD during the current Program. This is equally true for all his legal representatives. The IO considers himself to be impartial and independent as required by the Guidebook; he confirms that he is acting in no other interest but the best interests of the public who use the global Internet.

In accordance with the principle of full transparency he is fully committed to, the IO wishes to put on the record that he has acted as counsel for the Government of Peru in the *Maritime Dispute (Peru v. Chile)* pending before the International Court of Justice (The Hague, Netherlands). For the sake of completeness, the IO also discloses that he has acted as an adviser for the Government of Peru in a dispute with Ecuador, another State in the Amazon region, concerning their common boundary. These professional relationship between the IO and one of the governments having submitted a GAC Early Warning does not call into question the IO's independence. Neither Peru nor Brazil or any other interested State is a party to the present dispute, or has applied for the .Amazon gTLD or any other gTLD within the present Program. The IO, as a party to the present proceedings, is not representing the interests of his former clients. He is acting in the sole interests of the public who use the global Internet. The relationship between the IO and a State has nothing to do with his decision to object or not.

² <http://mm.icann.org/pipermail/newgtldrg/2013-January/000213.html>;
<http://mm.icann.org/pipermail/newgtldrg/2013-February/000287.html>.

Description of the basis for the Objection (Article 3.3.1 of the Guidebook and Article 8 of the Procedure) - Factual and Legal Grounds

(Description of the basis for the Objection, including: a statement giving the specific ground upon which the Objection is being filed, and a detailed explanation of the validity of the Objection and why it should be upheld.)

1. The Application for .Amazon has been submitted by Amazon EU S.à.r.l. According to the information supplied, the Applicant is indirectly controlled by Amazon.com, Inc. through Amazon Europe Holding Technologies S.C.S. and Amazon Europe Holdings, Inc. Amazon.com Inc. is an American company, which with “other sellers offer millions of unique new, refurbished and used items in categories such as Books; Movies, Music & Games; Digital Downloads; Electronics & Computers; Home & Garden; Toys, Kids & Baby; Grocery; Apparel, Shoes & Jewelry; Health & Beauty; Sports & Outdoors; and Tools, Auto & Industrial.”³

2. The stated purpose of the .Amazon gTLD is “to provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation.”⁴ The Applicant has pointed out that “[d]omains in the .AMAZON registry will be provisioned to support the business goals of Amazon”,⁵ and that “Amazon and its subsidiaries will be the only eligible registrants”.⁶ Therefore, if the application were positively received by ICANN, it would become a closed brand gTLD.

3. On 20 November 2012, the Brazilian and Peruvian GAC members have issued a GAC Early Warning “[o]n behalf of the Governments of Brazil and Peru ... express[ing] [their] concern regarding the application for the generic top-level domain (gTLD) ‘.AMAZON’ by the private company ‘Amazon EU S.à.r.l.’, a subsidiary of ‘Amazon.com Inc.’”⁷ Both GAC members have pointed to the sensitivity of the Application and “with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also of the Government of Argentina, [requested] that the ‘.AMAZON’ gTLD application be included in the GAC early warning process.”⁸ Other comments in opposition have been posted on the list of the At-Large New gTLD Review Group.⁹

4. The IO communicated to the Applicant its preliminary assessment concerning the .Amazon Application by his Initial Notice on 23 January 2013. Amazon.com has responded summarily to this Initial Notice on 6 February 2013. After that exchange of views, the IO

³ Application, point 18 (a).

⁴ *Ibid.*

⁵ *Ibid.*, point 18 (c).

⁶ *Ibid.*, point 29.1.

⁷ See fn 1 above.

⁸ *Ibid.*

⁹ See fn 2 above.

decided to file the present objection against the Application for .Amazon on the ground of the “Community objection” provided by Article 3.2.1 of the Guidebook.

1. Statement of the Ground upon Which the Objection is being Filed

5. According to the Guidebook, a “community objection” is warranted when “there is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”

6. In order to evaluate the merits of a “community objection” the Expert Panel shall “use appropriate general principles (standards)” as set out in Section 3.5 of the Guidebook, as well as “other relevant rules of international law in connection with the standards.”

Article 3.5.4 sets out four tests which need to be met cumulatively for a “Community objection” to prevail:

- The community invoked by the objector is a clearly delineated community (Community test);
- Community opposition to the application is substantial (Substantial opposition test);
- There is a strong association between the community invoked and the applied-for gTLD string (Targeting test);
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted (Detriment test).

2. Detailed Explanation of the Validity of the Objection and Why the Objection should be Upheld

7. The four tests of a community objection provided for in the Guidebook are met in the present case. The Application for .Amazon encounters substantial opposition from a significant portion of the community to which the string may be explicitly and implicitly targeted and is likely to create material detriment to the rights or legitimate interests of that community. The applied-for gTLD string .Amazon targets, at least implicitly, the community of the Amazon region in South America (a), which constitutes a clearly delineated community in the sense of the Guidebook (b). The opposition against the Application is substantial (c) and the Application

creates a likelihood of material detriment to the rights and legitimate interests of the Amazon community (d).

a. *Targeting Test*

8. A “community objection” is warranted in the event of a strong association between the applied-for gTLD string and a specific community. In other words, the string used is or could be clearly linked to a community the rights and interests of which are at stake. This link can be explicit or implicit.

9. Amazon’s Application has not been framed as a community-based TLD. It explicitly targets only Amazon and its subsidiaries as commercial group acting under the same brand.

10. However, this does not exclude, that the applied-for string can be implicitly linked to a specific community different from Amazon, Inc. and its subsidiaries. The 2007 ICANN Final Report on the Introduction of New Generic Top-Level Domains indicates that “implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use”.¹⁰ The Guidebook confirms that a relevant factor to be taken into account in order to evaluate the Targeting test is also the possible “[a]ssociations by the public”. The test is not limited to the assumptions and the intended use proposed in the Application, but is primarily concerned with the expectations of the average Internet users and their perception of and associations with the string. Useful elements for the determination if an applied-for gTLD string targets a community are the identity of the string and the usual denomination or abbreviation used by and for a community, or whether the string clearly describes the community and its members without including elements outside the community.

11. Despite the fact that the string “Amazon” is part of the name of the Applicant’s parent company (which is indeed “Amazon.com”, a domain name the company owns) and is used by the company in order to describe some kind of community associated with the business firm (also designated by the company officers as “Amazonians”¹¹), the string “Amazon” targets also the South-American region with the same English name around the Amazon River. The identity of the company’s business name and brand and the English name of the South-American River is far from being unintentional. The company itself pointed to the fact that “Amazon.com’s name

¹⁰ Implementation Guideline P, <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm> (‘2007 ICANN Final Report’).

¹¹ See 2011 Annual Report, p. 3 (Letter to Shareholders) (“Amazonians are leaning into the future, with radical and transformational innovations that create value for thousands of authors, entrepreneurs, and developers.”) (available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTM0NDcwfENoaWxkSUQ9LTF8VHlwZT0z&t=1>).

pays homage to the Amazon River. Just as the Amazon River is more than eight times the size of the next largest river in the world, Amazon.com's catalogue is more than eight times the size of the largest physical bookstore."¹² Therefore, according to the Applicant's parent companies own assessment, the string "Amazon" is linked to the Amazon River and its region.

12. This is corroborated by the consistent use of the term "Amazon" in order to describe and to characterise the Amazon region and its community. The 1978 Treaty for Amazonian Co-operation, concluded by Brazil, Bolivia, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela in 1978, uses consistently the term "Amazon region".¹³ UNESCO has also used the term "Amazon" in order to describe the region¹⁴ parts of which have been included in 2000 and 2003 into the World Heritage List under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage¹⁵ to which 190 States are parties. In 2003, the World Heritage Committee approved the inscription of several important and outreaching sites of the Amazon region under the common name of "Central Amazon Conservation Complex".¹⁶ Furthermore, the WWF also uses the denomination "Amazon" in order to refer to the region in South-America,¹⁷ to which it pays particular attention. It is therefore plain that in the perception of the public, the string "Amazon" is clearly linked to the Amazon region and the community it delineates.

13. According to the Applicants own statements and the general use of the term by the public, there is a strong association between the Amazon region and its community and the applied-for gTLD string.

b. Community Test

14. The Guidebook does not provide a clear definition of the term "community". It merely recalls that an objector "must prove that the community expressing opposition can be regarded as a clearly delineated community" (Article 3.5.4) and refers to a list of non-limited "factors"

¹² Press Release, "Shopping for Books on the Internet Isn't Just for Tech Buyers Anymore; Amazon.com, World's Largest Bookseller, Tracks Who's Buying Online", 14 June 1996, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643033. See also Press Releases, "Web Sites Big and Small Participating - From Film Critics to Chefs to Puppies", 18 July 1996, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643390; "Amazon.com announces 1996 Bestsellers", 9 January 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643032;

"Amazon.com announces new pricing and twice as many titles", 17 March 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643025; "Amazon.com announces dramatically lower prices!", 10 June 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle_Print&ID=502858.
¹³ Paragraphs 3, 6 and 8 of the Preamble, Articles VII and XIV, United Nations, *Treaty Series*, Vol. 1202, No. I-19194, p. 71. Other provisions use the adjective form "Amazonian".

¹⁴ See <http://whc.unesco.org/en/list/998>. See also http://whc.unesco.org/archive/advisory_body_evaluation/998.pdf.

¹⁵ United Nations, *Treaty Series*, Vol. 1037, No. I-15511, p. 152.

¹⁶ WHC-03/27.COM/24, 10 December 2003, p. 105, available online: <http://whc.unesco.org/archive/2003/whc03-27com-24e.pdf>.

¹⁷ <http://worldwildlife.org/places/amazon>.

that the Expert Panel could use in order to check if this test is met. It includes, for example, the recognition at a local/global level, the level of formal boundaries, the length of existence, the global distribution, or the size of the community.

15. The term “community” refers to a group of people living in the same place or having a particular characteristic in common.¹⁸ The distinctive element of a community is therefore the commonality of certain characteristics. The individuals or entities composing a community can share a common territory, region or place of residence, a common language, a common religion, a common activity or sector of activity, or other characteristics, values, interests or goals which distinguish them from others.

16. The Guidebook does not determine which kind of common characteristics, values or goals are relevant for the issue whether a given group constitutes a community, nor does it put any limits in that regard. The 2007 ICANN Final Report confirms that “community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community.”¹⁹

17. One of the relevant criteria is whether the group of individuals or entities can be clearly delineated from others and whether members of the “community [are] delineated from Internet users in general”²⁰ with reference to their common characteristics and particularities. The recognition of the community among its members, on the one hand, and by the general public at a global or a local level, on the other hand, depending on its actual distribution, is in that regard a useful factor to be taken into account.

18. As described by the World Wildlife Fund (WWF), “the Amazon is a vast region that spans across eight rapidly developing countries: Brazil, Bolivia, Peru, Ecuador, Colombia, Venezuela, Guyana, Suriname and French Guiana, an overseas territory of France. The landscape contains: one in ten known species on Earth, 1.4 billion acres of dense forests, half of the planet’s remaining tropical forests, 4,100 miles of winding rivers, 2.6 million square miles in the Amazon basin, about 40 percent of South America. There is a clear link between the health of the Amazon and the health of the planet. The rain forests, which contain 90-140 billion metric tons of carbon, help stabilize local and global climate. Deforestation may release significant amounts of this carbon, which could have catastrophic consequences around the world.”²¹ It further points out that “[m]ore than 30 million people from including 350 indigenous and ethnic groups, live in the Amazon and depend on nature for agriculture, clothing and

¹⁸ See <http://oxforddictionaries.com/definition/english/community>.

¹⁹ Implementation Guideline P, <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>.

²⁰ Evaluation question No 20 of the Guidebook, Attachment to Module 2.

²¹ <http://worldwildlife.org/places/amazon>.

traditional medicines. Most live in large urban centers, but all residents rely on the Amazon's natural bounty for food, shelter and livelihoods."²²

19. The Amazon community can be clearly delineated from the general public by the specific and strong link it has with the Amazon region. The community does not only share the specific geographical region. It has more far-reaching common interests and common ties, including the economic development of the region, the respect of the environmental conditions of the region, the preservation of the Amazon indigenous culture(s) and the conservation of ethnological and archeological wealth of the region. These common interests and needs have been recognized and are protected by the States which share the Amazon region as evidenced in the 1978 Treaty for Amazonian Co-operation.²³ The States concerned share the common understanding of the specificities of the Amazon community and its importance for their respective development. They have put into place "a process of cooperation which shall benefit their respective countries and the Amazon region as a whole."²⁴ They have committed themselves to "[a]chieve sustainable development in the Amazon region reconciling use, protection and conservation of its resources, with equitable conditions that ensure integral sustainable development, effective presence of the State in its different levels of Government and Amazonian populations that fully exercise their rights and obligations in the framework of the national laws in force and international agreements."²⁵ The most interested States, sharing the territory of the Amazon region and the Amazon community, have thus recognized the specificities of the region, the interests of the community and their particular needs. Their cooperation in the region and for its benefits shows that the community in its entirety is clearly recognized as a whole, irrespective its division between different sovereign States.

20. In view of the broad elements of definition mentioned, the Amazon community composed of those living in the geographical region and having strong links to the Amazon region, including and recognized by governments which share the territory, constitutes a clearly delineated community for the present purposes. It can be distinguished from other Internet users easily and has been recognized at the international and regional levels.

²² *Ibid.*

²³ See fn 13 above.

²⁴ *Ibid.*

²⁵ Amazon Cooperation Treaty Organisation, "Amazonian Strategic Cooperation Agenda", November 2010, p. 15.

c. *Substantial Opposition Test*

21. According to the Guidebook, a “Community objection” is warranted in the event of “substantial opposition within the community”. This test and its scope of application depend largely on the circumstances and on the context of each case.

22. The Guidebook includes several factors, which the Expert Panel could use in order to determine if such “substantial opposition” with regard to an application exists. These factors include the number of expressions of opposition relative to the composition of the community, the representative nature of entities expressing opposition, the level of recognized stature or weight among sources of opposition, distribution or diversity among sources of expressions of opposition (regional, subsectors of community, leadership of community, membership of community), historical defense of the community in other contexts, and costs incurred by the objector in expressing opposition, including other channels the objector may have used to convey opposition.

23. This list of factors is not limitative. It focuses on the number of oppositions expressed or the representative nature of those having expressed opposition, i.e., the part of the community represented by those having expressed opposition and its significance with regard to the community in its entirety.

24. A mere numerical criterion was certainly not the intent of the authors of the Guidebook and the Expert Panel is not limited to a mere numerical analysis balancing the number of those having expressed opposition or are deemed to be represented by those having expressed opposition, on the one hand, and the overall size of the concerned community, on the other hand. The word “substantial” cannot be defined as limited in that way. If it can certainly refer to an important size or number, it is also used for something of “considerable importance” or “considerable ... worth”²⁶. It is therefore not only the number of opposition which should be taken into account, but also the material content of comments and oppositions expressed by those concerned, and in particular, the importance of the rights and interests at stake. Particular importance should be paid in that regard to comments made by governments through the GAC Early Warning Procedure.

25. The very fact that the IO was granted the possibility to file “Community Objections” confirms the necessary broad meaning of the term “substantial opposition”. Indeed, as he has pointed out²⁷, the IO would not file a formal “Community objection” if a single established institution is better placed to represent the community concerned. The role of the IO is to

²⁶ See <http://oxforddictionaries.com/definition/english/substantial>.

²⁷ See, e.g., <http://www.independent-objector-newglds.org/english-version/the-independent-objector-s-comments-on-controversial-applications/africa-general-comment/>.

defend the public interest and to act on behalf of the public for the defense of rights and interests of communities that lack an institution which obviously could represent the community in the present context. Article 3.2.5 of the Guidebook also indicates:

“In light of the public interest goal noted above, the IO shall not object to an application unless *at least one comment* in opposition to the application is made in the public sphere.” (emphasis added)

26. This shows that even a single comment can trigger a “Community objection” if it raises issues in relation to rights and interests of a community that can be associated with the applied-for gTLD.

27. The .Amazon Application has triggered only a small number of comments in the public sphere. This may certainly be explained by the limited awareness of members of the community of ICANN’s New gTLDs Program. This, in itself, should and cannot be used in order to disqualify a community objection from being upheld. The IO considers that it is an essential part of his mission to protect those users of the Internet who are less aware of the very existence and the impact of the ICANN Program on their rights and interests.

28. Particular attention needs to be paid to the Early Warning issued by the Brazilian and the Peruvian GAC Members²⁸. Brazil shares more than half of the Amazon region. Even if it cannot be identified as the established institution representing the community in its entirety, which is divided between several States, it represents and protects the rights and interests of a substantial part of the Amazon region and the Amazon community within its territory. Peru, on the other hand, is also particularly interested in the protection and the promotion of the interests and rights of the Amazon community. As the Peruvian GAC member has pointed out, the “[P]eruvian Amazon region comprises 61% of the total territory of Peru”.²⁹ It constitutes therefore a particularly important concern to the country.

29. Moreover, the opposition expressed by Brazil and Peru has been fully endorsed by Bolivia, Ecuador and Guyana.³⁰ These States share parts of the Amazon region and are State parties to the 1978 Treaty for Amazonian Co-operation.³¹ This means that five out of eight State parties to the aforementioned Treaty, including some of the most interested ones, have expressed their opposition to the .Amazon Application. This is highly significant given the goals and interests of that international instrument aimed at protecting and developing harmoniously

²⁸ <https://gacweb.icann.org/download/attachments/22938690/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000>.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ See fn 13 above.

the Amazon region, taking full account of the interests and needs of the Amazon community. Argentina has also endorsed the point of view of the Amazonian States.³²

30. On the other hand, as has been noted in the GAC Early Warning, “the application for the ‘.AMAZON’ gTLD has not received support from the governments of the countries in which the Amazon region is located.”³³

31. For these reasons, it is submitted that the opposition against the .Amazon Application is substantial.

d. Detriment Test

32. Finally, the Application of Amazon EU S.à.r.l. for the .AMAZON gTLD creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the Amazon community and to the public more generally.

33. The Guidebook includes some guidance with regard to the Detriment test, which needs to be addressed with regard to the specific elements and particularities of each application, on the one hand, and the interests and rights of the community to which the applied-for gTLD can be targeted, on the other hand. The material detriment may result from harm to reputation of the community, interference with the community’s core activities, economic or other concrete damage to the community or significant portions of the community. In order to assess the likelihood of such harm or damage, the Expert panel can take into account a variety of factors, including the dependence of the community on the DNS for its core activities, the intended use of the gTLD as evidenced in the Application, but also the importance of the rights and interests likely to be harmed for the community targeted and for the public more generally.

34. The Applicant Guidebook puts particular attention to the issue whether the Applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user and community interests. In such a case, it is more than likely that the rights and interests of the community will be detrimentally affected by operation of the gTLD as projected by the applicant.

35. The Application filed by Amazon EU S.à.r.l. is aimed exclusively at providing “a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its

³² <https://gacweb.icann.org/download/attachments/22938690/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000>.

³³ *Ibid.*

brand and reputation.”³⁴ The Applicant has pointed out that “Amazon and its subsidiaries will be the only eligible registrants”.³⁵ Therefore, if the application were positively received by ICANN, it would become a closed brand gTLD. It results from the Application that the Applicant and its Registry do not intent to operate the .AMAZON gTLD taking into account the particular needs and interests of the Amazon community which is implicitly targeted by the string. Domain names in the gTLD “will not be offered to third parties”,³⁶ including governments or members of the targeted community. The Applicant has made clear that “all domain names must be used to support the business goals of Amazon”,³⁷ defined and subject to change by the company alone.

36. This risk of exclusive misappropriation has been clearly expressed by the Peruvian and Brazilian members of GAC. They underline in the Early Warning that “[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region.”³⁸ The confiscation of the entire name space within the .Amazon TLD by a singly corporate group for its own business goals deprives the people or entities being part of the Amazon community and owning its cultural heritage to obtain a .Amazon domain name and to benefit from the reputation linked to the very name of their community and their region.

37. What is more, such an exclusive misappropriation of a community name will have the necessary consequence that the still existing link between the term “Amazon” and the region it refers to will progressively disappear with far reaching consequences for the region and its population. The users of the global Internet will probably link the string exclusively to the Applicant and its corporate entities. The awareness of the global Internet user of the very existence of the region and its utmost importance for the international community are likely to suffer, and cause harm to the core issues concerning the Amazon region, i.e., the protection of its unique environment, including the Amazon rainforest and the unique variety of species in the region, as well as the harmonious economic development of the community. These issues are not only common to the Amazon community. As the WWF points out, “[t]here is a clear link between the health of the Amazon and the health of the planet.”³⁹

³⁴ Application, point 18 (a).

³⁵ *Ibid.*, point 29.1.

³⁶ *Ibid.*, point 22.

³⁷ *Ibid.*, point 29.2.1.

³⁸ <https://gacweb.icann.org/download/attachments/22938690/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000>.

³⁹ <http://worldwildlife.org/places/amazon>.

38. Consequently, the launch of a closed brand gTLD .Amazon as foreseen by the Applicant is very likely to interfere with the legitimate interests of and to cause material harm to the Amazon community and the the public who use the global Internet.

Remedies Requested

(Indicate the remedies requested.)

The Independent Objector requests the Expert panel to hold that the present objection is valid. Therefore, the Expert panel should uphold the present Objection against the .Amazon Application.

In addition, the Independent Objector requests that its advance payments of costs shall be refunded in accordance with Article 14 (e) of the Procedure (Attachment to Module 3 - New gTLD Dispute Resolution Procedure).

Communication (Article 6(a) of the Procedure and Article 1 of the ICC Practice Note)

A copy of this Objection is/was transmitted to the Applicant on 13 March 2013 by e-mail to the following address: lorna.gradden.am@valideus.com

A copy of this Objection is/was transmitted to ICANN on 13 March 2013 by e-mail to the following address: newgtld@icann.org

Filing Fee (Article 1 Appendix III to the Rules and Article 8(c) of the Procedure)

In accordance with Article 3.2.5 of the Guidebook, ICANN is responsible to provide the funding on behalf of the Independent Objector.

The Independent Objector hereby explicitly grants ICC the right to contact ICANN directly with regard to any payment matters for the Objections.

Description of the Annexes filed with the Objection (Article 8(b) of the Procedure)

List and Provide description of any annex filed.

- Treaty for Amazonian Co-operation, Brasflia, 3 July 1978, United Nations, *Treaty Series*, Vol. 1202, No. I-19194, p. 71 (Annex 1)
- Amazon Press Releases (Annex 2)
 - “Shopping for Books on the Internet Isn’t Just for Tech Buyers Anymore; Amazon.com, World’s Largest Bookseller, Tracks Who’s Buying Online”, 14 June 1996, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643033

- "Web Sites Big and Small Participating - From Film Critics to Chefs to Puppies", 18 July 1996, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643390
- "Amazon.com announces 1996 Bestsellers", 9 January 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643032
- "Amazon.com announces new pricing and twice as many titles", 17 March 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=97664&p=irol-newsArticle_pf&ID=643025
- "Amazon.com announces dramatically lower prices!", 10 June 1997, http://phx.corporate-ir.net/phoenix.zhtml?c=176060&p=irol-newsArticle_Print&ID=502858

Date: 12 March 2013

Signature: _____

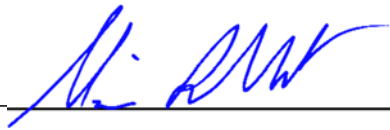
A handwritten signature in blue ink, appearing to be 'M. D. W.', written over a horizontal line.

EXHIBIT C-024

New gTLD Program
Initial Evaluation Report
 Report Date: 22 March 2013

Application ID:	1-1318-83995
Applied for String:	アマゾン
Priority Number:	24
Applicant Name:	Amazon EU S.à r.l.

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
<p>Congratulations!</p> <p>Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.</p>	

Background Screening Summary

Background Screening	Eligible
<p>Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.</p>	

Panel Summary

String Similarity	Pass - No Contention																								
<p>The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.</p>																									
DNS Stability	Pass																								
<p>The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.</p>																									
Geographic Names	Not a Geographic Name - Pass																								
<p>The Geographic Names Panel has determined that your application does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.</p>																									
Registry Services	Pass																								
<p>The Registry Services Panel has determined that the proposed registry services do not require further review.</p>																									
Technical & Operational Capability	Pass																								
<p>The Technical & Operational Capability Panel determined that:</p> <p>Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Question</th> <th style="text-align: right;">Score</th> </tr> </thead> <tbody> <tr><td>24: SRS</td><td style="text-align: right;">1</td></tr> <tr><td>25: EPP</td><td style="text-align: right;">1</td></tr> <tr><td>26: Whois</td><td style="text-align: right;">2</td></tr> <tr><td>27: Registration Life Cycle</td><td style="text-align: right;">1</td></tr> <tr><td>28: Abuse Prevention and Mitigation</td><td style="text-align: right;">2</td></tr> <tr><td>29: Rights Protection Mechanism</td><td style="text-align: right;">2</td></tr> <tr><td>30: Security Policy</td><td style="text-align: right;">2</td></tr> <tr><td>31: Technical Overview of Registry</td><td style="text-align: right;">1</td></tr> <tr><td>32: Architecture</td><td style="text-align: right;">2</td></tr> <tr><td>33: Database Capabilities</td><td style="text-align: right;">2</td></tr> <tr><td>34: Geographic Diversity</td><td style="text-align: right;">2</td></tr> </tbody> </table>		Question	Score	24: SRS	1	25: EPP	1	26: Whois	2	27: Registration Life Cycle	1	28: Abuse Prevention and Mitigation	2	29: Rights Protection Mechanism	2	30: Security Policy	2	31: Technical Overview of Registry	1	32: Architecture	2	33: Database Capabilities	2	34: Geographic Diversity	2
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36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	30
Minimum Required Total Score to Pass*	22

**No zero score allowed except on optional Q44*

Financial Capability

Pass

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	2
49: Contingency Planning	2
50: Funding Criteria Registry Functions	3
Total	11
Minimum Required Total Score to Pass**	8

***No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs marketplace at <newgtlds.icann.org>.

EXHIBIT C-025

New gTLD Program
Initial Evaluation Report
 Report Date: 05 April 2013

Application ID:	1-1318-5591
Applied for String:	亚马逊
Priority Number:	64
Applicant Name:	Amazon EU S.à r.l.

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
<p>Congratulations!</p> <p>Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.</p>	

Background Screening Summary

Background Screening	Eligible
<p>Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.</p>	

Panel Summary

String Similarity	Pass - No Contention																								
<p>The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.</p>																									
DNS Stability	Pass																								
<p>The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.</p>																									
Geographic Names	Not a Geographic Name - Pass																								
<p>The Geographic Names Panel has determined that your application does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.</p>																									
Registry Services	Pass																								
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39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	30
Minimum Required Total Score to Pass*	22

**No zero score allowed except on optional Q44*

Financial Capability

Pass

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	2
49: Contingency Planning	2
50: Funding Criteria Registry Functions	3
Total	11
Minimum Required Total Score to Pass**	8

***No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs marketplace at <newgtlds.icann.org>.

EXHIBIT C-026



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john.jeffrey@icann.org
chris.lahatte@icann.org

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Ombudsman
ICANN

Nick Bolter
Partner in Charge
Contact Information Redacted

Attention John Jeffries / Chris LaHatte

6 April 2013

Your ref 1-1315-58086

Our ref GD\NCB\307695\4886

Dear Sirs

Independent Objector's Objections to Amazon E.U. S.à.r.l gTLD Applications 1-1315-58086, 1-1318-5591 and 1-1318-83995

We act for Amazon EU S.à.r.l., who has instructed us in relation to the above. We write to request ICANN and the ICC set aside the Independent Objector's ("IO") objections.

Our client recognises the IO's longstanding career as a respected advocate, however, even at this very early stage of consideration, it is apparent that the office of the IO exhibits a Conflict of Interest within the meaning of ICANN's Conflict of Interest Policy. In short, M. Pellet currently represents the government of Peru in proceedings before the International Courts of Justice ("ICJ"), and has numerous connections to the government of Peru and to Brazil. ICANN must set aside the IO objection given this evident conflict of interest, and if deemed necessary, appoint another IO without such conflict of interest.¹

1. M. Pellet has long-standing, and on-going, relationships with Peru and Brazil, whose governments have the most significant interests in his objections

M. Pellet's objections are based, in full, on comments made in the single Early Warning submitted by the Governments of Peru and Brazil in relation to application 1-1315-58086 (for *.amazon*), which he has extended to cover both the Japanese and Chinese IDN variations of the term, despite the lack of comments filed against these applications even by the Japanese and Chinese governments. We believe this is due to M. Pellet's on-going representation of one of the Early Warning signatories of Brazil and Peru, and his self-proclaimed "special links" to the region.

M. Pellet himself tries to dismiss any question of conflict in his official objections, after failing to note it in his original letter to our client, and after our client brought this matter to ICANN's attention. Despite M. Pellet's dismissal of the matter, we do not believe that a conflict can only occur when the ties are between

¹ Our client is concerned, however, that at this late stage appointing another IO who has not reviewed all gTLD applications will be prejudicial to Our client in terms of fairness and cause unfair delay to Our client's applications.
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an *applicant* and the IO. Conflicts indeed can occur where an objection is being filed in furtherance of the interests of a potential community that has ties with the IO. We are unaware of any conflicts rules where a judge or arbitrator must take into account only the potential conflicts of *one* party to the proceeding and can ignore the other.

In relation to Peru, it appears that M. Pellet currently represents the Peruvian government, and has since 2008. The IO states on page 6 of each of his objections that he "has acted" for Peru, and refers to his "former" clients, yet his website makes it clear that his representation of the Peruvian government, which included oral arguments at the ICJ as recently as 14 December 2012, is ongoing. See <http://www.alainpellet.eu/Pages/CIJ.aspx>, <http://www.alainpellet.eu/Pages/Affaires.aspx> and <http://www.alainpellet.eu/Documents/PELLET%20-%202007%20-%20DI%20entre%20souverainet%C3%A9%20et%20CI.pdf>.

In addition, M. Pellet has also acted for two of the other governments identified as having an interest in halting Amazon's *.amazon* gTLD applications, namely the Government of Bolivia, in ICSID case ARB/07/28, and the Government of Argentina in a river dispute with Uruguay between 2006 and 2010. M. Pellet was also appointed as an arbitrator by Argentina in two disputes (ICSID ARB/04/16 and UNCITRAL (since suspended)).

Regarding Brazil, M. Pellet has publicly described his particular affection for this country in the following terms:

"Brésil, un pays qui m'est particulièrement cher pour de multiples raisons", from "Cours Général: Le droit international entre souveraineté et communauté internationale – La formation du droit international", *Anuário Brasileiro de Direito Internacional*, vol. II, 2007, pp. 12-74.

and,

"I may perhaps owe [the opportunity to deliver a UN lecture in honour of Brazilian jurist Gilberto Amado] also to my special links with the countries of Latin America, particularly Brazil, which conferred on me a few years ago, again in an unmerited gesture, a professorship honoris causa – the first I have ever received and a source of great pride to me!", from "'Human Rightism' and International Law", *Italian Yearbook of International Law*, 2000, pp. 3-16 (emphasis added). Of the nine previous Gilberto Amado lectures, six were delivered by Brazil's Ambassadors, Ministers or Governmental legal advisers.

We believe M. Pellet's ongoing connections to and "*special links*" with Brazil, Peru and the remainder of Latin America have influenced his decision-making, and his evaluation of competing arguments, and will, unavoidably, continue to do so long after those connections cease to be active. This is all the more so in a situation such as the gTLD dispute resolution process, where the lack of precedent requires the IO to rely on his own experience to determine how to proceed.

2. M. Pellet's conflict of interest explains why his objections regarding Amazon are uniquely inconsistent with what he has previously stated about the role of the IO

It is not possible, on the basis of the Applicant Guidebook alone, to reconcile the restraint formally adopted by the IO in relation to *.africa* (applications 1-1165-42560 and 1-1165-42560), *.persiangulf* (application ID: 1-2128-55439), *.gcc* (application 1-1936-21010) and *.islam* (application 1-2130-23450), where the IO clearly considered the grounds for a community objection to be made out, with the decision to file a series of community objections in relation to the much weaker case against *.amazon* (and its IDN counterparts, which were not even a part of any community's comments in the first instance).

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ICANN

In relation to the *.africa* applications, by way of example, the IO found that all four criteria for a community objection set out in 3.5.4 of the Applicant's Guidebook had been met. He even went so far as to say that "none of the arguments raised by DCA Trust has convinced the IO that an objection on the community ground is not warranted against their application".

Yet the IO consistently concluded that "it is the public policy of the IO not to make an objection when a single established institution representing and associated with the community having an interest in an objection can lodge such an objection directly". The role of the IO, using M. Pellet's own words, is that of a "safety net".

M. Pellet is treating applications inconsistently, in favour of Brazil and Peru, which only serves to underline the conflict of interest. For example, contrast the applications of *.amazon* and *.africa*:

- a. The finding against the *.africa* applicant on the first community objection test was based in part upon "Africa" appearing in one of the geographical lists (the UNESCO list), referred to in 2.2.1.4.2. of the Applicant's Guidebook.

By contrast, "Amazon" does not appear in any of the referenced lists, whether ISO 3166-1 under 2.2.1.4.2.1., a city name under 2.2.1.4.2.2., a sub-national place name (such as one listed in ISO 3166-2) under 2.2.1.4.2.3., or as a UNESCO region or "composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings", under 2.2.1.4.2.4.

- b. The finding against the *.africa* applicant on the second and third community objection tests relied on the fact that 17 Early Warnings had been issued by GAC Representatives from Africa, including the African Union Commission, which represents all African States.

By contrast, only a single Early Warning was submitted in relation to application 1-1315-58086 (*.amazon*), and none at all were filed in relation to application 1-1318-83995 or application 1-1318-5591. The single Early Warning that was submitted was submitted jointly by Peru and Brazil, in coordination with some of the Amazonas region nations, and not by the governments on behalf of the unified Amazon Cooperation Treaty Organization ("OCTA"), the body which the Early Warning itself lauds as "an international organisation which coordinates initiatives in the framework of the Amazon Cooperation Treaty [to which Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela are all signatories, and] which expedites the execution of its decisions through its Permanent Secretariat". It is at OCTA's Headquarters that Amazon has met with OCTA representatives (acting in that capacity), to discuss its gTLD applications.

Given that ICANN repeatedly invited public comment on the new gTLD applications, the lack of independent public comment from OCTA itself, and the failure of two of the OCTA governments to sign on to the Early Warning, is instructive. Indeed, the fact that Argentina, a GAC member which did not file its own Early Warning and did not make any public comment in its own name, is listed in Peru and Brazil's Early Warning is not pertinent to the enquiry: Argentina is not a member of OCTA and is located far from the Amazon region; therefore it has no possibility of being representative of any relevant community for these purposes.

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Despite the long-standing existence of the OCTA, the governments of the region have not themselves been able to present a unified opposition to the *.amazon* application within their own Early Warning.

- c. The findings against the *.africa*, *.persiangulf*, *.gcc* and *.islam* applicants on the fourth community objection test raise separate issues that are not germane to Amazon's applications.

Despite his findings that all four of the relevant tests merited a community objection in respect of *.africa*, *.persiangulf*, *.gcc* and *.islam*, the IO stated that he would decline to take any action, on the basis that in each case there was "a single established institution representing and associated with the community having an interest in an objection [who] can lodge such an objection directly" or, in the case of *.persiangulf*, he finds he should not file an objection because "it is open to the Arabian Gulf community to file an objection as well as the same community could have applied for a ".Arabiangulf" gTLD".

That exact consideration applies to Amazon's applications, in the form of OCTA.

Yet, when it came to alleged concerns raised by countries with whom M. Pellet has ongoing "*special links*", including those which are financial and professional, he uniquely came to the opposite conclusion and decided to file objections not just to the application the subject of the Early Warning, but to two others as well. These findings are despite the fact that OCTA could have filed an objection and could have applied for an ".amazon", ".amazonia" or ".amazonas" gTLD themselves.

The IO presents no separate evidence or claims that distinguish these cases in *any* way, and no justification for the disparate treatment can be made.

3. The appearance of a conflict of interest is damaging to ICANN, but can be rectified

If the IO's objections proceed, they will damage the integrity of the gTLD dispute resolution process. In particular, our client will be forced to publicly charge the IO with a conflict of interest through the objection process and possibly elsewhere, and members of the public who use the global Internet, whose interests alone the IO is to serve, will notice:

1. the close, significant and ongoing "*special links*", including financial and professional connections, the IO has with Peru, Brazil and Latin America;
2. the fact that neither Peru nor Brazil nor any of the other OCTA signatories applied for any new gTLD in any way related to the Amazon or the issues described as so important to the region in the Early Warning;
3. the fact that none of the OCTA signatories or the Amazon basin's biome have suffered from the existence of the domain name *amazon.com* since its registration nearly 20 years ago²;
4. the lack of submissions or public comments from any other OCTA signatories in relation to Amazon's *.amazon* applications;
5. the lack of submissions or public comments from members of the public who use the global Internet in relation to Amazon's *.amazon* applications;
6. the inconsistent approach of the IO in relation to comments raised by countries with whom he has "*special links*", compared with those with whom he has no such "*special links*"; and

² Not to mention numerous ccTLD domain name and trademark registrations for "AMAZON" as well as "AMAZON.COM" in the various OCTA member nations themselves.

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7. the IO alleging that one of the world's pre-eminent and most trusted online retailers could use domain names to "cause harm to the core issues concerning the Amazon region" and "the health of the planet".

As a result, a large proportion of the public and of other gTLD applicants will conclude that the IO is not acting as a "safety net" for the public but that he has filed these objections solely or predominantly to represent the interests of Peru and Brazil, so that they would not have to.

It is our conclusion that in order for the dispute resolution process to be seen to be impartial and transparent in this unique situation, ICANN must withdraw the IO's objections.

4. Concluding remarks

Whilst committed to ICANN's policy of transparency, Amazon intends to treat this correspondence as confidential. Amazon must, however, reserve the right to reproduce and/or refer to all or parts of this letter, particularly in the event that M. Pellet's objection is allowed to proceed and Amazon is required to respond to it publicly.

We and Amazon are available to discuss this matter with a view to resolving it quickly and amicably. Indeed, our client will have representatives at the Beijing meeting, Stacey King and Dana Northcott, who would be happy to set a time to discuss this matter. We look forward to hearing from you at your earliest convenience.

Yours faithfully,


Edwards Wildman Palmer UK LLP

Edwards Wildman Palmer UK LLP

EXHIBIT C-027



2013-04-11-gTLDStrings

 Jeannie Ellers
Apr 29, 2013

Watch

Date/Source Document	11 April 2013 Beijing GAC Communique																							
Communication	<p>a. Strings for Further GAC Consideration</p> <p>In addition to this safeguard advice, that GAC has identified certain gTLD string further GAC consideration may be warranted, including at the GAC meetings to Durban.</p> <p>i. Consequently, the GAC advises the ICANN Board to: not proceed Initial Evaluation with the following strings : .shenzhen (IDN in Chinese), .persia .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .date, .spa, .yun, .thai, .zulu, .wine, .vin</p>																							
GAC Acknowledgement of Register Entry	GAC: 2 May 2013 Board : 9 May 2013																							
Next Steps/Required Action	<p>Board Action:</p> <table border="1" data-bbox="446 1186 1510 1827"> <thead> <tr> <th>Item</th> <th>Resp.</th> <th>Start</th> <th>Compl.</th> </tr> </thead> <tbody> <tr> <td>Publish GAC Communique and notify applicants of 21-day GAC Advice Response Period</td> <td>Staff</td> <td></td> <td>18 April</td> </tr> <tr> <td>Applicants 21-day response period to GAC Advice</td> <td>Applicants</td> <td>19 April</td> <td>10 May</td> </tr> <tr> <td>Publish GAC Communique to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD Strings</td> <td>Staff</td> <td></td> <td>23 April</td> </tr> <tr> <td>Public Comment period on how Board should address GAC Advice re: Safeguards</td> <td>Public</td> <td>23 April</td> <td>Comment: 14 May Reply:</td> </tr> </tbody> </table>				Item	Resp.	Start	Compl.	Publish GAC Communique and notify applicants of 21-day GAC Advice Response Period	Staff		18 April	Applicants 21-day response period to GAC Advice	Applicants	19 April	10 May	Publish GAC Communique to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD Strings	Staff		23 April	Public Comment period on how Board should address GAC Advice re: Safeguards	Public	23 April	Comment: 14 May Reply:
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http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm			
Collect and summarize applicant responses to GAC Advice	Staff	11 May	31 May
Summarize and analyze public comments on how Board should address GAC Advice re: Safeguards	Staff	5 June	12 June
Review and Consider Applicant responses to GAC Advice and Public Comments on how Board should respond to GAC Advice re: Safeguards	New gTLD Program Committee	13 June	20 June

The NGPC is also developing a GAC Scorecard similar to the one used during and the Board meetings in Brussels on 28 February and 1 March 2011.

Each scorecard item will be noted with a "1A" "1B" or "2"

1A: Indicates that the NGPC's proposed position is consistent with GAC Advice described in the Scorecard.

1B: Indicates that the NGPC's proposed position is consistent with GAC Advice described in the Scorecard in principle, with some revisions to be made.

2: Indicates that the NGPC's current position is not consistent with GAC advice described in the Scorecard and further discussion with the GAC is required following relevant procedures in the ICANN Bylaws.

Updates: <http://www.icann.org/en/news/announcements/announcement-14jun1>

Board Scorecard:

Summary of GAC Advice		NGPC Response
In addition to this safeguard advice the GAC has identified certain gTLD strings where further GAC consideration may be warranted, including at the GAC meetings to be held in Durban. Consequently the GAC advises the ICANN Board to not proceed beyond Initial Evaluation with the following strings: .shenzhen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .date, .spa, .yun,	1A	The NGPC accepts this advice. The provides that "GAC advice will not to processing of any applications (i.e a application will not be suspended but continue through the stages of the application process)" (AGB § 3.1). At time, ICANN will not proceed beyond evaluation of these identified strings other words, ICANN will allow evalu and dispute resolution processes to forward, but will not enter into any re agreements with the applicants for t identified strings for now. (Note: community objections have b filed with the International Centre for

	against .PERSIANGULF, .AMAZON, and .PATAGONIA. The application for .ZULU was withdrawn.
Responsible Party	Board/Staff
Target Completion Date	
Current Status/Communications Log	<p>10 May 2013 - Letter from the ICANN Board re: Progress in Addressing GAC Beiji Advice</p> <p>6 June 2013: NGPC Scorecard</p>
Board Action (Accept/Disagree)	<p>Accept</p> <ul style="list-style-type: none"> • ICANN has allowed evaluation and dispute resolution processes to go forward, I not enter into registry agreements with applicants for the identified strings for no • NGPC expects GAC to consider these applications further in Durban. <p>See http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun104jun13-en.pdf and http://www.icann.org/en/groups/board/documents/new-gtld-resolution-annex-104jun13-en.pdf.</p>
Board Acknowledgement of Completion	
GAC Acknowledgement of Completion	

Like

EXHIBIT C-028



By email to: john.jeffrey@icann.org

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John O. Jeffrey, Esq.
General Counsel and Secretary
ICANN

Nicholas Bolter
Partner-In-Charge
Contact Information Redacted

BY EMAIL ONLY

24 April 2013

Your ref 1-1315-58086

Our ref GD\NCB\307695\4886

Dear Sir

Independent Objector's Objections to Amazon E.U. S.à.r.l gTLD Applications 1-1315-58086, 1-1318-5591 and 1-1318-83995

We refer to our letter dated 6 April 2013 regarding the Independent Objector's Conflict of Interest regarding the above applications.

You may recall that in our letter we noted that the Independent Objector's mandate is limited to acting on behalf of the public who use the global Internet, and that he is expressly prohibited from acting on behalf of any particular persons or entities. We also noted that M. Pellet has consistently stated that he will not file an objection if there is a single established institution better placed to represent the relevant community, a point which he contends is so unequivocal that it is part of the criteria by which the Guidebook must be interpreted.

We then expressed concern that none of the objections listed above had been filed on behalf of the public who use the global Internet, but had instead been used to formalise the objections of the governments of Brazil and Peru. We set out how M. Pellet's treatment of Amazon's applications was not only inconsistent with the limitations placed by the Guidebook on his standing, but was also uniquely inconsistent with the exercise of his discretion in relation to every other objection he had publicly commented on.

Finally, we pointed out that, in light of: the inconsistency between the way M. Pellet has treated applications opposed by the Brazilian and Peruvian GAC members, on the one hand, and the way he has treated all other applications on the other; the public comments made by M. Pellet regarding his "*special links*" to those countries and the fact that he was appearing in arbitration proceedings on behalf of Peru while the Early Warning was being prepared and for some time thereafter; and the fact that his reference to his "former" representation of Peru was contradicted by his professional website (and still is), there was a clear, but ultimately remediable, conflict of interest that undermined the integrity of ICANN's objection procedures.

In our dealings with this matter so far we have sought to engage with ICANN on a confidential basis, and are therefore disappointed that Amazon received no response to our letter.

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Private and confidential

John O. Jeffrey, Esq
ICANN

There is no reason why the third largest supporter of ICANN's new gTLD program should be faced with higher hurdles than any other applicant nor that it should be kept in the dark in a process that ICANN repeatedly asserts it is trying to make as transparent as possible. As you will be aware, the Guidebook, including Module 3, is intended to reflect policy developed through ICANN's multi-stakeholder, bottom-up, consensus-driven process. We cannot believe that those who participated in this process would, when appraised of all of the facts, consider M. Pellet to be exercising the degree of "independence" expected of an Independent Objector who "does not act on behalf of any particular persons or entities, but acts solely in the best interests of the global public who use the global Internet".

We would like to better understand ICANN's position in relation to this matter. Please confirm whether you are available for a call on any of April 25, 26, 29, 30, or May 1.

We look forward to hearing from you shortly.

Yours sincerely,

Edwards Wildman Palmer UK LLP

Edwards Wildman Palmer UK LLP

EXHIBIT C-029

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EXHIBIT C-030

GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV, Annex I, and Annex II of the [GAC Beijing Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

Respondent:

Applicant Name	Amazon EU S.à r.l.
Application ID	.AMAZON (1-1315-58086) .APP (1-1315-63009) .AUTHOR (1-1315-99563) .BOOK (1-1315-44051) .CLOUD (1-1315-79670)
Applied for TLD (string)	As displayed above

Response:

May 10, 2013
Dr. Steve Crocker, Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Amazon’s Response to the ICANN Board of Directors on the GAC Beijing Communiqué

Dear Dr. Crocker and Members of the ICANN Board of Directors,

Thank you for the opportunity to respond to the Government Advisory Committee’s (“GAC”) Beijing Communiqué (the “Communiqué”). Amazon appreciates the efforts spent by the GAC on the difficult questions in connection with the new gTLDs. We are committed to working with the GAC, ICANN, national governments, and others toward the development of the Domain Name System through the collaborative multi-stakeholder, bottom-up, consensus-driven process. The multi-stakeholder model is only successful, however, if one stakeholder is not given veto power over other voices, and involved and invested parties. We are concerned that, if implemented, the Communiqué will circumvent years of active and transparent Community development by reversing policies and implementing new requirements and definitions on applicants, registries and registrants.

GAC Advice Response Form for Applicants



Applicants relied in good faith on the rules and limitations set forth in the Applicant Guide Book (“AGB”), expending significant time, money and resources on preparing and defending their Applications based on this reliance. Changing direction at this time undoubtedly will result in delays for all applicants, and raise legal issues. Retroactive changes, based on guidance that the ICANN Community already has rejected, fundamentally undermine the multi-stakeholder model.

Although likely unintended, the Communiqué, as written, will allow the GAC to create new regulations and overturn the sovereign laws of other countries, undermining the multi-stakeholder process and giving credence to arguments in other forums that national governments should have a controlling role in Internet governance. Accordingly, we urge the Board to reject certain aspects of the Communiqué and adhere to the principles originally agreed to in the AGB by Applicants, ICANN, and the Community.

Applicants Relied on Rules Set by ICANN

The new gTLD Program has its origins in the “carefully deliberated policy development work of the ICANN Community.” (AGB, preamble.) In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”) began a policy development process to consider the introduction of new gTLDs. In 2008, the ICANN Board adopted 19 specific policy recommendations for implementing new gTLDs. After approving the policy, ICANN undertook an open, inclusive, and transparent implementation process, including comment periods on nine drafts of the AGB, and numerous advisory group recommendations, to address stakeholder concerns such as the protection of intellectual property and Community interests, consumer protection, geographic protections, and DNS stability. This work involved extensive public consultations, review, and input on multiple draft versions of the AGB, including active, fully engaged consultation with the GAC. (<http://newgtlds.icann.org/en/about/program>)

Applicants relied on the AGB Provisions on Geographic Names

One of the principles originally debated by multiple stakeholders, including the GAC, the ICANN Board, and the ICANN Community, relates to the protection of geographical names. The GAC tried unsuccessfully to define, for the AGB, what constitutes a blocked “geographic string,” and the multi-stakeholder Community thoroughly discussed the issue from 2007 to 2011 in ICANN meetings, public forums, drafts of the AGB, and through numerous constituencies. After four years of discussion, the Board and Community agreed on the use of well-established internationally recognized and agreed-upon geographic designations. “The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. The revised definition . . . continues to be based on the ISO 3166-1 standard and fulfills the Board’s requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs.” (ICANN Board – GAC Consultation: Geographic Names, 21 February 2011, p. xi (summarizing GAC/Board communications from September 22, 2009).)

As the Board noted in one of its initial responses to the request for a broader definition than the ISO 3166-1 standard, “the capacity for an objection to be filed on Community grounds, where there is substantial opposition to an application from a Community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not

GAC Advice Response Form for Applicants



defined in the Applicant Guidebook.” (ICANN Board – GAC Consultation: Geographic Names, 21 February 2011, p. ii.)

The Communiqué now backs away from more than four years of multi-stakeholder work on the geographic name issue by its new attempt to isolate strings that raise geographical issues. This action is disruptive (not only for us and our applications) because the effect is not dissimilar to that of consensus Communiqué advice but without the essential component of consensus. It is disruptive to the multi-stakeholder process as a whole – it acts as an effective veto on Community-driven policies (with the potential for far-reaching effects outside of ICANN’s realm).

The Communiqué Chips Away at the Multi-Stakeholder Model

We ask the Board to focus on several recommendations in the Communiqué that chip away at the ICANN multi-stakeholder model and, in some cases, may give individual national governments veto power over any applied-for string as well as regulatory power over private entities that governments might not have under their own laws. Specifically, the Board (1) should not delay specific applications for further considerations, (2) should not allow changes to an applied-for string and (3) should adopt implementable and reasoned Safeguard Guidance.

1. The Board should not delay specific applications for further GAC Consideration

The AGB allows the GAC to provide Communiqué advice on specific applied-for strings and safeguards for Board deliberation, stating that for a particular application not to proceed, there needs to be consensus of the GAC. (AGB 1.1.2.7.) Indeed, “to be considered by the Board during the evaluation process, the GAC Communiqué on New gTLDs must be submitted by the close of the objection filing period.” (Id.) With the exception of two strings (.africa and .gcc), however, the GAC has not provided consensus advice against any other particular strings for Board deliberation.

Although specific countries raised national sensitivities with our applications for .amazon and our Chinese and Japanese parallel applications (.アマゾン and .亚马逊), the GAC did not reach consensus advice to block any of these three applications. Instead, it asked the Board to prevent these applications from proceeding based on a need for “further consideration.” Such a request has nearly the same effect as consensus Communiqué advice. To allow “further consideration,” a new action in the process neither contemplated by the AGB nor previously debated by the Community, sets a precedent that could perpetually delay an application to the applicant’s detriment, allow for a government’s effective veto power over a particular application and/or string, and permit the uneven discrimination against vetted, established principles and process.

If the Communiqué guidance were implemented, it could require Amazon and other applicants to either abandon an application for a string that reflects its globally protected trade name and trademarks or, in the alternative, adopt a gTLD with corporate indications that do not represent the company’s brand globally (and in some cases violate local laws covering the type of corporate entity one can hold itself out as). This “hold” acts as a de facto block to strings otherwise permitted for registration by the AGB; it gives the countries the same result as if

GAC Advice Response Form for Applicants



consensus Communiqué advice was achieved (when it was not), but without the core ingredient of actual consensus. Further, it does not foster productive negotiation between affected parties.

The GAC's attempt to hold an application because of a government's potential conflict destroys the premise of consensus entirely, which in turn significantly dilutes surety and stability in the new gTLD process. Additionally, it allows a government to supersede the trademark and free-expression rights granted by other governments and obtain global rights over applicants that the government would not otherwise possess. Thus, we request that the Board reject the GAC Communiqué on geographic names and allow the .amazon applications to proceed.

The effect of the GAC's request for "further consideration" could lead to perpetual negotiations where one party has no standing or recourse.

We have deep respect for the people, culture, and heritage of the Amazonas region, and recognize the governments' desire to protect the region internally against third parties that may cause harm in some way. Our company and the region have coexisted amicably, both regionally and globally, with no interference on regional matters or consumer confusion or harm for more than seventeen years, and we are pleased to serve countless customers in the region with our vast offerings of goods and services.

Despite our long-standing presence throughout the region, representatives from Brazil and Peru, however, issued an early warning against our .amazon gTLD application. The GAC representatives indicated initially that the only remedy for us was to abandon the application, and later stated that they would consider allowing Amazon to change our application to ".amazonincorporated" or ".amazoninc" or ".amazoncompany." At the Beijing meeting, it is our understanding that representatives from Brazil and Peru sought GAC Communiqué advice objecting to our .amazon application (and the IDN variants Amazon including .アマゾン and .亚马逊), but were unable to achieve GAC consensus. Despite their inability to achieve consensus and block the applications outright, we understand that representatives from Brazil and Peru requested (via the GAC) to implement a new and unusual remedy not previously contemplated by the AGB, asking the Board to delay our .amazon applications so the GAC could "further consider" the strings at the Durban meeting.

In the interim, none of the representatives from Brazil or Peru have implemented any of the variety of protections previously agreed through the multi-stakeholder process. For example, neither representative filed a Community objection although both countries were well aware of this option (each has been an active member of the GAC dating to 2008). Instead, a third party filed a Community objection on behalf of the region. (For completeness, we note that this same third party, acting as "Independent Objector," currently represents the Government of Peru in an ongoing case at the International Court of Justice, arguing on its behalf as recently as December 2012.)

As we stated in our gTLD applications, Amazon's mission is to be the world's most customer centric company, where people can discover anything they might want to buy online. Investing in a new gTLD for "AMAZON," our house trademark, trading name, and cornerstone of our global brand since 1995, is an essential part of this strategy. When considering the benefits of new gTLD applications in terms of communication, security, and stability, especially for an online

GAC Advice Response Form for Applicants



company like ours, we place paramount importance on protecting one of our most valuable assets – our trademark “AMAZON” – just as other leading companies protect their registered company and brand names to serve their customers. In fact, our name AMAZON is a trademark registered, along with AMAZON-formative marks such as AMAZON.COM and AMAZON and Design (collectively “AMAZON Marks”), more than 1300 times in over 149 countries world-wide. This includes registrations for AMAZON Marks in the trademark offices and in the ccTLDs of the very regions that now claim Amazon should not be allowed to use our global mark as a gTLD. (As of the date of submittal of the gTLD Applications, Reveal Day, and the deadlines for Early Objections, Objections, and GAC Communiqué, neither “Amazon,” “Amazonas,” “Amazonia,” “Amazonica,” nor any translation or short-form of any of these terms, were included in the ISO 3166-1 standard, designated on the “Separable Country Names List”, or were names by which a country is commonly known in violation of 2.2.1.4.1 of the AGB. In addition, none of these terms or translations appears as a string listed as a UNESCO region or appears on the United Nation’s “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list, and therefore does not violate 2.2.1.4.2 of the AGB. Finally, there are no known national laws that protect these terms from use or registration by third parties as of the date of this filing.)

We have attempted, and will continue to attempt, to negotiate toward a mutually beneficial solution. For instance, we corresponded with the GAC representatives from Brazil and Peru, participated in a video conference and traveled to Brasilia for direct negotiations with the Organização do Tratado de Cooperação Amazônica (“OTCA”) prior to the Beijing ICANN meeting. All of our proposed alternatives for resolution have been rejected by the GAC representatives. (We are happy to discuss in a confidential submission to the Board the proposed alternatives we have put forth.) Despite our willingness to reach a mutually agreeable solution, we should not be forced to negotiate under continual GAC “consideration,” holding up our applications to the detriment of business because the GAC was not able to reach consensus.

.YUN application

.YUN means “cloud,” in Pinyin, which is the reason we applied for the string. Representatives from the Government of the People’s Republic of China, however, note that the Yunnan Province is sometimes shortened to “Yun.” Amazon wrote to representatives from China as soon as we received the Early Warning, but due to communication issues, those representatives were unable to respond until the Beijing meeting. We welcome discussions with representatives from the Yunnan Province government and already have offered to implement safeguards to ensure that the string is not used in a manner that may cause confusion. Although we are hopeful this matter will be resolved to both parties’ satisfaction in coming months, for the same reasons discussed above for the .amazon applications, there is no basis for a GAC “hold” until resolution. We ask this Board to reject this portion of the Communiqué.

2. The Board Should Not Allow Changes to an Applicant’s String.

This issue of whether an Applicant can change its applied-for string already has been covered by the GAC, the Board, and the Community during the negotiations leading up to the final Applicant Guidebook. “It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuse.” (ICANN Board - GAC Consultation: Geographic Names, February 21, 2011, p. 3.)

GAC Advice Response Form for Applicants



As a result, Amazon respectfully requests that the Board reject the re-opening of this already resolved debate. To do so in connection with one application would require, for purposes of fairness, re-opening any and all applications facing potential objections. Doing so would lead to additional evaluations of applications that already have been cleared, and delay the entire program.

3. The Board Should Adopt Implementable and Reasoned Safeguard Guidance for New gTLDs.

Amazon agrees that all registry operators should abide by relevant applicable laws, including those relating to consumer protection and competition, and that registry operators require in their acceptable-use policies that registrants comply with all applicable laws, particularly in relation to privacy, data collection, and child and consumer protection. We applaud the GAC for reinforcing the need to include such provisions in the Registry Agreement.

The Communiqué, however, appears to go one step beyond and requires registries and, by association, registrars and users of the Internet (through their registration agreements and use of second level domain names in the new gTLDs), to institute policies and procedures not required by law and, in some instances, which may be interpreted as being in direct opposition to national laws (for example, circumventing national laws that may grant safe harbors to neutral platforms). This process would act as a material change to the AGB and, as such, requires a full vetting by the entire ICANN Community. We also request that the Board reject this section of the Communiqué.

Additionally, the Communiqué has used a very broad brush to label a variety of strings as “sensitive strings” under a variety of subclasses. These strings, listed as non-exhaustive, could, in fact, cover all applicants. We are concerned that labeling strings as “sensitive” could subject registry operators to heightened, unintended legal standards in various jurisdictions. In addition, the “categorization” of strings appears to be arbitrary. For example, the category “intellectual property” includes the strings “.FREE,” “.FANS,” “.DISCOUNT,” and “.ONLINE”. Indeed, based on these examples, any string that represents a generic term could be identified as “intellectual property.”

Finally, the Communiqué goes further to caution that certain strings – though not specifically identifying them – should be subject to validation and verification of second-level applicants’ licenses and credentials. In addition, the Communiqué proposes that registries should obtain input from relevant regulatory bodies and/or by “industry self-regulatory bodies,” in connection with safeguards to protect those industries and their consumers. Hence, the Communiqué would give de facto “regulatory” rights to non-governmental “industry self-regulatory” bodies. Such a policy might force private entities – registries and businesses operating at the second-level –to obtain government approval over their business models. Again, this principle is not required under most national laws.

The Communiqué Guidance on Public Interest Goals isn’t Implementable.

GAC Advice Response Form for Applicants



The Communiqué recommends that exclusive registry access for strings “representing generic terms” should serve a “public interest goal.” (GAC Communiqué, Annex I, Category 2.2) The Communiqué does not define either “public interest” or “generic terms.” Applicants and the Board have no way to comply with or implement this Communiqué; thus, the Board should not adopt this safeguard, however well-intentioned.

That said, if the Board chooses to adopt this safeguard, we note there are other “public interest goals,” including consumer protection, mitigation of abusive activities (such as through heightened security measures and checks), a process for handling complaints, and appropriate documentation on security threats. The GAC has already noted this in another part of its Communiqué on safeguards. (Annex I, Safeguards Applicable to all new gTLDs.) Indeed, these public interest goals can be met more efficiently and with greater accuracy in a space that is not operated solely for the sake of selling domain names (previously and perhaps inaccurately mislabeled as “closed” or “open-restricted”). (We direct the Board to the public comment that Amazon filed in connection with the debate on “open” v. “closed” registry models. <http://forum.icann.org/lists/comments-closed-generic-05feb13/msg00199.html>) As a result, we request that our applications be allowed to proceed without change.

Conclusion

We are happy to address any follow-up questions or concerns from the Board.

Respectfully submitted,
Stacey King
Sr. Corporate Counsel – Amazon

EXHIBIT C-031



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Dr. Steve Crocker, steve.crocker@icann.org
Mr. Cherine Chalaby, cherine.chalaby@icann.org
Mr. John Jeffrey, john.jeffrey@icann.org
ICANN

By email only

18 May 2013

Your ref 1-1315-58086

Our ref NCB\GD\307695\4886

Dear Mr. Chehadé, Dr. Crocker, Mr. Chalaby, and Mr. Jeffrey

Independent Objector’s Objections to Amazon E.U. S.à.r.l gTLD Applications 1-1315-58086, 1-1318-5591 and 1-1318-83995

We act for Amazon EU S.à.r.l.

We write further to our correspondence addressed to Mr. Jeffrey regarding a potential conflict of interest that has arisen from the “Independent Objector’s”, M. Alain Pellet, consideration of Amazon’s applications for .amazon and its Japanese and Chinese transliterations. For ease of reference, we attach a copy of our initial letter dated 6 April 2013 (i.e. before ICANN 46), as well as a further request for a response dated 24 April 2013. As we note, M. Pellet currently represents the Government of Peru before the International Court of Justice and has many ties to the Government of Brazil. We have yet to receive a response from Mr. Jeffrey or ICANN.

Amazon continues to hope that its concerns regarding the Independent Objector can be kept confidential. However, as Amazon is obliged to submit its replies to M. Pellet’s objections by no later than Friday 24 May 2013, the lack of response from ICANN to our correspondence leaves Amazon with no choice but to deal with these issues within its public response to the Independent Objector.

Amazon appreciates that Mr. Jeffrey and the Board has a considerable workload at this time. However, Amazon hopes that Mr. Jeffrey or ICANN will as soon as possible respond to the important issues raised in our letters.

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Private and confidential

Mr. Fadi Chehadé
Dr. Steve Crocker

Page 2
18 May 2013

Yours sincerely,

Edwards Wildman Palmer UK LLP

Edwards Wildman Palmer UK LLP

Attachments

EXHIBIT C-032

[English \(/translations\)](#) [العربية \(/ar\)](#) [Español \(/es\)](#)

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Resources

▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

▶ [Accountability \(/resources/accountability\)](#)

▶ [Governance \(/resources/pages/governance-2012-02-25-en\)](#)

▶ [Groups \(/resources/pages/groups-2012-02-06-en\)](#)

[Business \(/resources/pages/business\)](#)

▶ [Contractual Compliance \(/resources/pages/compliance-2012-02-25-en\)](#)

▶ [Registrars \(/resources/pages/registrars-0d-2012-02-25-en\)](#)

Approved Resolution | Meeting of the New gTLD (generic Top Level Domain) Program Committee

04 Jun 2013

1. **Main Agenda**

- a. [Consideration of Non-Safeguard Advice in the GAC \(Governmental Advisory Committee\)'s Beijing Communiqué Rationale for Resolution 2013.06.04.NG01](#)

1. Main Agenda:

- a. [Consideration of Non-Safeguard Advice in the GAC \(Governmental Advisory Committee\)'s Beijing Communiqué](#)

Whereas, the [GAC \(Governmental Advisory Committee\)](#) met during the [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué");

Whereas, on 18 April 2013, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) posted the Beijing Communiqué and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>) triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1;

- ▶ Registries
(/resources/pages/registries-46-2012-02-25-en)

Operational Metrics
(/resources/pages/metrics-gdd-2015-01-30-en)

- ▶ Identifier Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR)
(/resources/pages/is-ssr-2014-11-24-en)

- ▶ ccTLDs
(/resources/pages/cctlds-21-2012-02-25-en)

- ▶ Internationalized Domain Names
(/resources/pages/idn-2012-02-25-en)

- ▶ Universal Acceptance Initiative
(/resources/pages/universal-acceptance-2012-02-25-en)

- ▶ Policy
(/resources/pages/policy-01-2012-02-25-en)

- ▶ Public Comment
(/public-comments)

- ▶ Technical Functions
(/resources/pages/technical-functions-2015-10-15-en)

- ▶ Contact
(/resources/pages/contact-2012-02-06-en)

- ▶ Help
(/resources/pages/help-2012-02-03-en)

Whereas, the NGPC met on 8 May 2013 to consider a plan for responding to the GAC (Governmental Advisory Committee)'s advice on the New gTLD (generic Top Level Domain) Program, transmitted to the Board through its Beijing Communiqué;

Whereas, the NGPC met on 18 May 2013 to further discuss and consider its plan for responding the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué on the New gTLD (generic Top Level Domain) Program;

Whereas, the NGPC has considered the applicant responses submitted during the 21- day applicant response period, and the NGPC has identified nine (9) items of advice in the attached scorecard where its position is consistent with the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué.

Whereas, the NGPC developed a scorecard to respond to the GAC (Governmental Advisory Committee)'s advice in the Beijing Communiqué similar to the one used during the GAC (Governmental Advisory Committee) and Board meetings in Brussels on 28 February and 1 March 2011, and has identified where the NGPC's position is consistent with GAC (Governmental Advisory Committee) advice, noting those as "1A" items.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2013.06.04.NG01), the NGPC adopts the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué" (4 June 2013), attached as [Annex 1 \(/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf\)](/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf) [PDF, 564 KB] to this Resolution, in response to the items of GAC (Governmental Advisory Committee) advice in the Beijing Communiqué as presented in the scorecard.

Rationale for Resolution 2013.06.04.NG01

Why the NGPC is addressing the issue?

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> (</en/about/governance/bylaws#XI>) 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 the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013. 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.

What is the proposal being considered?

The NGPC is being asked to consider accepting a discrete grouping of the GAC (Governmental Advisory Committee) advice as described in the attached NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC (Governmental Advisory Committee) Beijing Communiqué (4 June 2013), which includes nine (9) items of non-safeguard advice from the Beijing Communiqué as listed in the GAC (Governmental Advisory Committee) Register of Advice. These items are those for which the NGPC has a position that is consistent with the GAC (Governmental Advisory Committee)'s advice.

Which stakeholders or others were consulted?

On 18 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice, <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>) triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1 <http://newgtlds.icann.org/en/applicants/gac-advice-responses> (<http://newgtlds.icann.org/en/applicants/gac-advice-responses>). The NGPC has considered the applicant responses in formulating its response to the GAC (Governmental Advisory Committee) advice as applicable.

To note, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address GAC (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm> ([/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm](http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm)). The public comment forum on how the NGPC should address GAC (Governmental Advisory Committee) advice regarding safeguards is open through 4 June 2013. These comments will serve as important inputs to the NGPC's future consideration of the other elements of GAC (Governmental Advisory Committee) advice not being considered at this time in the attached scorecard.

What concerns or issues were raised by the community?

As part of the 21-day applicant response period, ICANN (Internet Corporation for Assigned Names and Numbers) received 383 applicant response documents representing 745 unique applications. Twenty-three responses were withdrawn and eleven were submitted after the deadline. Applicants appear to generally support the spirit of the GAC (Governmental Advisory Committee) advice. The responses expressed concerns that the advice was too broad in its reach and did not take into account individual applications. Some applicant responses expressed concern that some elements of the advice seem to circumvent the bottom-up, multi-stakeholder model, while others proposed that the NGPC reject specific elements of the advice. A review of the comments has been provided to the NGPC under separate cover. The complete set of applicant responses can be reviewed at:
<http://newgtlds.icann.org/en/applicants/gac-advice-responses>
(<http://newgtlds.icann.org/en/applicants/gac-advice-responses>).

What significant materials did the Board review?

As part of its deliberations, the NGPC reviewed the following materials and documents:

- GAC (Governmental Advisory Committee) Beijing Communiqué:
<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf> (<http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>) [PDF, 156 KB]
- Applicant responses to GAC (Governmental Advisory Committee) advice:
<http://newgtlds.icann.org/en/applicants/gac-advice-responses>
(<http://newgtlds.icann.org/en/applicants/gac-advice-responses>)
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>
(<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>) [PDF, 261 KB]

What factors did the Board find to be significant?

The Beijing Communiqué generated significant interest from applicants and resulted in many comments. The NGPC considered the applicant comments, the GAC (Governmental Advisory Committee)'s advice transmitted in the Beijing Communiqué, and the procedures established in the AGB.

Are there positive or negative community impacts?

The adoption of the GAC (Governmental Advisory Committee) advice as provided in the attached scorecard will assist with resolving the GAC (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible.

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

There are no foreseen fiscal impacts associated with the adoption of this resolution.

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

Approval of the proposed resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>). This triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Published on 6 June 2013



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



[ICANN Blog \(/news/blog\)](https://news/blog)

Who We Are	Contact Us	Accountability & Transparency	Governance	Help
Get Started (/get-started)	Offices (/https://forms.icann.org/en/about/offices)	Accountability Mechanisms (/en/news/in-focus/accountability/mechanisms)	Documents (/en/about/governance)	Dispute Resolution (/en/help/dispute-resolution)
Learning (/en/about/learning)	Global Support (/resources/pages/customer-support-2015-06-22-en)	Independent Review Process (/resources/pages/irp-2012-02-25-en)	Agreements (/en/about/agreements)	Domain Name Dispute Resolution (/en/help/dndr)
Participate (/en/about/participate)	Security Team (/about/staff/security)	Request for Reconsideration (/groups/board/governance/reconsideration)	AOC Review (/en/about/aoc-review)	Name Collision (/en/help/name-collision)
Groups (/https://www.icann.org/resources/pages/groups-2012-02-06-en)	PGP Keys (/en/contact/pgp-keys)	Ombudsman (/help/ombudsman)	Annual Report (/about/annual-report)	Registrar Problems (/en/news/announcements/announcements06mar07-en.htm)
Board (/resources/pages/board-of-directors-2014-03-19-en)	Certificate Authority (/contact/certificate-authority)	Registry Liaison (/resources/pages/contact-f2-2012-02-25-en)	Financials (/en/about/financials)	WHOIS (/http://whois.icann.org/)
President's Corner (/presidents-corner)	AOC Review (/http://forms.icann.org/en/about/aoc-review/contact)	Reviews (/http://forms.icann.org/en/groups/reviews/contact?organization_id=16025&version=1)	Document Disclosure (/en/about/transparency)	Planning (/en/about/planning)
Staff (/en/about/staff)	Organizational Chart (/resources/pages/organization-chart)	Litigation (/en/news/litigation)	Dashboard Beta (/https://www.icann.org/dashboard)	RFPs (/en/news/rfps)
Careers (/https://icann-openhire.silkroad.com/external/apply?fuseaction=app_allpositions&company_id=16025&version=1)	Request a Speaker (/http://forms.icann.org/en/contact/speakers)	Correspondence (/en/news/correspondence)		
Newsletter (/en/news/newsletter)	For Journalists (/en/news/press)			
Development and Public Responsibility (/https://www.icann.org/development-and-public-responsibility)				

EXHIBIT C-033

Alain PELLET
Independent Objector for the ICANN's New gTLDs Program
Contact Information Redacted

June, 8th 2013

Attention: Mr. Nicholas C.A. Bolter
Edwards Wildman Palmer UK LLP

Via Email: Contact Information Redacted

Cc.: ICANN

Via Email: newgtld@icann.org

Cc.: ICC

Via Email: Contact Information Redacted

Re.: *Independent Objector's Conflict of Interests*

Dear Mr. Bolter,

I write with reference to your letter to ICANN dated 6 April 2013, in which you request ICANN to "withdraw the IO's objections". This solicitation is based on an alleged conflict of interest. Your letter has been forwarded to me by ICANN on 31 May 2013.

I find your approach of ICANN most inappropriate. It is in any case not for ICANN to take any position on the issue of independence or to remedy – at this late stage – any alleged concerns in any way. Indeed, it is stated in the New gTLD Applicant Guidebook that "neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest" (Section 3.1.5). This clearly shows that the issue of independence is not limited to the applicants, it also encompasses the IO's independence *vis-à-vis* ICANN as explicitly stated in the AGB. It would be a great infringement on the IO's independence if ICANN were to take any steps on this matter. Therefore, it is manifestly inappropriate and contrary to the AGB rules to request ICANN to interfere on this issue.

This being said, although I maintain that your claim concerning my alleged bias is groundless, you can of course maintain it, in which case, it has to be dealt with by the Expert panel, who has the full authority to decide in all impartiality and in the course of an adversarial proceeding that an objection does not meet the requirements as set out in the AGB. This is so, in particular, if the Expert Panel is convinced that the IO is acting "on behalf of any particular persons or entities" and not, as he is directed to do, "solely in the best interests of the public who use the global Internet" (AGB, Article 3.2.5 (1)). In this case, it is for the Expert Panel to draw the consequences from its findings in this regard. Therefore any allegations of partiality or bias must and can only be dealt with in the dispute resolution process.

Sincerely,

Alain Pellet



EXHIBIT C-034

July 2013

**U.S. STATEMENT ON GEOGRAPHIC NAMES
IN ADVANCE OF ICANN DURBAN MEETING**

The United States has listened carefully to the concerns expressed by colleagues on certain geographic strings. It is our sincere hope that individual governments can resolve their concerns on specific geographic strings through agreements on specific safeguards negotiated with the relevant applicants. We encourage all parties to continue to do so leading to Durban. However, in the event the parties cannot reach agreement by the time this matter comes up for decision in the GAC, the United States is willing in Durban to abstain and remain neutral on .shenzen (IDN in Chinese), .persiangulf, .guangzhou (IDN in Chinese), .amazon (and IDNs in Japanese and Chinese), .patagonia, .yun, and .thai, thereby allowing the GAC to present consensus objections on these strings to the Board, if no other government objects.

The United States affirms our support for the free flow of information and freedom of expression and does not view sovereignty as a valid basis for objecting to the use of terms, and we have concerns about the effect of such claims on the integrity of the process. We considered that the GAC was of the same mind when it accepted ICANN's definition of geographic names in February 2011 and agreed that any potential confusion with a geographic name could be mitigated through agreement between the applicant and the concerned government. In addition, the United States is not aware of an international consensus that recognizes inherent governmental rights in geographic terms. Therefore, the choice made in this discrete case does not prejudice future United States positions within the ICANN model or beyond.

Recognizing that the current rules for the new gTLD program do not specifically prohibit or condition these strings, we expect the specific issue of how to better address individual government concerns as well as other relevant considerations, including the free flow of information and freedom of expression, in the context of geographic terms, to be considered in the review of the new gTLD program as mandated by the *Affirmation of Commitments*. This review hopefully will provide guidance as to how better to address this issue in future rounds of new gTLDs.

EXHIBIT C-035



July 4, 2013

Heather Dryden
Chair, Governmental Advisory Committee

Dear Ms. Dryden and Members of the ICANN Governmental Advisory Committee:

On behalf of Amazon EU S.à.r.l (Amazon), we write in connection with our gTLD applications for .AMAZON (including our IDN applications).

In the Governmental Advisory Committee's (GAC) Beijing Communiqué, it requested that several applications, including .AMAZON and the IDN equivalents, be suspended pending further discussions in Durban.

Amazon reached out to the Governments of Brazil and Peru on several occasions – both before and after Beijing – and made a variety of proposals we believe represent a middle ground that respects both the cultural history and needs of the Amazonia Region, as well as those of Amazon as a global corporation trusted by millions of people world-wide. Unfortunately, we have been unable to reach an agreement at this time. It is our hope, however, that the Governments of Brazil and Peru will be open to continued dialogue in the future.

We attach for reference in your deliberations a history of our outreach and the proposals we have made to the Governments of Brazil and Peru, as well as a Public Interest Commitment (PIC) we submitted earlier today to the ICANN Board and Staff, which we will attach to our applications should the GAC and/or Board lift its suspension. Finally, we also include a summary of the Amazon domain name and trademark portfolio in South America. We request the GAC treat these documents as confidential and not distribute them to any third-parties.

Thank you for your time, attention, and consideration of these materials. We will be in Durban starting July 12 and are available to meet with any member of the GAC that wishes to ask us any questions on the attached.

With best regards,

A handwritten signature in black ink, appearing to be "Stacey King", written over a circular scribble.

Stacey King
Sr. Corporate Counsel, Amazon
Contact Information Redacted

PRIVATE & CONFIDENTIAL

For distribution within ICANN's Governmental Advisory Committee

Correspondence	Date	Sent by	To
Outreach by Amazon consultant in Brazil to Brazilian GAC representative	22 April 2013	Amazon	Brazil GAC Representatives
In-person meeting between Amazon and Brazilian GAC representative	8 May 2013	N/A	N/A
Amazon letter to Brazil and Peru, following up April 15 letter, and re-iterating desire to reach a solution through further discussions (with a proposal for a video-teleconference during the week of June 17 th)	13 June 2013	Amazon	Brazil and Peru GAC Representatives
Video-teleconference between Amazon and Brazil and Peru GAC Representatives	3 July 2013	N/A	N/A

5	To delegate a set of domain names representing the Amazonia region for use by OTCA and its Member Governments	Amazon, OTCA, and its member Governments will agree on a set of domain names to be delegated to the Amazonia Region. These domain names could be used by the Region for non-commercial Government or non-profit related activities. Some examples of domain names are OTCA.amazon; amazonia.amazon; amazonas.amazon; amazonica.amazon; and rainforest.amazon. Alternatively, the parties could work together to find an acceptable way to manage the allocated spaces.	Proposed by Amazon during the video-teleconference with GAC representatives from Brazil and Peru on 3 July 2013.	Representatives for Brazil and Peru have asked for a written proposal, but are not willing to suspend proceedings pending negotiation on the proposal. Representatives indicated that they would review the proposal, but are not able to accept in principle that this solution is acceptable.
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Other Proposed Avenues for Resolution

7	Title/Issue	Description	Status	Remarks
7	Public Interest Commitment (PIC)	The PIC agrees to limit certain culturally sensitive strings to OTCA and its Member Governments and not to contest future applications for .Amazonia, .Amazonas, or .Amazonica by OTCA and its Member Governments.	Submitted as correspondence to ICANN on 4 July 2013.	

EXHIBIT C-036



July 4, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. Cherine Chalaby, Chair of the New gTLD Committee
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Dr. Crocker and Messrs. Chehadé and Chalaby:

On behalf of Amazon EU S.à.r.l (Amazon), we write to submit for your consideration the attached Public Interest Commitment (PIC) in connection with our gTLD applications for .AMAZON (including our IDN applications).

As you know, the Government Advisory Committee (GAC) was unable to reach consensus in Beijing on the objection by the Governments of Brazil and Peru to our .AMAZON applications. As a result, the GAC advised that our applications be placed on hold until Durban, which the Board accepted and instituted.

Amazon is committed to working with the Governments of Brazil and Peru to address their concerns and has reached out on several occasions – both before and after Beijing – and made a variety of proposals we believe represent a middle ground that respects both the cultural history and needs of the Amazonia Region, as well as the rights of Amazon, a company with a global brand name and our millions of customers world-wide. Unfortunately, we have been unable to reach an agreement at this time. It is our hope, however, that the Governments of Brazil and Peru will be open to continued dialogue in the future.

The attached PIC is submitted to both you and the GAC. Amazon is ready and willing to attach this PIC to our applications for .AMAZON (including our applications for .AMAZON in Chinese and Japanese script) upon the release of our applications from Board/GAC suspension.

We continue to have great respect for the Amazonia Region and its Governments, and look forward to engaging in continued dialogue that reflects the needs and sensitivities of all the parties involved.

Please contact us if you have any questions.

With best regards,

A handwritten signature in black ink, appearing to be "Stacey King", written over a circular stamp or seal.

Stacey King
Sr. Corporate Counsel, Amazon

Cc: Heather Dryden, Chair, Government Advisory Committee

Amazon EU S.à.r.l (Amazon) is committed to operating the .AMAZON registry in compliance with all applicable laws and regulations and in furtherance of the goals outlined in our Application, Question 18.

The primary objective for Amazon's Public Interest Commitment ("PIC") is to reinforce and clarify our intentions to operate the .AMAZON registry as a secure, stable, and trusted platform for our customers in every part of the world.

Amazon understands and is sensitive to the concerns raised by the Governments of Brazil and Peru. We are committed to avoiding user confusion and respecting the region's history and cultural identity, while simultaneously respecting ongoing principles of coexistence between Amazon's global commercial operations and the Organização do Tratado de Cooperação Amazônica's (OTCA) inter-governmental protections of the Amazonia Region. To that end, Amazon will:

- Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA and its Member Governments.
- Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.
- Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".

Amazon's commitments identified in this Specification 11 are limited to and may be invoked and/or contested under the PIC Dispute Resolution Process ("PICDRP") only by the OTCA on behalf of the Governments that jointly govern the Amazonia Region on behalf of the Amazonia people.

Amazon's commitments identified in this Specification 11 are contingent on Amazon's reasonable satisfaction with the final terms of ICANN's proposed PIC requirements, including the associated PICDRP. In such case, Amazon will consider whether any change request will be required.

EXHIBIT C-037

New gTLD Program
Initial Evaluation Report
 Report Date: 12 July 2013

Application ID:	1-1315-58086
Applied for String:	AMAZON
Priority Number:	1156
Applicant Name:	Amazon EU S.à r.l.

Overall Initial Evaluation Summary

Initial Evaluation Result	Pass
<p>Congratulations!</p> <p>Based on the review of your application against the relevant criteria in the Applicant Guidebook (including related supplemental notes and advisories), your application has passed Initial Evaluation.</p>	

Background Screening Summary

Background Screening	Eligible
<p>Based on review performed to-date, the application is eligible to proceed to the next step in the Program. ICANN reserves the right to perform additional background screening and research, to seek additional information from the applicant, and to reassess and change eligibility up until the execution of the Registry Agreement.</p>	

Panel Summary

String Similarity	Pass - No Contention																								
<p>The String Similarity Panel has determined that your application is consistent with the requirements in Sections 2.2.1.1 and 2.2.1.2 of the Applicant Guidebook, and your applied-for string is not in contention with any other applied-for strings.</p>																									
DNS Stability	Pass																								
<p>The DNS Stability Panel has determined that your application is consistent with the requirements in Section 2.2.1.3 of the Applicant Guidebook.</p>																									
Geographic Names	Not a Geographic Name - Pass																								
<p>The Geographic Names Panel has determined that your application does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.</p>																									
Registry Services	Pass																								
<p>The Registry Services Panel has determined that the proposed registry services do not require further review.</p>																									
Technical & Operational Capability	Pass																								
<p>The Technical & Operational Capability Panel determined that:</p> <p>Your application meets the Technical & Operational Capability criteria specified in the Applicant Guidebook.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Question</th> <th style="text-align: right;">Score</th> </tr> </thead> <tbody> <tr><td>24: SRS</td><td style="text-align: right;">1</td></tr> <tr><td>25: EPP</td><td style="text-align: right;">1</td></tr> <tr><td>26: Whois</td><td style="text-align: right;">2</td></tr> <tr><td>27: Registration Life Cycle</td><td style="text-align: right;">1</td></tr> <tr><td>28: Abuse Prevention and Mitigation</td><td style="text-align: right;">2</td></tr> <tr><td>29: Rights Protection Mechanism</td><td style="text-align: right;">2</td></tr> <tr><td>30: Security Policy</td><td style="text-align: right;">2</td></tr> <tr><td>31: Technical Overview of Registry</td><td style="text-align: right;">1</td></tr> <tr><td>32: Architecture</td><td style="text-align: right;">2</td></tr> <tr><td>33: Database Capabilities</td><td style="text-align: right;">2</td></tr> <tr><td>34: Geographic Diversity</td><td style="text-align: right;">2</td></tr> </tbody> </table>		Question	Score	24: SRS	1	25: EPP	1	26: Whois	2	27: Registration Life Cycle	1	28: Abuse Prevention and Mitigation	2	29: Rights Protection Mechanism	2	30: Security Policy	2	31: Technical Overview of Registry	1	32: Architecture	2	33: Database Capabilities	2	34: Geographic Diversity	2
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33: Database Capabilities	2																								
34: Geographic Diversity	2																								

35: DNS Service	1
36: IPv6 Reachability	1
37: Data Backup Policies & Procedures	1
38: Data Escrow	1
39: Registry Continuity	2
40: Registry Transition	1
41: Failover Testing	1
42: Monitoring and Fault Escalation	2
43: DNSSEC	1
44: IDNs (Optional)	1
Total	30
Minimum Required Total Score to Pass*	22

**No zero score allowed except on optional Q44*

Financial Capability

Pass

The Financial Capability Panel determined that:

Your application meets the Financial Capability criteria specified in the Applicant Guidebook.

Question	Score
45: Financial Statements	1
46: Projections Template	1
47: Costs and Capital Expenditures	2
48: Funding and Revenue	2
49: Contingency Planning	2
50: Funding Criteria Registry Functions	3
Total	11
Minimum Required Total Score to Pass**	8

***No zero score allowed on any question*

Disclaimer: Please note that these Initial Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. All applications are subjected to due diligence at contracting time, which may include an additional review of the Continued Operations Instrument for conformance to Specification 8 of the Registry Agreement with ICANN. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs marketplace at <newgtlds.icann.org>.

EXHIBIT C-038

DURBAN - GAC Plenary 2

DURBAN – GAC Plenary 2
Saturday, July 13, 2013 – 16:00 to 17:00
ICANN – Durban, South Africa

CHAIR DRYDEN: Good afternoon again, everyone. If we could begin to take our seats, please, we will begin.

Okay. Let's get started on our next session.

So we now have about 45 minutes to deal with our next agenda item regarding the GAC Beijing communique and where we stand regarding the responses from the Board or the New gTLD Program Committee on that communique.

And then at 5:00 we have, as you I think are aware, we have canceled the Board/GAC Recommendation Implementation Working Group session as we will talk about GAC early engagement in the policy development process when we meet with the GNSO. And I understand that Board colleagues from the Board/GAC working group will aim to be in attendance when we discuss that in the GNSO. So we will still have the benefit of their involvement in those discussions. And so in light of having this additional time and a late request from a group that wishes to establish a constituency for geo registries, that the vice chairs were very supportive of including in our agenda. They were able to agree to come and brief us at 5:00 on that. So we've allotted 30 minutes to receive a briefing from them. And I expect it will be along the same lines as the briefing we received in Beijing from the group wanting to set up the Brand Registry Group, which I understand has now been set up.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So that will happen at 5:00. So in the meantime, here's what I would like us to accomplish.

We have a few documents that we can refer to for these next discussions, and I think probably the one that's most clear and summarizes everything nicely is the NGPC consideration of GAC Beijing advice dated 3rd July 2013, which is the full scorecard. So you will note that between Beijing and now, we have been getting scorecards coming from the New gTLD Program Committee, and based on their most recent meeting and resolutions and decisions coming out about the GAC's advice, they have now formulated a complete scorecard. So this is the state of play in terms of their responses on the entire Beijing communique including annex 1. And so this is a useful tool for us to see at a quick glance the state of play regarding the policy program committee's consideration of the GAC's advice. As well, recently circulated was a paper coming from the New gTLD Program Committee of the Board and that is titled "Questions and Concerns Regarding Portions of the GAC's Safeguard Advice." And this is focused on the category 1, which also relates to what is being called category 2.1 of the annex to the Beijing communique, where the committee has identified outstanding questions or concerns for the GAC.

And so this paper is meant to give us further information, further guidance for when we meet with them tomorrow morning, I think at 10:00, to look at these main outstanding issues that come from our Beijing communique.

The other issue is regarding the issue of implementation of acronyms of the intergovernmental organizations, and how to be responsive to the

concerns that have been raised by the IGOs in light of the questions coming from the Board there as well. And we can find some guidance from the New gTLD Committee in the covering letter from the 3rd of July that was sent to us and signed by the chair of the Board, and in the first section there entitled "Initial Protections for IGO Protections," and that is to update the GAC on some of the decisions they have made and some of the questions or concerns that they are now raising with us and the IGO coalition on that.

So I think these are the key outstanding issues, but I do expect that colleagues here will identify others if they think there are other parts of the scorecard where they would like the GAC to comment further or provide further guidance.

So at this point, can we take any initial comments from colleagues about where we are and their thoughts about the agenda that we have identified for tomorrow morning for our exchange with the New gTLD Program Committee?

China, please.

I'm sorry, I can't see who is raising their hand. But, please, go ahead.

CHINA: I have no question.

PERU: This is Peru, Chair.

CHAIR DRYDEN: Please, go ahead, Peru.

PERU: Okay. Thank you so much, Madam Chair. Peru is taking the floor on behalf of a sizable number of countries concerned about the application of geographic names and in general with the application of dot Amazon in particular, concerns that we would like to request the GAC members to endorse. However, personally, allow me just to salute our fellow colleagues here and to express our appreciation to the government of South Africa for hosting us.

This statement is submitted by Argentina, Brazil, Chile, Peru, and Uruguay with the full support of the Amazon region countries.

And it reads as follows: We acknowledge that the GAC principles regarding new gTLDs adopted in 2007 clearly establish that the principles shall not prejudice the application of the principle of national sovereignty. Besides, we understand that highlighting the importance of public interest is a relevant element that gives stability, sustaining the multistakeholder model, and ultimately the legitimacy of ICANN's administration.

In this sense, this model should contemplate adequate mechanisms before the GAC to guarantee a proper representation of the governments and their communities regarding the public policy issues within the ICANN framework. It is fundamental that governments have the adequate instance where their opinions can be effectively considered, particularly in a content of unprecedented wide-open call for application that has brought uncertainty for both governments and

applicants and has created conflicts with system rules and will establish precedents and benchmarking for future operations.

In the context of the last applications for new gTLD process, various strings have generated concerns from different countries. This is the case of Brazil, Peru, and the Amazonic countries with the application for dot Amazon by the company Amazon, Inc. and, until very recently, was the case for Argentina and Chile with the application of dot Patagonia.

From the beginning of the process, our countries have expressed their concerns with the aforementioned applications presenting various documents to the GAC, referring to the context and basis of the national and regional concerns, including early warning and GAC advice requests.

Various facts recorded in several historiographical, literary and official documents throughout history, including the recent official regional declarations, have been submitted and explained by each country directly to the GAC and to the applicants through the established procedures and through an active engagement process with the interested parties that has allowed us to explain our position for requesting the withdrawal of the applications.

This is the position adopted, for example, by the fourth Latin American and Caribbean Ministerial Conference on Information Society, the Amazon Cooperation Treaty Organization, the Brazilian Internet Steering Committee, the Brazilian Congress, and the Brazilian civil society, the Peruvian Congress Commission on Indigenous Peoples, local governments of the Peruvian Amazon region, and several representatives of the Peruvian civil society.

The 2007 principle states that ICANN's core values indicate that the organization, while remaining rooted in the private sector, recognizes that governments and public authorities are responsible for public policy and should take into account governments and public authorities' recommendations.

They also make reference to the provision of the Universal Declaration of Human Rights and the obligation that the new gTLDs should respect the sensitivities regarding terms with national, cultural, geographic, and religious significance.

They clearly add that ICANN should abide country, territory or place names and country, territory or regional language or people descriptions unless in agreement with the relevant governments or public authorities. Therefore, within the context of the approved principles, there is clear basis that supports our position as governments.

We understand that the introduction, delegation, and operation of new gTLDs is an ongoing process, and, therefore, it is subject to constant evaluation, evolution, and change in order to improve the program.

Being the first applications to be analyzed, the decision that will be taken are going to be relevant for future cases and will have effects in future applications which might potentially affect every country. In relation with this application, involved governments have expressed serious concerns related to the public interest. In particular, dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own

culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.

During our last meeting in Beijing, the great majority of the governments represented in the GAC understood the legitimate concerns we have raised related to the use of geographic names in new gTLDs. We believe that this new GAC meeting is again an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for dot Amazon address to the ICANN Board in order to reject this application.

We stand by the commitment to the GAC principles regarding new gTLDs adopted in 2007 which require countries' prior approval for the filing of geographic names and encourage ICANN to formulate clear criteria limiting the utilization of geographic names as top-level domain names in the next round of the program.

Thank you, chair.

CHAIR DRYDEN:

Thank you for those comments, Peru.

The GAC will discuss this agenda item on Tuesday at 10:30, I believe. So I consider your comments relevant to that particular agenda item.

All right. Peru, you have further comments.

PERU:

Yes, just very briefly. Just we will come back in the next opportunity on this, but just to let our colleagues know that this statement has already been provided by the secretariat and you must have it all in your -- in the Internet in your mail accounts.

Thank you.

CHAIR DRYDEN:

Thank you for that clarification about the materials.

So for that agenda item regarding the strings for further consideration that we outlined in the Beijing communique, we do have materials that we have posted and circulated and that are available to GAC colleagues, and that includes statements and reports from GAC members.

So if we look at the state of play with the overall scorecard and views regarding the agenda specifically identified for exchange with the new gTLD policy committee tomorrow, are there thoughts on -- for example, do we have agreement that those are the key items that we have a need to exchange with the committee tomorrow on. Is there anything further that colleagues would like to flag that the GAC may need to look at this week in terms of the response?

As I say, most of the advice was accepted by the New gTLD Committee of the Board. And then as I say, there are these outstanding items that we will have a discussion about with the New gTLD Committee tomorrow.

So I see Switzerland and Australia.

Thank you.

SWITZERLAND:

Thank you, Madam Chair.

There's one other issue I would -- wanted to bring to the attention. In the GAC communique of Beijing, we had -- not in the safeguard part but in the general advice on new gTLDs, we had a text about community support for applications which basically says that in cases where a community has expressed a collective and clear opinion, positive or negative, on an application, that ICANN should take this into account. And ICANN basically just responded referring to the community evaluation and objection process.

And the idea of this text is that this should be done also in cases where there has been no community application or no community objection, but because some of the communities were not aware of these procedures or have been advised not to use them for reasons because they were too complicated or others things. There's lots of feedback that we have got in the past months that many communities, although they would -- they are clearly community, did not use these procedures and the idea of this text in the communique was to raise the awareness about this to ICANN and to the Board. And I think we should clarify this in the meeting with the gTLD committee; that we did not intend just to refer to the existing structures but that (indiscernible) is more fundamental than this.

Thank you.

CHAIR DRYDEN:

Thank you for that, Switzerland.

My quick reaction is in terms of the understanding around what was intended by the GAC's advice, I remember there was some back and forth about that. And I think what we would need to do is, as a GAC, have a discussion about whether there's agreement that we would clarify along the lines you're proposing.

It's not clear to me at this point that we could do that, so let's create time for us to have that discussion, and then we can also raise it in the exchange with the Board on Tuesday, and then focus on the current agenda of the New gTLD Committee.

So we will take note of the need for a follow-up discussion in the GAC about what was intended in providing this advice, which was accepted by the Board gTLD committee, and identify what, if anything further, we would want to comment on or advise on. And we can also make use of the meeting that we have at the end of Tuesday with the Board.

So let's take careful note of that item and deal with it this way.

Okay. So next I have Australia, then United States, then Germany.

So Australia, please.

AUSTRALIA:

Thank you, Chair.

So I have a number of comments about the agenda. The first one is on the questions which the Board has sent through to the GAC to help structure our discussion, or the New gTLD Program Committee has sent through.

For those who have had a chance to read them, as they only came through today, I think, they're quite detailed. And one thing which I think would be interesting to focus on in our discussion with the committee is if there are any areas of potential agreement. It seems where -- they've focused in great detail on the wording of a particular phrase and various questions, and they've gone into quite a lot of detail. The sense that I don't have from the feedback that we've got is areas where there may not be questions or where there is potentially some sort of provisional agreement. And it might be interesting to draw out areas where there aren't issues and see if we can build on those rather than diving into detailed areas where we may sort of get lost, so to speak.

The second one is I think we may -- although I don't think it's been flagged directly by the committee, we may be in a discussion with them about the closed generic issue. I also think the response from the Board indicates that they've accepted in part, there's a dialogue in the remainder. And in the dialogue it's mentioned they will seek clarification on our advice with respect to exclusive registry access.

And from the way it's phrased, I'm not exactly sure which bits they're going to seek clarification on. So I think it might be something for us to be prepared for.

There's a number of component parts to that GAC advice in terms of generic strings, what the public interest may be and so on.

So I'm not sure where the Board will focus, but their scorecard response does flag that they will want to talk with us about that at some stage.

And a potential third thing to consider is another one that the Board accepted the advice, but potentially where there may be still further questions is on the question of singles and plurals where we asked the Board to reconsider this. The Board did and considered that their initial response, reaction was okay.

I'm interested in whether any other GAC colleagues are as convinced as the Board is.

I think from my perspective, it still seems to raise questions from a very simple common-sense perspective.

I understand that there is an expert group that has provided advice here about confusability and so on. And -- But from a user perspective, I still find it very difficult to believe that this will not be confusing; that there will be a string and a plural of a string with an "S" at the end and that users will understand the difference.

There's a number of other aspects to this, potential gaming behaviors. In the second round, if it seemed to be okay to apply for plurals, what's to stop applicants from applying for plurals of very successful gTLDs in this round just to leverage off of that marketing and success and so on.

But I am concerned about consumer confusion with singles and plurals, and I'm interested to see whether anyone else shares that concern.

CHAIR DRYDEN:

Thank you very much for those comments, Australia.

So your first proposal to try and give some focus to our discussions and approach regarding the issues raised in the paper that we've just

received I think is a practical one. So I'm happy for us to try to identify areas where we do agree with them as a way to help us move through consideration of these outstanding issues and touching upon closed generics and precisely how that will be handled. What the process is around that I think will be of interest to us to understand as well. So I have taken note of that.

Regarding singular and plurals, I will put them in the same pile, put that issue in the same pile as that raised by Switzerland regarding community support. So that allows us, again, to have GAC discussion following our exchange with the committee tomorrow morning. And then if we wish to raise that in the meeting with the Board, we can do so. And having done so, after hearing from colleagues in the GAC and having a more full discussion. And again, this allows us to focus on the outstanding category safeguard advice for tomorrow morning and the IGOs issue.

Okay. So we have a second agenda forming that we will find time to discuss as a GAC later on.

Okay. So next I have United States, please.

UNITED STATES OF AMERICA: Thank you, Madam Chair.

First, I did think it's useful to throw this out there, and I trust that colleagues will share our view, I hope. I think the Board, the New gTLD Committee has been amazingly responsive to the GAC, and I think this approach that is being followed of following the scorecard kind of

methodology and coming back to the GAC after succeeding meetings is extremely helpful so that we know what their thinking is.

And I think I'd like to -- hopefully we will also say this to the Board when we meet in public with the whole community. I think we also owe a great deal of gratitude to the entire community for being so responsive to the GAC's Beijing advice. And I think all of the applicants clearly stepped up and responded to the Beijing communique in a very short window, and every other interested member of the community did as well.

So I think it's worthy of note that the community was incredibly responsive to the Beijing communique.

So I just wanted to put that out as sort of a threshold statement.

We have been tracking all of the Board messages back to the GAC. Unfortunately, and with apologies to them, but this latest communication just came to us today, and I had very similar questions as Peter did from Australia. In some cases it's not entirely clear to me what the Board is actually asking of the GAC. So -- And maybe they think turn about is fair play, perhaps. Maybe we weren't as clear, they thought, as we needed to be in our Beijing communique. But, for example, when they have that side-by-side list of some generic words and highly regulated sectors, I'm not entirely clear I understand what they're asking us to do. To verify whether a sector -- a string represents a regulated sector or not.

So we might want to try to frame some questions -- I don't know whether colleagues share the hesitation I have or the questions I have. I'm just not entirely clear what they're asking us to do with them.

They also point out -- Apologies, colleagues. I have managed to attract germs from several airplane rides, so I hope it doesn't get worse.

They also talk about we didn't have a principled basis for distinguishing between certain categories and certain strings. So I'm not taking issue necessarily with what they're raising with us. I'm just not entirely sure I know what they're asking us to help them do as a next step.

So I would certainly welcome thoughts from colleagues as to how we tackle these questions, because I assume we have, all of us, a shared goal as to moving the ball further down the field. We'd like to take as many of these things off the list as we possibly can.

And I did want to make just a comment, since we haven't yet met with the New gTLD Committee. But on the IGO issue, just to sort of confirm that it might take away from the most recent conference call that we held with the board members, which I thought was extremely helpful. So appreciation to you, Chair, as well for setting that up and managing to that have held before we came.

I understand the Board's statement to be they have accepted our advice in theory, and they've accepted it concretely for IGO names, but where we remain sort of -- where more work remains to be done is vis-a-vis IGO acronyms.

So I did not hear them say that they would not protect acronyms, but that they need to engage with us further. So I took that as a good sign.

And my understanding, and I hope that colleagues will share their impression, those of you who were on the call, that the primary question I think they want to work with us on is exactly what process we will be following to review those acronyms that actually have -- are in use and can be legitimately used by third parties.

So as we will all recall our IGO coalition, they worked very hard. They developed a proposed approach, and that was circulated around the GAC list and sent to the Board. And I'm going to put words in the Board's mouth, and I think I'm correct but the Board can obviously correct me if I'm wrong, and certainly colleagues can as well. My take-away from the July 3rd call was that the hesitation on the Board's part about the proposed process was that it put the IGOs themselves in a position of being judge and jury as to whether a third entity has a legitimate right to use that acronym. And I think that's the crux of the problem. Having said that, I think there should also be a solution; that we remove the IGOs from being judge and jury and rely on a more neutral approach, whether it's some variation of the trademark clearinghouse notification function. Something along those lines that would actually provide a different platforms so that -- and I'll use the World Health Organization, if I may -- the World Health Organization could get a notification if a legitimate third-party use of the word "who" in the English language for any TLD that had nothing to do with the health sector. And presumably the World Health Organization would consider that legitimate. I'm just throwing that out as an example. They're not here to speak but it strikes me that would be legitimate.

We need to find, I think, a more streamlined, cleaner way, more neutral approach where the IGOs are not somehow -- and I think they put

themselves forward actually in an attempt to be helpful. So I'm looking at my IGO colleagues. I know that was probably their intention. But I think we have to appreciate there is some sensitivity on this issue.

So I just wanted to throw that out, and I trust that others have the same perspective. If you do not, then we should probably talk about this before we meet with the Board.

So thank you.

CHAIR DRYDEN:

Thank you for that, United States.

So I think you've helpfully identified a couple of issues for us from the paper that it would be useful for us to raise when we meet with the gTLD committee.

And regarding IGO acronyms, WIPO is ready to comment as well as part of our discussions this afternoon. So I will turn over to them shortly to provide some inputs to us.

But I'm thinking that the crux of the issue as you present it is my understanding as well of where we are.

So hopefully, then, we can turn to the gTLD committee and have them confirm that or clarify for us what is the precise nature of the issue.

So I have Germany next in the speaking order. And unless I have other requests from GAC members -- I have U.K. Okay. And then I will ask EU Commission, and then I will ask WIPO to comment on the IGO acronyms points.

Germany, please, go ahead.

GERMANY:

Thank you. I just want to comment on some of the positions of my colleagues.

First of all, I would like to support U.S. position in respect of the questioning what expect the Board as answer for their questions in respect of our safeguard advice.

I have also some doubt. And maybe in general, the question is what expects ICANN to be the role of the GAC in this respect? And it would be interesting to hear more about this. And maybe we need to discuss it in depth.

Second issue is community support, which was raised by Switzerland. I would like to support this idea, and I think we had an advice in this respect.

I also have the feeling that it was not answered adequately, and I, therefore, see a need for maybe refining our questions or reiterating it, making sure that the answer we received wasn't exactly the one we expected, but this is fine for me to discuss further in the GAC.

The same issue is on string similarity, which is connection to plural and singular issues. I would like to ask the ICANN Board whether they used the same system for identifying string similarities for the ccTLDs, IDN ccTLDs, and for this new gTLD process. And if it was not the same system they used, I think it would be difficult because, frankly, from -- it's more an impression and not a concrete notion, but I have the

impression that the rules in respect of IDN ccTLDs were rather strict, not allowing any changes without infringing string similarity tests. And for the gTLDs, it's the contrary. There seem to be quite a lot of possibilities, even if they seem to be similar. One example is singular plurals. And, for example, I would like to know whether they used the same algorithm. And if not, I think it would be some issue that the GAC could raise and ask questions.

Thank you.

CHAIR DRYDEN:

Thank you very much for that, Germany. That's helping confirm, I think, where we're headed and how to prepare our agendas and discussions for our meetings this week.

Okay. Great.

So next I have United Kingdom, please.

UNITED KINGDOM:

Thank you, Chair. Just two anxieties. Firstly, as maybe several colleagues here have done I did a consultation with our supervisory authorities and regulators last week. And it's a pity we didn't have these questions in time for that. And if there are issues that are in this document that require us to go back to our regulators and supervisory authorities, that's going to take some time. So I hope the Board will appreciate that. We've made this point on previous occasions, I'm sure.

My second anxiety is that I think there's a risk here that we are getting sucked into detailed implementation of safeguards, and I think we do,

as Germany has indicated, need to be mindful of our role in terms of providing high level advice and saying to ICANN really it's your job to implement and you take, you know, advice as you see fit but don't come to the GAC to help you on implementation.

In addition, I just want to say, I support Switzerland on the community applications issue as we discussed in Beijing. This was not about community applicants. It's about those applications that have proved themselves to be representative of communities. And that was the point of the advice. And I -- I fear the GAC has -- sorry, the board has misunderstood the advice. So we can talk this through in our discussion as you suggested.

On IGO acronyms, I think the proposal from the U.S. is a good one. This is a very tricky issue. Over 200 IGOs, some of them have very, you know, popular acronyms -- I mean, popular in the sense they're acronyms used by other wide-ranging commercial and private interests and some are even words and names. So some kind of neutral approach to sorting this out, which I believe the IGO's would be sympathetic to, is -- sounds to me like the way forward. Thank you.

CHAIR DRYDEN:

Thank you for that, U.K. Next I have EU Commission.

EUROPEAN COMMISSION:

Thank you, Chair. The U.K. GAC representative has actually passed on part of the messages I wanted to communicate with this intervention. But we would like to reiterate that the fact that the board gave its reply only on the 2nd of July has given very little time for the European

Commission to run internal consultation since are a big institution, as you know. And hence, for the time we have to engage in discussions with the board, there are some issues that might be still under discussion and we would like to defer big decisions for Buenos Aires. And we've also noticed that the response from the new gTLD community and the questions that are posed to the GAC actually force us to go beyond giving high-level response and force us to go down the road of implementation. Thank you.

CHAIR DRYDEN:

Thank you. Okay. So next we have WIPO to provide us with some comments on the issue of acronyms, I believe. So over to you, please.

WIPO:

Thank you, Madam Chair. Good afternoon, GAC members. My name is Gerry Tang from WIPO, and I am here with my colleague Sam Paltridge from the OECD to my left. We greatly appreciate being given the opportunity to be here speaking on behalf of the IGO coalition. This coalition consists of over 40 IGOs plus another 15 U.N. agencies such as UNICEF and all of us representing a wide range of essential public interests and who are created by and accountable to the states we represent.

The two GAC communiques from Toronto and Beijing recognize and endorse a strong public interest in protecting both IGO names and acronyms at the top and second level of the Domain Name System. On this basis the GAC and IGO's actively work together to identify a contained list of IGO's whose names and acronyms are to be protected.

Since then the ICANN board has recognized that the remaining issue is the implementation of this protection. In relation to this implementation the board identified three points. First, the languages in which IGO names and acronyms are to be protected. Second, the process for future review of the list. And third, how to handle acronyms for which there may be several claims. IGOs have now provided answers and proposals to each of these points. IGOs have agreed that the names and acronyms will only be protected in up to two languages, rather than the U.N. six languages. IGO's have agreed that the list of names and acronyms would be regularly reviewed, either prior to delegation of any domains in a new gTLD round or every three years, whichever is earlier.

Finally IGOs have agreed that whoever wishes to register a domain name that matches an IGO name or acronym that IGO cannot stand in the way of such registration where the registration is for a bona fide purpose, as opposed to something unlawful or dishonest that would harm the public by pretending some kind of connection with the IGO. Should an IGO and user come into dispute over a proposed domain name registration, that dispute would certainly be able to be reviewed.

The mechanism proposed by the IGOs is workable, efficient, and vitally - - considering that IGOs are publicly funded by your states -- cost effective. That being said, IGOs remain as always flexible and open to engage in good faith discussions with the GAC and the board on the operation of such mechanism. It should, however, be kept in mind that the purpose of these discussions is to implement a system that protects IGO names and acronyms, particularly acronyms which, given that IGO names are a bit of a mouthful, are the identifiers by which IGOs are far

better known, from abuse in a vastly expanded domain name system. And I thank you very much for letting us speak here today.

CHAIR DRYDEN: Thank you very much for those comments. Okay. So I don't see further requests at this time. Okay. Netherlands.

NETHERLANDS: Thank you, Heather. As you -- you asked for topics which could be discussed also in the safeguards and the other sections we have, I want to make the statement on behalf of registry dot Amsterdam which basically says that they will not be able to sign a registry contract because it's in violation of data protection legislation. And there are remediation possibilities, and I think as the geo group will come back to this because it's not only a problem for dot Amsterdam. While they have -- let's say many registries have a problem with signing the current and agreed registry agreement, however, there are remediation and exemptions possible, but this procedure and registry agreement doesn't fit the -- is not, let's say, something which is fit for dot Amsterdam as a public authority. They will all -- they will even be in breach of national legislation, even signing the contract itself and then afterwards remediating it. So I would raise this -- would like to raise this point not now in content but I would raise it in -- also in -- during our talks tomorrow. Thank you.

CHAIR DRYDEN: Thank you for raising this further issue. We will have a briefing from the geo TLD group. I don't know whether they will raise this issue, I suppose

they could. Okay. You seem to think they might. So this will give us some opportunity to hear from them and reflect on this issue further, and then in terms of whether we raise it tomorrow or whether we raise it as part of this other set of issues, list of issues that we are creating to come back to as a GAC, we can think about how to -- how to treat this. But I understand this as being an RAA issue, is that correct? Or am I -- could you clarify?

NETHERLANDS: It is a registry agreement problem.

CHAIR DRYDEN: Ah, registry agreement. Right. Okay. So that helps. Thank you. So I can put the right title to this, registry agreement.

All right. So next I have a request from Belgium, and then I will move to close the speaking list so that we can receive our briefing from the geo TLD group. So Belgium, please.

BELGIUM: Thank you, Madam Chair. I just wanted to take the floor to express our support to Germany's and Switzerland's positions regarding this community applications. We have the support of the communities in this regard, even when they have not been approved. We also support the U.K.'s position regarding the need to define more accurately what advice is expected from the GAC with regard to the fact that we are not in a position to control the implementation of safeguards.

And finally, we would like to discuss the importance of having the support of the political authorities within the framework of geographical names applications, the importance of having the local authority's support when it comes to applications regarding geographical domain name. Thank you.

CHAIR DRYDEN:

A quick last look around.

Okay. So we will continue these exchanges tomorrow morning at 9:00. So what I'm hearing is confirmation that we have a discussion planned and an agenda agreed with the gTLD committee for our exchange tomorrow to talk about category 1 safeguards as well as it relates to closed generics and plans around that. And as well the issue of protecting IGO acronyms. And then in addition, we have additional issues identified where we might need further GAC discussion. If we can do that tomorrow morning, then let's make use of that time. If not, we will find time to further discuss the issue of the advice we gave on community applications and what we intended, in fact, with that advice. And as well, the issue of singular and plurals of the same string, and again, our advice was accepted there where we asked the board to look at this issue and they did, and just to be clear, they -- they made a decision. There was a resolution saying that they would not do anything particular or make changes to the guidebook to deal particularly with this issue. So now it's being proposed that the GAC may want to look at this again and provide further comments and advice, so I also have that on the list. And as well the issue of registry agreements, and particularly a circumstance where an applicant would have a conflict or

potential conflict with national laws and how that would be treated based on how the -- the registry agreements are currently formulated. So that's where we are today.

We will continue in this manner when we continue at 9:00 tomorrow and before we meet with the gTLD committee. So I'll just check that our presenters are here from the geo TLD group. Perfect. Okay. So we'll move to have that briefing now. And just take one moment. Okay. All right. So we have a deck, and to my right is Dirk who will be giving us the briefing today. So please, go ahead.

DIRK KRISCHENOWSKI:

Yeah, my name is Dirk Krischenowski. I'm managing director and founder of dot Berlin, the initiative for the Berlin top-level domain name, and I'm speaking here now on behalf of our geo TLD interest group. We have so far, and I would like to thank Heather and the GAC members to invite us to speak to you and talk to you. And we much appreciate this opportunity to discuss some points with you. Some have been already addressed in the afternoon, and we would give some more briefing and input on the points in the following slides. Next slide, please.

The slides are who we are, the concerns with the registry agreement, our PM requirements and the formation of our geo top-level domain name constituency. Next slide, please. Who we are. Next slide. Yeah, this is quite small, but it gives an overview over all the top-level domain applications we have seen in this round. And you see where are many from, but I think we're from all ICANN regions. We have geo top-level domain applications there. And I would go next slide in more details.

So as the group of geo top-level domain names we thought we should define geo top-level domain names a little bit closer so that everybody knows who we are. And we said geo top-level domain names are those who are geographic names like dot London, dot Paris, or dot Berlin, some geographic identifiers or abbreviations like dot Rio or dot NYC, or geographic indications like dot (indiscernible) or dot Irish or dot Catalonia and some others. And geo top-level domain names absolutely need to have documented support of their local or relevant government and authorities. This is essential as well. And a third point which would make up a geo TLD is -- the purpose of the geo TLD is to indicate and identify domain names with a geographic origin. This is somehow important because there are some geo TLDs which recently became geo TLDs by the geo TLD panel. And we -- our group consists at the moment of 50 applicants for geo TLDs out of 76 total geo top-level domain names. That's our group. Next slide, please.

The concerns with the registry agreement. Next slide, please. A short slide, but I think this reflects the discussion in the afternoon. We think potentially most of us as geo top-level domain names think that the registry agreement really overrides the national legislation, especially in the privacy and data retention policies, like the EU Article 29, and we see some potential problems facing us with the consistency of the UDRP and local dispute resolution policies which several geo top-level domain names have. And I mean with local dispute resolution policies are not only those implemented by the national legislation but implemented by the geo top-level domain itself. We have this already in some ccTLDs, these local dispute resolution systems, and we would be happy to discuss this with you and we would like to -- like you to address this

topic, especially at the GAC board -- at the ICANN board and the ICANN staff so that we have a solution when we go into the contract negotiation phase and sign the contracts with ICANN. There's one slide, please.

The RPM discussion. It's a little built complicated. Please next slide. ICANN has said oh, this is not -- not very good to see, but ICANN has said there should be no registration phase prior to the trademark house clearing -- clearinghouse phase and these are the most models ICANN has. On the top you have the trademark clearinghouse phase and then trademark clearing -- trademark claim service. Afterwards general availability comes, and if a geo top-level domain name, a city or a local government wants to have its local face, ICANN says you can have this limited registration phase in number 2 and 3 before it comes to general availability. And what does this mean for cities? We like to have an example on that. Please next slide. Let's say -- a hypothetical example but could fit, we have the city of Paris having -- want to have a local governmental face where the city of Paris registers Metro dot Paris and police dot Paris. These names would then go in this phase to the city of Paris. Then there would be the TMCH phase and the general availability. Everybody's happy. City has its names. And the other phases can run properly. But this is a proposal of Paris, and if we have on the next slide, please.

>> [Speaker is off microphone]

DIRK KRISCHENOWSKI:

Ah, yeah. On the next slide, the proposal of ICANN says the TMCH phase should be first and that would mean that Metro dot Paris would go to a big company like Metro AG, a very big GAC concern and let's say the police dot Paris would go to the very well-known Police band which you probably all know. And both names would be gone even before the local government phase would start. And there's probably no chance to avoid this. This is an example where our problems raised from. On the next slide we have summarized these topics. It's first prioritization phase and we would like to have -- or ask for that governmental reserved names should trump the TMCH phase. So the government should have -- the local government and probably national governments should have the ability to reserve their names or register them actually in -- before the trademark clearinghouse sunrise phase starts. And priority should be given to those registrants that have a nexus with a geo top-level domain name, let's say to Paris, to Berlin, to Barcelona or to other cities. That's what we are asking for. And second is, at the moment the RPM requirements say there can't be any names online before the trademark clearinghouse phase has been finished. And we think it's essential for the cities and regions, that key partners in these geo top-level domain names and by this I mean the city marketing or the zoo or some other public institutions as well as well-known organizations in the city should have the ability to launch their name before the trademark clearinghouse phase. This is essential for marketing the TLD. Imagine you want to launch a TLD with a trademark clearinghouse phase and you can't even do proper marketing with some good key partners projects which are already there and show the public what you can do with the TLD. And secondly, the launch phases could be different or should be different to illegible registrants. Next slide,

please. Yeah. Then we have the geo top-level domain constituency which is the third point we would like to address. Next slide, please. We are -- at the moment here's the picture from the GNSO and we are going to ask for a constituency within the registry stakeholder group. Next slide, please. And this group consists today of 22 gTLDs like dot com, info, org, info, travel, jobs, Asia, cat and others, and the new gTLD applicants interest group. And what we ask for -- next slide, please -- is to have, along with the brand constituency which has been proposed by many brands, gTLD applicants in Beijing along with those guys who want to ask for geo top-level domain constituency which represents our view and the intake group should still exist as a group of interested parties. And on the last slide, we have a brief mission statement of the geo top-level domain constituency, should as other constituencies represent interests of the geographic top-level domain names, promote cooperation, networking, and other sharing among its members, stakeholders, and within ICANN, ensure that policies are consistent with geographic and local communities, vital interests, and should give guidance to future applicants for geographical top-level domain names. These were the topics I'd like to address with you, and I would be happy if we, as I have two -- two other members of our group with me from Paris and from Africa and Cape Town, Joburg, and Durban, to discuss these points with you.

CHAIR DRYDEN:

Many thanks for that presentation. So are there any questions that GAC members have about the concerns identified by the geo applicants? So I see Paraguay and Portugal, please.

PARAGUAY: Thank you, Madam Chair. I just want to know if we can have a copy of this presentation sometime? Thank you.

DIRK KRISCHENOWSKI: Yes, for sure.

CHAIR DRYDEN: Okay. Portugal, please.

PORTUGAL: Thank you. Well, I shall talk in Portuguese because we have translation but I don't know -- (audio problem). Or not. Or I can wait. Or I can speak in English because it's late.

[Laughter]

Well, I'd like to thank you for this -- this presentation. That for me was the most important part of this afternoon. So thank you very much. I'd like to better understand why you set up this constituency, what was the reason behind? So what did you make to see that you -- you would need to be together? And if you -- it has this -- something to do with the fact that ICANN is not really supporting your interests. Thank you.

DIRK KRISCHENOWSKI: Okay. The reasons why we are doing this, I think we are -- we are quite different from the rest of all new gTLD applicants due to our nature. We all have support from the relevant local and presumably also the

national government in this case. And if you have seen, we have local topics which are really just not affecting the rest of the world but this local community that has applied for its name and with the local community there's -- there's always local government. And this local government has certain interests to use its name and to have its name as good in the root as the ccTLDs. Let's say they have their particular interests as well. And I think the geo TLDs are much closer to the ccTLDs like to the geo TLDs in a certain way, but potentially fits still in the registry stakeholder group because they have a contract with ICANN. Yep.

CHAIR DRYDEN:

Thank you. Netherlands, please.

NETHERLANDS:

Yes, thank you, Heather. And thank you, Dirk. I think it's very, let's say, we cannot plot this new constituency because I think many of you geo TLD applicants went -- applicants in the geo group were one of the first movers, let's say, in the gTLD process. I think you also from Berlin, I recall that you had many years of moving things around, trying to push things in the good direction in ICANN and I think it certainly helps the process.

One thing I would like to expand maybe more on your side is this, let's say, registry agreement problems which I have heard from two of my applicants from our country which is dot police and dot Amsterdam. I'm a little searching about what -- what's this problem means for you in

practice. You mentioned (indiscernible) and privacy as being a potential problem in the RA agreement. Thank you.

DIRK KRISCHENOWSKI:

Yeah, I think as absolutely a practical compound, when it comes to WHOIS, the ICANN contract asks us to publish all the WHOIS data including fax, telephone, and e-mail address, and this is not in line or in conflict with legislation in the European Union or in Germany or in Netherlands or the member states. There they have all different systems, but no one has, I think, the full ICANN -- all the details published for the registrant. I think some -- some ccTLDs might even have near too close a WHOIS system and that brings us to the first where we started to the first lawsuit immediately when we start by publishing all these data. That is I think not what we want to be dragged into lawsuits the day after we have signed or brought the first WHOIS entry online.

CHAIR DRYDEN:

Thank you.

Do you have in mind a particular solution to that issue in terms of the registry agreements?

We covered, I think, a similar issue when we talked about the Registrar Accreditation Agreement earlier because we have had to acknowledge that there are conflicts that can arise with national legislation, and it's not a new issue, as such. So if you could elaborate on that.

DIRK KRISCHENOWSKI: Yeah, but it is an issue which is still very important and the first geo top-level domain names are going -- could go potentially online in the a couple of, let's say, two or three months from now onwards. And we would like you, as a GAC, to address this topic, and we'll also discuss this with ICANN, but we want to have a solution where we can live with in our particular situation and with national and -- yeah, national legislation or EU, or other legislation which is there.

CHAIR DRYDEN: Okay. Thank you.

So I don't see any further requests. Well, Switzerland, perhaps, and then Italy. Okay.

SWITZERLAND: Thank you, Chair. I'll be brief.

Just to support what the Netherlands and others have said. We think this is a useful thing, and I will not recall, like I did not recall in the brand registry meeting that we had the idea of categories some years ago. And it obviously makes sense because they are very different.

Just one point about the sunrise phase and the need for local constituencies or local specific needs that should reasonably come before the sunrise. I think this is a key point that is very important for many of the geo TLDs, and I want to support this issue that a solution should be found and that ICANN should be flexible in finding a solution that makes sense for geo TLDs.

Thank you.

CHAIR DRYDEN: Thank you, Switzerland.

Italy, please.

ITALY: So you say that 50 of the 76 geo names are associated with the new constituency. And my question is, first of all, do you have any information about the withdrawal of some of them? I'm asking this because dot roma is one of these 76, and I can assure that they never, the top-level domain, limited, received the support from the City of Rome. And I'm surprised that the name is still there and they didn't renounce or withdraw the application.

So, but in any case, I would like to know if you contacted all the 76 just to share the problems with your organization.

DIRK KRISCHENOWSKI: Yes, we have contacted all geo top-level domain applicants to join our group, and we have, at the moment, 90 -- some 92 persons on our mailing list, which is running since I think the meeting in Toronto. So a pretty long time. And we have been organized and held meetings in between. The last meeting was hosted by the City of London in London two weeks ago, with over 40 participants from all over the world.

And so we have good contact, and informed them also about constituency formation request and all these things which come up with geo top-level domain names. So we try to have a very fair, transparent and open process in this matter.

Regarding to some of the geo top-level domain names which might have no support letter, at the moment I'm not the right person to talk to. They are still in the list of applicants and they are not withdrawn, so I can't say anything else as reflecting on this list which is published by ICANN.

CHAIR DRYDEN: Thank you. Okay. So at this point I would just note -- Germany, did you have comments? Please.

GERMANY: Yes, thank you. It is a simple question in this respect. I just wanted to know how you make sure on this protection of city-specific names, you want to establish a list on this, how you want to make sure that you avoid some legal challenges maybe imposed by trademark infringements. Because, on the other hand, you have trademarks that you probably may infringe and that may be also have legal consequences. And in this respect, it will be the registry who now takes over the responsibility for this -- for developing a list that contains maybe also trademarks from other regions and jurisdictions.

DIRK KRISCHENOWSKI: I think lawsuits in this matter can't be -- can't be avoided. And these examples here come from the real world. The metro company, the big German one, they sued the Paris metro on the metro.com -- or help me. Yeah, metro.com and metro.FR and other names, and such lawsuits or legal things can't be avoided.

This will happen, but I think we have a very clear legislation in the countries how to work with these names. And I think when a city asks for metro.paris or police.paris, I don't see any company or other party getting into this name or getting this name.

Yeah.

CHAIR DRYDEN:

Your colleague from the geo TLDs would like to speak.

NEIL DUNDAS:

Thank you. I'm Neil Dundas from the dotAfrica applicant as well as three South African cities.

I think just to answer that specific question, the trademark holders have always got alternative dispute resolution. There are mechanisms designed to address trademark issues post delegation.

So if there is a domain that is allocated to a local government authority, such as metro, and the person that holds the trademark for metro believes that their marks -- their trademark rights have been infringed, they can always use the UDRP or some process like that where they would have to prove the name is abusive, essentially. And that would be very difficult to do against a legitimate use such as metro for the City of Paris.

So I think there are catch nets for the protection of trademark rights post the sunrise process.

But from our perspective, if you are looking at a localized instance, the development of reserved name lists not only for our cities but for our continent is a very time-intensive and very lengthy process. We're going to have to approach many, many governments in Africa, we're going to have to coordinate those efforts, filter down, build up this list. It might be quite an extensive list ultimately. And I'm sure the same would apply for some of the city names.

But I think what we're asking for is that we sensitize ICANN to be flexible when we approach them on these issues because, at the moment, the issues are still in a gray area. We cannot go ahead and invest all our time and resources on developing these lists to only find out in the next few months that the sunrise process, the trademark clearinghouse process trumps them.

So we need to start sensitizing ICANN to the fact that geos are developing these lists and these lists have the support of local governments and authorities and that they should be given due respect and due regard when they are published, and certainly should have priority above trademark rights.

And of course there's an element of reasonableness there. The geo TL applicants will employ reasonable measures to ensure sure that the lists are within reasonable bounds.

From our perspective, just a last point is on the rights protection mechanisms. For a continent like Africa, which is a developing region of the world, concepts such as the trademark clearinghouse are exceptionally difficult processes to create awareness and educate the local businesses and trademark holders on.

So we would like to see applicants have the flexibility to introduce their own localized systems to address trademark validations and verifications so that local participants can more effectively participate in the sunrise process.

This is an effective request. We want you to direct ICANN to say the trademark clearinghouse is fantastic for general protection across all gTLDs, but if we really want to promote and make our geo TLDs successful, allow the applicant some flexibility to implement their own processes, with the trademark clearinghouse as the fall-back position. But let us do something that we know can cater for the local communities we are trying to serve. And I think that's another issue we need to sensitize ICANN on, is when it comes time to negotiating these agreements, we're going to want them to see that flexibility is needed when they approach the geo TLDs.

We have local stakeholders such as governments involved, and there's a lot of thought and deliberation that has gone into this process, and ICANN must respect that and not simply push us to the back of the queue and then negotiate the agreements with us.

Thank you.

CHAIR DRYDEN:

Thank you.

So one final -- two final speakers, Netherlands and Norway, and then we need to conclude.

NETHERLANDS:

Yes, thank you, Heather. This last remark I think is very essential, what you made. And it proves for me that although there is -- let's say there is advantage of having a one size fits all, in this case I think one size fits all doesn't do justice to all the different kind of applications. And would also even make one extra example. I think your examples are very valid.

For example, we have national police applied for, polizei, dot polizei. It would be, to be honest, very ridiculous to them to have a clearinghouse mechanism to have commercial entities reserve names under polizei. So it completely doesn't make any sense.

So we have -- I think ICANN should really have, I should say, the flexibility to have certain applications, and I think the geo group is a very specific category to have an exemption to this rule, an adapted clearinghouse mechanism.

Thank you.

CHAIR DRYDEN:

Thank you. Norway, please.

NORWAY:

Thank you. This is just out of curiosity. Do you have any knowledge on relevant governments' involvement in the running of the geo TLDs? Like do you have like a new member list? Have you got many high demands from governments or are most of the members just got an approval, a letter of approval without any terms and conditions?

Thank you.

FABIAN:

Hi. My name is Fabian (saying name). I am working for the dot Paris project. As an example, the City of Paris is itself the applicant. So it has applied itself as the City of Paris, the city government for the TLD. And as far as running the TLD, it will be very closely involved in policy definition. So for instance, the TLD's launch policy has been designed with the City of Paris, and it's today put into question by those rules that ICANN has published.

But to answer your question more generally, I think there is a balance of the situation within the geo TLD community. There are those applications where the local government's involved. For instance, in France, out of the five geo TLDs, we have three of them that are the actual local government and two of them, two others, that are actually - - sorry, it's one of the four that is not-for-profit which has support from the relevant authority.

So in our group we have a balance. We could get back to you with numbers, and to be precise. But we do have relevant government involved directly in applying and in running the TLDs.

And, for instance, to come back to the example of the City of Paris, it will be the one -- it's envisioning to be the one signing the contract with ICANN.

DIRK KRISCHENOWSKI:

And we have a roster of our group where it's -- where we can put on, if it's a local government who is applicant or private entity or association or something like this, we can provide you with this list, certainly.

But it's like -- it's a colorful mix, like the ccTLDs are, with every kind of legal entity running a TLD. It's the same with geo top-level domain names.

CHAIR DRYDEN:

Okay. Thank you.

So I would note that we have the issue of registry agreements and geos on our discussion agenda in the GAC so we will be coming back to this issue. And I wonder whether it would be useful for us to ask for some sort of briefing about the registry agreements and, in particular, these issues from staff, if we can manage to schedule it to further inform the GAC returning to this topic.

So thank you for coming to present to us today. And as I say, we will be looking at this further at our meetings here.

So for the GAC, we will conclude here and reconvene at 9:00 a.m. tomorrow. So have a good evening, everyone.

Thank you.

[END OF AUDIO]

EXHIBIT C-039

13.07.2013

Statement on “.amazon” and other strings containing geographic names**47th ICANN GAC Durban Meeting**

Submitted by Argentina, Brazil, Chile, Peru and Uruguay, with the full support of Amazon basin countries.

- We acknowledge that the “GAC principles regarding new gTLDs” adopted on 2007, clearly establish that the principles “shall not prejudice the application of the principle of national sovereignty”. Besides, we understand that highlighting the importance of public interest is a relevant element that gives stability, sustaining the multistakeholder model and ultimately the legitimacy of ICANN’s administration.
- In this sense, this model should contemplate adequate mechanisms before the GAC, to guarantee a proper representation of the Governments and their communities regarding the Public Policy issues within the ICANN framework. It is fundamental that Governments have the adequate instance where their opinions can be effectively considered, particularly in a context of an unprecedented wide open call for applications that has brought uncertainty for both governments and applicants, has created conflicts with existing rules and will establish precedents and benchmarking for future operations.
- In the context of the last applications for the New gTLD Process, various strings have generated concerns from different countries. This is the case of Brazil, Peru and the Amazonic countries with the application for “.amazon” by the company Amazon, Inc. and until very recently was the case for Argentina and Chile with the application for “.patagonia”.
- From the beginning of the process, our countries have expressed their concerns with the aforementioned applications, presenting various documents to the GAC referring to the context and basis of the national and regional concerns, including Early Warning and GAC Advice requests. Various facts, recorded in several historiographical, literary and official documents throughout history, including recent Official Regional Declarations, haven been submitted and explained by each country directly to the GAC and to the applicants, through the established procedures and through an active engagement process with the interested parties that has allowed us to explain our position for requesting the withdrawal of the applications. This is the position adopted, for example, by the IV Latin American and Caribbean Ministerial Conference on Information Society, the Amazon Cooperation Treaty Organization, the Brazilian Internet Steering Committee, the Brazilian Congress and the Brazilian Civil Society, the Peruvian Congress Commission on Indigenous Peoples, local governments of the Peruvian Amazon region and several representatives of the Peruvian Civil Society.

- The 2007 principles states that ICANN's core values indicate that the organization, while remaining rooted in the private sector, recognizes that governments and public authorities are responsible for public policy and should take into account governments' or public authorities' recommendations. They also make reference to the provisions of the Universal Declaration of Human Rights and the obligation that the new gTLDs should respect "the sensitivities regarding terms with national, cultural, geographic and religious significance". They clearly add that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities". Therefore, within the context of the approved principles there is a clear basis that supports our position as governments.
- We understand that the introduction, delegation and operation of new gTLDs is an ongoing process, and therefore, it is subject to constant evaluation, evolution and change in order to improve the program. Being the first applications to be analyzed, the decisions that will be taken are going to be relevant for future cases and will have effects in future applications, which might potentially affect every country.
- In relation with this application, involved governments have expressed serious concerns related to public interest. In particular ".amazon" is a geographic name that represents important territories of some of our countries, which have relevant communities, with their own culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.
- During our last meeting in Beijing, the great majority of the governments' represented in the GAC understood the legitimate concerns we have raised related to the use of geographic names in new gTLDs. We believe that this new GAC meeting is again an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for ".amazon", addressed to the ICANN Board in order to reject this application.
- We stand by the commitment to the "GAC principles regarding new gTLDs" adopted in 2007, which require countries' prior approval for the filing of geographic names and encourage ICANN to formulate clear criteria limiting the utilization of geographic names as top level domain names in the next rounds of the program.

EXHIBIT C-040

DURBAN – GAC Open Plenary 4
Tuesday, July 16, 2013 – 10:30 to 11:30
ICANN – Durban, South Africa

CHAIR DRYDEN:

Okay, everyone. If you could take your seats, let's get started again. Okay. All right. So welcome back, everyone. Just a few organizational points to keep in mind. We're circulating an attendance sheet. So if you can please fill in the attendance sheet to help us track who is here. Usually Jeannie's very good at being on top of everyone that has joined the meeting a bit later than when we started on Saturday, but she's not here, so let's do the attendance sheet to make sure we can keep a good record of who is here in attendance and participating in our meetings.

Also, a reminder that at the end of today there is a cocktail with the board, so a Board-GAC cocktail that we're all invited to join. And this is a very good informal opportunity to talk to some of our board colleagues and have an exchange with them. So I would really encourage you to come as well. The ccNSO is having its tenth anniversary and we've really come to have good working relations with our colleagues in the Country Code Name Supporting Organization so I know they would really appreciate us joining them to celebrate this event on their tenth anniversary. And so that we are able to attend the cocktail with the board, there will be special buses arranged to take us to the ccNSO anniversary event so that this can be made as smooth a process as possible for us. So again, I encourage all of you to take advantage of these opportunities to socialize and join in the celebrations with our country code colleagues.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So with that out of the way, just some notes on the agenda. As you know, we were planning to address the outstanding strings discussion in this session, but more time is needed for consultations with some GAC members, and so we have notified you via the GAC list that we have moved this to Wednesday, I think it's at 11:30 a.m. when we will have that meeting. But I do think that if we can continue this process of consultations, if I can talk to a few more colleagues and some that I have committed to come back to, then it will allow that session to go more smoothly and for us to understand how that will be conducted in advance, and I think that is in everyone's interest, given that there are some sensitivities associated, in particular with discussing those issues and those remaining strings, in that session.

So as an alternative -- Brazil, please.

BRAZIL:

Good morning, Chair. Thank you. Just related to the shift of the agenda that you just announced and sent us yesterday evening, or afternoon, sorry, I would like to ask the Chair to review this proposal because in our case we brought the vice minister today to the GAC meeting just because of this discussion. And he's leaving tomorrow early. So I would like to ask the Chair and our colleagues to review this proposal to bring the issue to the same agenda that we have received in the beginning of our work some weeks ago because we have planned our delegation and the trips based on that agenda. If you could review it and if we could have the support of our colleagues, the Brazilian delegation would appreciate it.

CHAIR DRYDEN: Thank you, Brazil. So we did not receive any objections via the GAC list about this change, but I did consult with the vice chairs about this before making the change to the agenda and as I say, it's going to help us to have more time. Frankly, I just don't think we're all ready for the discussion today. However, if you are prepared to make a statement, then perhaps we can receive the statement now and then address these issues tomorrow as proposed. Brazil.

BRAZIL: Madam Chair, I made -- I'm making a statement. I would like to propose to the plenary to review this decision. If you could put today the decision of the plenary.

CHAIR DRYDEN: Thank you, Brazil. And (audio problem) I have proposed to move it to tomorrow. I do not believe we are ready for discussion of all the strings that are on the list. Consultations have been ongoing, my consultations have been ongoing, and we need more time for that. However, if you wish to make a statement about a string that is on that list, then we can hear that statement now. I think that would be a way to proceed. Okay. So I see Peru, Argentina, and the EU Commission.

PERU: Good morning, Chair, good morning, everybody. We would like to support the request from Brazil. Any GAC member has the right to ask for the review of a Chair decision, with all due respect. In our case we haven't been consulted, being main -- a country mainly interested in the discussion of dot Amazon, among other strings, and we are concerned

about the fact that this shift in the agenda may not allow enough time to have a thorough discussion of what is the main business of the GAC. So we would like to endorse what Brazil has requested and, of course, join the plea for all GAC members to review this decision of the Chair. Thank you.

CHAIR DRYDEN:

Thank you, Peru. It's unfortunate that I was not aware of your views before we sat down to have this session. It would have been preferable to understand your concerns and to look at a way forward before we sat down in the plenary. So you may feel that you were not consulted, but neither have I been consulted in terms of your concerns. And of course, I -- I am happy to take note of them. Okay. So Argentina, you are next, please.

ARGENTINA:

Thank you, Madam Chair. Argentina shares the same concerns as Brazil has expressed and also Peru and would like to remind you that we did a statement in the name of several of our countries of the region that we were worried about specific strings in that list of strings that have to be reviewed. Also, I would like to remind you that in Beijing the agenda was changed and was shifted to Thursday, some work that has to be done, and some of us were already scheduled to leave that day. So we would like to have more time to discuss some issues that we think are substantive important for our region. Thank you.

CHAIR DRYDEN: So as I understand it, the concern is that we won't have enough time. I believe we will. And I think the question that you are particularly interested in, the governments that have spoken so far, will be addressed very quickly. And if we can discuss it outside of this session, then I think that would be useful so that you know how it's going to be handled and what you can expect. And this is what I mean by wanting to make sure that all of the consultations in the corridors are complete so that that session can actually go very quickly and smoothly, in fact. So next I have EU Commission.

EUROPEAN COMMISSION: Thank you, Chair. I understand your concern of moving on quickly and I think it might not be the right moment to come to definitive conclusion, but I think one of the words that was also mentioned in the opening session is "empathy," far apart from efficiency and effectiveness. And I think if the delegates feel strongly about having some discussion at this stage, I would like to support the Brazilian proposal to have at least first discussion at this stage of the meeting. Thank you.

CHAIR DRYDEN: Thank you, EU Commission. Okay. Iran, you're next.

IRAN: Thank you, Madam Chairman. Yes, we understand that you have consulted some colleagues. May not be -- you may have not been able to consult others. However, we have the distinguished -- the deputy minister of Brazil here. He wants to follow the questions. We have full respect to all of our colleagues and we have to work together. I suggest

that instead of discussing an hour what to do with the agenda, you continue your consultation this morning and the provision that this afternoon you provide opportunity, at least strings that Brazil and some other countries are interested to be discussed while the deputy minister is here. So we should, I think, work collectively and friendly and leave a little bit of time, maybe afternoon you can do that. Perhaps at least you consider the possibility that give priority to these strings while our distinguished colleague from Brazil is here. We don't want to disappoint anybody and we would like -- because he might have very heavy agenda, have to leave here, and that is all. So we also support the proposals of other colleagues that have made that. We need to continue that and take into account of the concern expressed our -- by our colleagues. That is point one.

Point number two, Madam Chairman, not ask for the floor again, we have sent you a letter and we would like that tomorrow when you discuss you provide us opportunity to briefly present the thrust of our letter. Thank you.

CHAIR DRYDEN: Thank you, Iran. Chile, please.

CHILE: Thank you, Chair. Well, we circulated a document, a few of the countries of our region, the first day of this meeting and we were ex -- what you expressed regarding that statement was that you -- that was going to be discussed today. So I think that we could -- if that's good for everyone, we could at some point talk about those topics because we --

there are relevant countries here that have concerns, so I think it would be important to hear in this session what's going on and where we're standing at this point. Thank you.

CHAIR DRYDEN:

Thank you, Chile. Okay. So we have some time now before we break. So for those here present that would like to comment on the outstanding strings, let's do that now. I would like to keep the time in the agenda for Wednesday as well. But as has been proposed, this is an opportunity for at least some initial discussion, taking advantage of those that are present and giving them an opportunity to make their comments today. All right. Brazil, please.

BRAZIL:

Thank you, Madam Chair. I would like also to thank our colleagues that support our request. And I would like to emphasize the importance of having this discussion today as well as were planned a few months ago. So I would like to propose that we follow the suggestion of the Iran representative in having this discussion today after whom I believe at 2:30 today.

CHAIR DRYDEN:

Okay. We're looking at the schedule, and we have a session planned with the ccNSO at 2:00. So depending on whether we can make changes to that, we may or may not be able to have the discussion at 2:30, as you describe. But we do have the time now, if you did want to make comments, as I say, before we break for lunchtime. So India, please.

INDIA:

Thank you, Chair. Let me introduce myself. This is my first intervention at the GAC. I'm Ajay Kumar, representing government of India, and I would request the indulgence of the GAC plenary to consider a request which India has with respect to a couple of strings. These strings we had actually issued our early warning way back as per the time schedule and we had also engaged in the process of dialogue and interaction with the applicants with respect to these strings. And we were happy to work with them and to come out at an amicable solution. Unfortunately, however, while the discussions were going on and we were under the impression that we would be able to achieve a resolution, things have reached a situation where I don't think we have been able to reach a situation where we can agree to these gTLDs. I know this is beyond the deadline, but the request that I have for GAC's consideration is these two gTLDs, one is dot Indians which is very close to the ccTLD for India and the other one dot Ram which is the biggest Hindu deity in India for the biggest chunk of population in the country. Both of them have very serious concerns within the country. This matter has been considered in our government both with various stakeholders as well as with various ministries of the government and we realize that it is difficult for us to agree to these gTLDs. I understand that we are actually behind time and GAC has been proceeding and we greatly appreciate the great work which GAC has been doing, but the fact of the matter is that if we were to ignore the objections that we have today, we actually have a situation which will need to be addressed and, therefore, I think considering the large number of people who are expressing the concerns with respect to these

application, the GAC may deliberate and find out a way to resolve these objections.

We cannot have a process really which would lead to a situation which creates -- leads to a problem. I mean the whole process through which the GAC has been going on over the last so many months has been to find out a way by which the gTLD process can proceed smoothly as well as we are able to find -- address the genuine concerns of the governments. And here we are in a situation, despite our best efforts, despite the interactions we have had at different times with the applicants, we have not been able to resolve.

So I think given the magnitude of the problem and the sensitivities conveyed at the highest levels from the government of India, we would request the GAC to kindly consider taking this matter and raising it along with the rest of 14 strings that have been included in the short list, the Beijing communique.

Thank you.

CHAIR DRYDEN: Thank you, India. Iran, please.

IRAN: Thank you, Madam Chairman.

I fully respect all distinguished colleagues in GAC to make every statement, but perhaps for the sake of time, perhaps possibly we just limit this period of time, one hour and so, to the Amazon discussions because our distinguished colleagues have difficulty for tomorrow.

While we fully respect all colleagues to make every point, at a later time we will come to the discussion of the strings. So this is exceptional case of Brazil because they cannot stay here tomorrow. So if all distinguished colleagues agree, you limit the discussions to that.

Thank you.

CHAIR DRYDEN:

Thank you, Iran. I'm happy to hear initial comments and discussion from any of those governments that are interested in doing so in terms of the outstanding strings that we have identified, but certainly Brazil and others may wish to comment specifically on Amazon. But I like this proposal to have an initial discussion now to make use of the time we have.

Okay. Peru, please.

PERU:

Thank you, Chair.

So as we understand, and our thanks to our GAC member of Iran, we are to start the discussion on dot amazon at this moment.

In that sense, let us remind that we have already distributed a statement on what the position, not only of the countries but of the whole region is in this regard. And if you allow us, I would like to ask our colleagues from Brazil to make the first presentation, and then we come -- we'll come back to complement what they are going to say.

CHAIR DRYDEN:

Thank you very much, Peru.

Brazil, are you requesting the floor? Please, Brazil.

BRAZIL:

Thank you, Madam Chair.

So we would like to, first of all, thank you, the GAC and the Chair, to accept our request to start this conversation today, to take advantage of the presence of our vice minister here, whose presence here expresses the wide and deep concern of the Brazilian society with the solicitation of the registration of dot amazon.

As you may know, we had a very deep, long and good discussion in the Brazilian Congress about this. Our Congressmen expressed their concern about the risk to have the registration of a very important cultural, traditional, regional and geographical name related to the Brazilian culture.

We share this opinion with all of the countries in the region, so Peru, Colombia, Venezuela, Ecuador, Suriname. All of them in a meeting in the Amazon Treaty Organization last April produced a document, a declaration related to the dot amazon, also expressing their concern to the registration of this very important name to the Brazilian society.

Afterwards, we had a meeting in the ALAC which comprised the Latin American and Caribbean countries in May. The same as well, all the countries supported the Brazilian, and the Amazon countries demand to the GAC, to our fellow countries to send an advice to the Board to reject the registration of dot amazon for the same reasons.

As you may know, the Amazon region only in Brazil comprises 50% of our territory. More than 30 million people live in this region in Brazil.

We have one of the most important bio systems in the world with a very huge sort of fauna and flora. And this concern is also shared by all the Amazon countries.

Besides the Latin American, Caribbean countries, besides the Amazon countries, within the society we had a very meaningful reaction against the registration of dot amazon. We have a declaration issued by the Internet Steering Committee, the Brazilian Internet Steering Committee, which is a very democratic and multistakeholder platform which takes care of the Brazilian policy on Internet. We had a very huge reaction from the civil society which is organizing a document signed by thousands of people to be sent to the GAC board -- to the ICANN Board reacting against this solicitation.

So in a certain way, we fulfill the requirement, which was posed by the Beijing communique. I would like to read the exact text that we have approved -- or, sorry, because I was not here, you have approved in Beijing four months ago, which says, "The GAC advise the Board," so it's already a decision from the GAC, "that in those case where a community, which is clearly impacted by a set of new gTLD applications in contention has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account together with all relevant information."

As you may remember, on Saturday or Sunday -- Sunday, Peru, Brazil, Argentina, Chile and Uruguay sent you a letter where we explained all this reaction from the society, from the Brazilian society, from the

Peruvian society, from the Brazilian Congress, from the Brazilian Internet Steering Committee. And we would like to come here again to ask the GAC members to support a GAC advice to the Board in the same -- in the same terms as we have approved last meeting in Beijing about dotAfrica.

Besides that, we think that the principles approved in 2007 by the GAC as well comprise our demand on this issue.

I would like to inform all of you that we have very good conversations with the Amazon, Inc. We understand their business plan.

All of our conversations, we have met at least three times, were carried out with a very faithful willing from both sides. Nobody thinks that each of the other side has bad faith on this.

We understand their business plan. We understand they're willing to make a good job. But for a matter of principle, we cannot accept this registration. And we have expressed to them this position very clearly, very politely, and very frankly.

So I would like to ask my vice minister to complement these initial words. But I would just ask you again, reinforce the Brazilian demand to the GAC members to approve a rejection on the registration of dot amazon by a private company in name of the public interest.

If the chair allows me, I would like to ask my vice minister to talk.

BRAZIL:

Thank you all for this support to our request. I would like to add two points to the comments made by my colleague. The first one is that this

domain string dot amazon, it affects a large number of communities in the Amazon, which is based on -- which covers eight different countries in South America.

I would like to recall what was said yesterday in the opening speech by the commissioner of the African Union where she said the importance of protecting geographical and cultural names in the Internet.

So I would like to ask the support of the members of GAC to reject this proposal of registering dot amazon.

CHAIR DRYDEN: Thank you, Brazil.

I see Peru.

PERU: Yes, Chair. Thank you. With your indulgence, just to highlight three or four points that we think are crucial for the understanding of our request.

And first, in terms of legal grounds for our request, we believe there is enough legal grounds in ICANN bylaws, in prior GAC advice, and also in the applicant's guide.

So our plea is very well grounded in the legal framework of the ICANN. That would be the first remark.

The second remark is that there is no doubt that this is a geographic name. Amazon is -- pertains to four departments of the Amazon countries. It is the department, for those that probably do not know

our political division, is the second, the second division for our countries. It is larger than provinces in our political division. And so it pertains to Venezuela, to Colombia, to Peru, and to Brazil.

Amazon, in Spanish, also belongs to cities of our countries, and Amazon in English is also a city in Guyana.

It has been allotted the three-digit code number. So it is in that 3166-2 list. So there is no doubt whatsoever that this is a geographic name. This would be the second remark.

And the third remark is that, indeed, this is a public interest issue, and that is why we are discussing this in the GAC.

There are several populations that have been involved in this, and I want to stress the fact that, unanimously, all Amazon countries and all Amazon provinces, departments, and local governments have expressed, in writing, their rejection to dot amazon.

So there is a unanimous claim, a unanimous understanding of the community concern against this registration.

So for the time being, those are the three remarks I would like to make. And of course I will be keen to come back in the discussion of any concern or any question that the members of the GAC may have.

CHAIR DRYDEN:

Thank you, Peru.

Okay. Are there any other requests at this time?

At the end of the table. Is that South Africa?

SOUTH AFRICA: South Africa, yes, chairperson.

CHAIR DRYDEN: Please.

SOUTH AFRICA: We would just like to state we support the contributions that have been made by the Brazilian delegation and the delegation from Peru.

We have similar strong concerns about the need to protect public interest and communities and cultural and geographic indicators.

Thank you, Chair.

CHAIR DRYDEN: Thank you, South Africa.

Next I have Gabon, then Sri Lanka.

Gabon? Do I have the right GAC member?

GABON: Yes.

Thank you, Madam Chair.

Gabon also needs to comment on this issue from -- it has received the comments from the Brazilian delegation on this issue, and we believe

that if this zone was validated by ICANN, this could go against the new gTLD principles developed by the GAC council in 2007.

The new gTLDs should observe the sensitivities and those terms that have a national, cultural, geographical, regional or traditional meaning.

Therefore, ICANN should reject any application related to geographical, cultural strings that have these -- that pose these kind of problems.

SRI LANKA:

My intervention will be very short. This issue of dot amazon has reached our foreign ministry and has gone to the highest level of attention between discussions with Brazilian government on a lot of bilateral trade related issues. And in view of the comments made by the Brazilian as well as the Peruvian delegate, I wish to record a highest and the strongest support for what has been stated by our Brazilian, Peruvian delegates at this session.

Thank you.

CHAIR DRYDEN:

Thank you, Sri Lanka.

Next I have Trinidad and Tobago and then Russia.

TRINIDAD AND TOBAGO:

Yes, thank you, Madam Chair. Trinidad and Tobago supports the position of Brazil on the dot amazon issue.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Russia.

RUSSIA: Thank you, Madam Chairman. I will speak in Russian, so please use headphones.

The Russian delegation would like to express its support, its complete support to the claims that were given by our colleagues from Brazil and Peru. We also share their concerns in using geographical terms when registering -- when registering domains by special companies. And of course we consider that the point of view of governments has to be taken into account in these terms.

Thank you for your attention.

CHAIR DRYDEN: Spasibo, Russia.

Uruguay, you are next, please.

URUGUAY: Just a very short speech.

I want to speak as chair of the ministerial meeting of the Latin American, Caribbean countries. The support for Patagonia and Amazon claims were in the strong words we could make in this event. It was a ministerial one. And we find there's no more for us to say. That's our opinion on the item.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Uganda.

UGANDA: Thank you, Madam Chairperson. I want to thank you in supporting the statements made by the Brazil and other countries who are affected by Amazon like all of us. And I wanted also to ask you, Madam Chairperson, many of us are from developing countries. We're going through a process of generating similar strings which may be of concern to us.

So I'm wondering should we always have to come here and make statements like this, or there's going to be a general way of protecting those strings that we think are sensitive to us. Just a secondary request to hear from you. I'm not a regular participant in this meeting, but I follow. And I thought that the GAC advice there that was given would be enough to protect. But I just want to hear again whether this is going to be a procedure that, if we feel strongly that there's something that we need to protect, we have to come here and talk about it. Thank you.

CHAIR DRYDEN: Thank you, Uganda. I have Australia next.

AUSTRALIA: Thank you, Chair. And thank you to all colleagues who have spoken already on this very important and, obviously, very sensitive issue for

the GAC to consider. And thank you. It's good to be followed by our colleague from Uganda. So thank you very much for raising the question about a broad process. Many of you will have seen that I've put some suggestions to the GAC list on this issue. So, first of all, I want to be very clear that the Australian government supports countries in advancing their national interest with regard to geographic names. This has obviously been an area of longstanding interest to the GAC, and there is a substantial amount of existing GAC advice on this issue.

The situation that we face today is that some governments consider geographic names that are not on ICANN's lists or picked up under ICANN's framework in the applicant guidebook.

And I think this is why we are here today discussing this, because there is an apparent gap in ICANN's processes and policy framework.

So, for me, my proposal and the Australian government's proposal has been to fix this gap. It appears that there are many applications in the current round that governments clearly consider to be geographic names and of considerable significance. And what we face is that there is no clear process. We have, in the GAC here, these conversations. But, in terms of ICANN's policy framework, we -- there is -- there is something missing. There is no process whereby governments and applicants can put their cases and have them heard and their criteria for resolution and so on.

So the Australian government, while not commenting on any of the applications that are before us today, broadly would like to advance the idea that the GAC suggests two ICANN that it establish a clear process to deal with this issue that would apply in this round and in future rounds

as well. I expect that many applicants in this round and people who pay attention will be sensitized in future rounds to the GAC's interest in this. But this situation may come up again. And I think we'll do ourselves a great service if we were to recommend to ICANN to put in place a clear process to reconsider the issue of geographic names and deal with it so that we do have a very clear process going forward. Thank you.

CHAIR DRYDEN: Thank you, Australia. Argentina.

ARGENTINA: Thank you, Madam Chair. And thank you, Australia, for bringing this comment and your contribution. Our delegation and your country had a meeting that we think it was very constructive, and we replied to your proposal.

I would like to stress a part of the applicant guidebook which is a paragraph that should be considered by companies. And I think it has been taken kind of lightly from the applicant perspective. The applicant guidebook says, in the section that talks about geographic names, "In the event of any doubt, it's in the applicant's interest to consult with the relevant governments and public authorities and enlist their support or non-objection prior to the submission of the application in order to preclude possible objections and preaddress any ambiguities concerning the string and applicable requirements."

Argentina thinks that, if this paragraph would be more reinforced or mandated by the applicant guidebook, all these problems that we're having now wouldn't happen. Because, if we had some communication

or contact from the company before, maybe we could have found a way out, which is something that could have been negotiated among countries and the company.

But that didn't happen. Just the companies went on with the application. So the applicant guidebook contemplates this event, but it has not been respected by the applicants. So we think that the GAC should stress this. And also we think that everything is written already in 2007 when the GAC, in the Lisbon meeting -- some of us were there that day -- we issued the new GAC principles for new gTLDs. And this is where all our ideas are expressed. Thank you.

CHAIR DRYDEN:

Thank you for that, Argentina. Next, I have Brazil and then Portugal. Thank you, Madam Chair. I'd like just to comment three things very quick. I would agree with Peter. I think we need to have an action in the GAC to try to cover this gap. But I don't think the gap is as serious as we think. First, because of some arguments that the representative from Argentina just raised. Because the, let's say, the obligation to search for a previous negotiations is from the applicant. The countries, they have the right to discuss in this fora, in this forum, the case is one thing. The second -- it doesn't mean that we don't need to cover the gap. I think it's useful to make an effort to cover this gap. But try to reach the question by Uganda I think, in our point of view, yes, sometimes you need to come here. Because the list, the previous list is not an exhaustive one. For example, now we have dot amazon. But in the future, maybe you can have dot sahara, dot sahel, dot Nile, dot Danube. I don't know if the names are there. I don't have the list by

heart. But maybe the names are not there. But it doesn't mean they're not important for national culture and traditional concerns in your countries.

So it's true there's a gap. But also it's true that the procedure is a little bit different. But it's also true that the list is incomplete.

And, just to finish my argument, I'd like to say that it is possible that some geographical names solicitation can find a negotiated solution. Maybe -- and it's the case -- we know some case where the city name, the state name, the province name has been subject of solicitation of registration. And they are -- the government is negotiating with the company or the companies responsible for the solicitation. And it's okay. But in the dot amazon, it was not possible. And it's out of negotiation.

So it's still there, the possibility of some geographical names registrations can be negotiated. We don't -- we don't put it in -- at risk. But in this specific case -- and I'm quite sure that there will be some other case. Dot africa has been a case in the past. And, in this case, dot amazon was not possible to be negotiated.

Thank you.

CHAIR DRYDEN:

Thank you, Brazil. I have Portugal and then Peru, please.

PORTUGAL:

Thank you very much.

I think it's too serious the issue we are dealing here with.

And I would like to make mine on behalf of the Portuguese government, the comments made five minutes ago by Australia and Argentina. Thank you.

CHAIR DRYDEN: Thank you, Portugal. Peru, please.

PERU: Thank you. I would like to go along with the proposal for working on any eventual gap that could be in the list or in criteria for geographic names that are not in the list of ICANN. In this case, however, I would like to stress the difference with dot amazon in particular and focus on this case in particular. There is no ambiguity in this case.

For the company that has submitted its application and it was very clear and they knew beforehand that it was there, a very vast region that was shared by several countries that the name was a geographic name as well. That was very well known by the company from the beginning. So, in this case, there was no doubt that they were dealing with a geographic name. There was also no doubt that it was a codified name because it got the three-digit code. So I would like to -- and we are ready to collaborate in this process of striking new criteria or clearer criteria, but it would work for other cases. We can -- I think that we can deal with separately. In the near future there is need to equate the situation of those names that are in the realm of the national patrimony of countries and that have cultural geographic significance. It is striking for us to see that there is a prior search on trademarks during the

sunrise period. But there is no list or no searching mechanisms for geographic names. So we shall work on that. But, again, this is not the case for dot amazon. It was recognized by the company from the very beginning that they were dealing with governments and they were dealing with a region, a very vast one.

CHAIR DRYDEN: Thank you, Peru. Chile, please.

CHILE: Thank you, Chair. We supported -- a declaration was circulated at the beginning of this meeting. We reiterate what we expressed there. We had similar concerns recently with other applications. And this can be a case for any other country, too. So we recognize that there are procedures in place and provisions in the different -- the guidebook and bylaws. And, even though they could be clarified, we were also open to define new criteria for the other cases, definitely. But we see in this case that there is factual data that's been expressed. And, even though that, that's the same their position, they've engaged in conversations with the applicant. And no solution was achieved directly in those conversations. So we believe that we need to address the specific situation now and think seriously in what we have proposed regarding the GAC advice in spite of other conversations that we could put forward regarding the improvement or clarification for further cases. Thank you.

CHAIR DRYDEN: Thank you, Chile. I have South Africa and then Iran.

SOUTH AFRICA:

Thank you, Chair. During the Beijing meeting, I think there was only one dissenting voice regarding the GAC giving advice to the board to reject the dot amazon application. And, when you look at GAC principles with regard to geo names, it is a requirement that, if you apply for a geographic name, you have to have government support, which was not the case in this nature. Also taking into account that Amazon is a trademark. But, for me, the fundamental question is: What was there first? The region or the trademark? Because I think that's very important to consider. To say that you might find -- also find that what actually informed the company's name was the region Amazon. So from that premise, I think, really, as a GAC, our job is easy to say that we should actually give this advice to ICANN to say that they need to reject this dot amazon application. And also the other thing is that we need to actually make a decision in this meeting. We cannot defer the decision to when we go to Argentina. It might be too late. So I think that, you know, for us as a GAC, we really need to apply our minds and do the right thing. Because we are here representing governments and public policy. That's what we're here to do, advise ICANN on public policy that deals with the Internet. Thank you, Chair.

CHAIR DRYDEN:

Thank you, South Africa.

Iran, please?

IRAN:

Merci madam.

[Speaking foreign language]

This is specific issue about dot amazon. The only reason is that our distinguished colleague -- we have addressed this issue of dot amazon because our colleague from Brazil was not able to attend this meeting tomorrow. What I'm asking is that we shouldn't make this issue too general, too comprehensive. It is not applicable to everyone. We need to discuss. We need to debate. But we shouldn't rush to get to something that might create difficulties for us in the future. That is why, Madam Chair, that I kindly asked you, with all due respect, to limit our discussion to dot amazon only. And for other more general cases there would be other times to discuss them. There are specific cases. And we have to resort to international conventions and act on a case-by-case basis so as not to be generalizing and create something that in the future will prevent us from discussing and making decisions. This is the request that we are specifically making to you, Madam Chair.

CHAIR DRYDEN: China and Nepal. China, please.

CHINA: I just want to say China supports the statement of Brazil and Peru, Argentina.

CHAIR DRYDEN: Thank you, China. NEPAL.

NEPAL: Thank you, Chair. I just wanted to comment on the conjecture from South Africa that Amazon, the company, may have got its name from the region. I recall in Beijing that the Brazilian delegation did read to us statements from the Amazon Web site confirming that, indeed, they did get the name from the region.

CHAIR DRYDEN: Thank you. Next I have Thailand.

THAILAND: Yes, thank you, Madam Chair. And I'd like to join my previous delegation to support the statement made by Brazil. I also would like to add that in -- when we talk about geographical names, in fact, ICANN also has another process that conduct in IDN which refers to the extensive knowledge of United Nations geographic names, expert on geographic names, which also recognize a Romanized country on how they define the long-term country and territory process. It's there. But in the fast track IDN and IDN consideration which is not adopted in the application guidebooks. So there is some process already there, which is sufficient, if you could have a look on the details of how they defined geographical names. And I think most of the country also support this UNG, GN. Thank you.

CHAIR DRYDEN: Thank you very much, Thailand. Okay. So at this point, I think we can pause. Iran. Would you like to --

IRAN: There is consensus on this issue. We do know that there are different viewpoints. However, we believe it is the right time to conclude. If you have the same impression I have on this situation.

CHAIR DRYDEN: At this point I think we can sum up for the moment. And this has been a very good exchange that we've had, I think, and we have successfully outlined, I think, what are some of the key issues in considering these names and there is, I think, a lot of clarity for us in terms of the concerns expressed about some of the strings that have been mentioned in this discussion. And it may be the case that we can acknowledge as well as the GAC at our meetings here -- in addition to addressing directly the question of those strings remaining on the list of outstanding strings -- that we acknowledge that in some cases there may be gaps or additional considerations, and we may want to point that out to the board when we put together our communique.

So I would, at this point, like to have us break for lunch, and we know that we have our session tomorrow where we will go through all the strings. And I do believe this has been, as I say, a useful exchange that we have had. I'm glad that we have had it. So I can see Brazil and Peru and Iran.

BRAZIL: Madam Chair, I think that we -- we have the opinions and the position of the countries here that clearly express their support to the Brazilian request to reject the dot Amazon registration, and I think that -- I don't see any reason to postpone this decision to tomorrow because we -- we

have all the opinions here today. So I would like to ask you to consider that.

CHAIR DRYDEN: Thank you, Brazil. Okay. I can see from the requests we're getting I'm pretty sure I know what you're going to say. Peru and Argentina.

PERU: Risking being predictable at this point, Chair --

CHAIR DRYDEN: Perhaps I can continue. I think we can settle this. So what I propose to do is put the question regarding dot Amazon, and then we will conclude this session. So are there any objections to a GAC consensus objection to the application for dot Amazon? Recognizing that there are IDN equivalents, this would apply to those equivalents. So I am now asking you in the committee whether there are any objections to a GAC consensus objection on the applications for dot Amazon, which would include their IDN equivalents. I see none. Would anyone like to make any comments on the string dot Amazon. I see none. Okay. So it is decided, and now we will break for lunch. Please be back here at 2:00.

[Applause]

[END OF AUDIO]

EXHIBIT C-041



Governmental Advisory Committee

Durban, 18 July 2013

GAC Communiqué – Durban, South Africa¹

I. Introduction

The Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) met in Durban, South Africa during the week of 13 July 2013. 59 GAC Members and 4 Observers attended the meetings. The GAC expresses warm thanks to the local host, .zadna, for their support.

II. Inter-constituency Activities

1. Briefing from the Geo TLD Registry Group

The GAC met with the Geo TLD Registry Group and received information on the organization's origins, values, missions and current concerns.

2. Meeting with the Accountability and Transparency Review Team 2 (ATRT 2)

The GAC met with the ATRT 2 and discussed expectations and priorities. The GAC encouraged the ATRT2 to give advice on improving the accountability and transparency in ICANN's financial operations reporting. The ATRT2 was invited to advise on how to improve outreach and active participation, especially from developing countries. Broad participation of stakeholders from all regions is vital for the legitimacy of ICANN and the multi-stakeholder model. The GAC also invited the ATRT2 to give advice on how to improve the GAC and the transparency of GAC meetings, and to better explain and provide rationales for the advice of the GAC. The ATRT2 invited individual GAC members to provide further written inputs to the Review Team.

¹ To access previous GAC advice, whether on the same or other topics, past GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Recent+Meetings> and older GAC communiqués are available at: <https://gacweb.icann.org/display/gacweb/GAC+Meetings+Archive>.

3. Meeting with the Generic Names Supporting Organization (GNSO)

The GAC met with the GNSO and exchanged views on key policy development work in the GNSO, including an ongoing Policy Development Process (PDP) regarding protection of IGO and INGO names and acronyms. An exchange focused on the opportunities for the GAC to engage early in GNSO Policy Development Processes.

4. Meeting with the Security and Stability Advisory Committee (SSAC)

The GAC met with the SSAC and received an update on recent SSAC work regarding namespace collisions, internal name certificates and dotless domains, and exchanged views on ensuing concerns.

5. Meeting with the Country Code Names Supporting Organization (ccNSO)

The GAC met with the ccNSO and received information about the recently concluded policy development regarding IDN ccTLDs, the modification of the IDN Fast Track process with creation of a second panel and the Framework of Interpretation work. The GAC and the ccNSO also discussed how to further improve the future dialogue between the GAC and the ccNSO.

6. Meeting with the At-Large Advisory Committee (ALAC)

The GAC met with the ALAC and received an introduction to ALAC's organization, bottom-up processes and output, including formal ALAC objections to certain new gTLD applications. The ALAC voiced concerns regarding issues on dot-less domains and domain name collisions and expressed support for recent SSAC statements. The ALAC also expressed concerns over the high threshold in the dispute resolution procedure for Public Interest Commitments (PIC) in particular in relation to the measurable harm standard required to file a complaint and the enforcement of these.

7. Briefing from the Domain Name Association (DNA)

The GAC met with the Domain Name Association and received information on its structure and objectives.

8. Meeting with the Expert Working Group on gTLD Directory Services (EWG)

The GAC met with the EWG and exchanged views on the model proposed by the EWG for the next generation directory service as a successor to the WHOIS service.

The GAC referenced its WHOIS principles from 2007 and its Beijing advice regarding the WHOIS Review Team recommendations, which both have served as input for the work of the EWG. The GAC expressed its concerns about the risks associated with centralized storage of data in one repository in one jurisdiction, and raised a series of issues relating to the proposed data repository structure and access including security, data accuracy, consistency with national law, accreditation of database users, and privacy governance. The GAC looks forward to further discussion of these issues as the working group progresses.

9. Briefing from Architelos

The GAC received a briefing on the TLD market and its development from Architelos, a consultancy focused on the domain name industry.

The GAC warmly thanks the GNSO, the SSAC, the ccNSO and the ALAC, as well as all those among the ICANN community who have contributed to the dialogue with the GAC in Durban.

III. Internal Matters

1. The GAC held its second capacity building session for new and existing members on 13 July, which included an update to the GAC on internationalization and the ICANN's strategy for engagement in the Africa region.
2. The GAC welcomed Madagascar, Namibia, São Tomé and Príncipe, Swaziland, and Zambia to the GAC as members.
3. The chair and vice chairs provided an update in Durban on progress with regard to ACIG providing secretariat support to the GAC.

IV. GAC Advice to the Board²

1. New gTLDs

1. GAC Objections to Specific Applications (ref. Beijing Communiqué 1.c.)

a. The GAC Advises the ICANN Board that:

- i. The GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications:³

² To track the history and progress of GAC Advice to the Board, please visit the GAC Advice Online Register available at: <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

³ Module 3.1: "The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

1. The application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)
2. The application for .thai (application number 1-2112-4478)

b. guangzhou (IDN in Chinese), shenzhen (IDN in Chinese), .spa and .yun

- i. The GAC agrees to leave the applications below for further consideration and **advises the ICANN Board**:
 - i. Not to proceed beyond initial evaluation until the agreements between the relevant parties are reached.
 1. The applications for .spa (application number 1-1309-12524 and 1-1619-92115)
 2. The application for .yun (application number 1-1318-12524)
 3. The application for .guangzhou (IDN in Chinese - application number 1-1121-22691)
 4. The application for .shenzhen (IDN in Chinese - application number 1-1121-82863)

2. .wine and .vin (ref. Beijing Communiqué 1.c.)

- a. **The GAC advises the ICANN Board that:**
 - i. The GAC considered the two strings .vin and .wine and due to the complexity of the matter was unable to conclude at this meeting. As a result the GAC agreed to take thirty days additional time with a view to conclude on the matter.

3. .date and .persiangulf (ref. Beijing Communiqué 1.c.)

- a. **The GAC has finalised its consideration of the following strings, and does not object to them proceeding:**
 - i. .date (application number 1-1247-30301)
 - ii. .persiangulf (application number 1-2128-55439)

4. .indians and .ram

- a. **The GAC Advises the ICANN Board that:**
 - i. The GAC has noted the concerns expressed by the Government of India not to proceed with the applications for .indians and .ram.

5. Protection of IGO Acronyms

- a. The GAC reaffirms its previous advice from the Toronto and Beijing Meetings that IGOs are in an objectively different category to other rights holders thus warranting special protection by ICANN. IGOs perform important global public missions with public funds and as such, their identifiers (both their names and their acronyms) need preventative protection in an expanded DNS.
- b. The GAC understands that the ICANN Board, further to its previous assurances, is prepared to fully implement GAC advice; an outstanding matter to be finalized is the practical and effective implementation of the permanent preventative protection of IGO acronyms at the second level.
- c. The GAC advises the ICANN Board that:**
 - i. The GAC is interested to work with the IGOs and the NGPC on a complementary cost-neutral mechanism that would:
 - a. provide notification to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and
 - b. allow for an independent third party to review any such registration request, in the event of a disagreement between an IGO and potential registrant.
 - ii. The initial protections for IGO acronyms confirmed by the NGPC at its meeting of 2 July 2013 should remain in place until the dialogue between the GAC, NGPC, and IGO representatives ensuring the implementation of preventative protection for IGO acronyms at the second level is completed.

5. Protection of Red Cross/Red Crescent Acronyms

a. The GAC advises the ICANN Board that

- i. The same complementary cost neutral mechanisms to be worked out (as above in 4.c.i.) for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee

of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR).

6. Category 1 Safeguard Advice

- i. The GAC has met with the NGPC to discuss the Committee's response to GAC advice contained in the Beijing Communique on safeguards that should apply to Category 1 new gTLDs. **The GAC Advises the ICANN Board that:**
 - 1. The GAC will continue the dialogue with the NGPC on this issue.

7. Geographic Names and Community Applications

a. Geographic Names

- i. The GAC recommends that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.

b. Community Applications

- i. The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation.
- ii. **Therefore the GAC advises the ICANN Board to:**
 - a. Consider to take better account of community views, and improve outcomes for communities, within the existing framework, independent of whether those communities have utilized ICANN's formal community processes to date.

8. DNS Security and Stability

- a. The GAC shares the security and stability concerns expressed by the SSAC regarding Internal Name Certificates and Dotless Domains. The GAC requests the ICANN Board to provide a written briefing about:
 - i. how ICANN considers this SSAC advice with a view to implementation as soon as possible. The GAC believes that all such stability and security analysis should be made publicly available prior to the delegation of new gTLDs.
 - ii. **The GAC Advises the ICANN Board to:**

- a. As a matter of urgency consider the recommendations contained in the SSAC Report on Dotless Domains (SAC053) and Internal Name Certificates (SAC057).

9. Registry and Registrar Agreements and Conflicts with Law

- a. It was noted that there are provisions in the Registry Agreement and Registrar Accreditation Agreement that may conflict with applicable law in certain countries, in particular privacy and data retention, collection and processing law. The importance of having adequate procedures to avoid these conflicts was highlighted.

V. Next Meeting

The GAC will meet during the 48th ICANN meeting in Buenos Aires, Argentina.

EXHIBIT C-042

DURBAN – ICANN Public Forum

DURBAN – ICANN Public Forum
Thursday, July 18, 2013 – 13:30 to 18:00
ICANN – Durban, South Africa

Ladies and gentlemen, if you'd be kind enough to take your seats, we'll be starting our public forum momentarily.

STEVE CROCKER: Good afternoon, everybody. Welcome to the last day of ICANN 47 in Durban.

Being in Durban is very special. Being in Durban on today is extra special.

We're going to have a pretty vigorous and open public forum, followed by a relatively short but important -- and I hope you stay for -- a staff -- a board meeting. It feels like a staff meeting sometimes.

But we're going to start with something quite special, a talk from Nii Quaynor, a tribute to Nelson Mandela, on this Mandela Day.

I don't think there's anything else I want to say at this point except get comfortable, settle in, and we're going to have a good time here.

Nii, are you ready?

It's a great pleasure to introduce a real hero of the Internet, a real hero of Africa, and a hero of the world, actually.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

Nii has an extraordinary reputation throughout the technical community, as well as particularly throughout the African Internet community, often called the Dean of the African Internet Community.

He's a former member of the board of ICANN and a real sparkplug in all things related to the Internet.

He shares a deep technical background, going back into the United States, and has devoted his life to making things happen here.

Nii? Thanks.

[Applause]

And as an additional honor, he was inducted into the Internet Hall of Fame this year.

NII QUAYNOR:

Thank you very much, Steve.

I'm honored to pay tribute to Nelson Mandela on the occasion of his birthday this 18th July 2013 at the ICANN 47 meeting in Durban.

We have come from afar, from many countries gathered here, to wish you, Mr. Mandela, a very happy birthday, and to pay tribute to you and thank you for your wisdom and sacrifice through the years.

The personal sacrifices you made so that Africa would be free is what has made it possible to have this international multistakeholder technical coordination meeting here in Durban, South Africa, with Africans and non-Africans participating freely at this 47th ICANN meeting.

You are a global symbol of peace and unity. We have all followed the challenges you faced, including 27 years of incarceration, and are all inspired by your total strength and commitment towards a principled cause, the resolution, reconciliation, and unity for all.

Mr. Mandela, the Internet came to Africa in November 1991 through the work of South Africans, which followed your release in February 1990 and preceded your award of the Nobel Peace Prize in December 1993. With the euphoria and inspiration from your triumph, several Africans and friends of Africa have faithfully spread the Internet throughout the continent, and I am proud to say there is Internet in every country in Africa. This created an African Internet technical community drawn from among a group of institutions named AF* that participate in ICANN and the global Internet ecosystem.

In your honor, we commit to an open Internet for world peace and development. Let the Internet remain stable, open, and secure for unity and peace of the world.

We thank you for opening our eyes to new and better approaches to community building. The journey of the African technical community into ICANN started in 1998 at Cotonou. We have since then crisscrossed the continent, Cape to Cairo and back in, imparting the Internet. ICANN processes are inclusive, open, diverse, multistakeholder, and practice consensus, and we are more informed, therefore, by what we can live with and what works.

Indeed, Africa has now got the Internet but has yet to do much with it. We ask your blessing for Africa to truly adopt the Internet in government policies, regulation, education, and services. We must

develop an information society or there will be no industry in the new economy in Africa; only consumers. That could start off a whole new techno-liberation struggle requiring knowledge and skills to be misapplied which we would wish to avert.

There are opportunities in ICANN for Africa to build its major Internet industries and develop the domain name business with registries, registrars, content developers, and technical service providers so that Africa would get ahead. Africans should take this challenge and build the businesses of the future to help their communities and countries develop.

Madiba, we wish you comfort and rest that is deserving of a tired savior. Your life is a lesson to all of us and continues to inspire us, especially as we nurture new communities. You lost dearly for the benefit of a whole community.

The media at times refers to me as the Father of the Internet in Africa, but in reality it is you, Madiba, who is the true Father of the Internet. You inspired freedom, unity, and inclusiveness, the very qualities that define the Internet, the very qualities that define you.

Happy birthday, Nelson Mandela.

Thank you, ICANN, and thank you, everyone.

[Standing ovation]

STEVE CROCKER:

I think all of the issues that people have brought into this room are going to seem small compared to the extraordinary struggles that are embodied in the tribute that we've just heard.

This session is intended to give the community -- you -- a direct line of communication to the board of directors without formality, without filters. We'll start off by explaining what this session is and, equally important, what it's not.

The public forum is the community's opportunity to make comments and ask questions. It's your chance to talk directly to the board and, indeed, not only to the board but to each other, to talk in front of the rest of the community and to the rest of the community. It is not intended to be a replacement for the other formal processes that we have. It's not a replacement or an add-on to the public comments that ICANN seeks on issues and policies.

Please continue to use those processes on specific issues. That's the only way they'll receive proper consideration from the appropriate committees, supporting organizations, and staff members.

Those of you who attended the public forum in our last meeting in Beijing know that we have begun to evolve this session.

In the Beijing session, we experimented with the idea of providing as much time as possible for people to ask questions or make statements, and we deliberately tried to stand back from giving immediate responses.

The feedback -- and indeed our own assessment -- was that that didn't work out quite as nicely as we had expected, so we've moved the --

we've made a change in that area and we will attempt to respond directly, as best we can. And Brad will take you through the details of that.

We welcome your comments on this process. We're happy to keep evolving it. I have a great distaste for pro forma activities, and so if this isn't real, then we either make it real or we move on and do something else.

So with that, Brad, our director of global media affairs, will now give you an overview of how the questions will be fielded. Take it away.

BRAD WHITE:

Thanks, Steve. So a few rules here. If you're in the room, queue up behind this microphone.

It's very important that you speak clearly, slowly, for the sake of the scribes. State your name; tell us who, if anyone, you're representing; and as was just mentioned, this is not only an opportunity to speak to the board, it's an opportunity to speak to the community.

So make it clear: Are you addressing the board, in expectation of a response; or are you addressing the community?

Remote participants can join in via two channels. You can e-mail your questions to forum@icann.org. We'll receive those questions here. We'll let the board facilitator know that we have questions and be able to get you on at that point. I'll read your questions. We have a staff team that receives them almost immediately.

We also have a telephone link, and if you go to the schedule for this -- for the public forum online, there's a listing of access numbers around the world.

Here are some rules that will govern this session.

Everyone either in the room or participating remotely is expected to conform with the standards of behavior.

Ted, do we have the standards of behavior? Oh, there we go.

Basically, the upshot is be courteous, be respectful.

To allow as many people as possible to be heard, everyone will be limited to two opportunities to speak on each issue. The first comment is limited to two minutes. There will be a countdown timer to urge adherence to this rule.

Ted, can we hear the countdown timer?

[Timer sound]

[Laughter]

I think that was intended for the board.

[Laughter]

BRAD WHITE:

Dr. Crocker, does that work for you?

STEVE CROCKER:

Yeah, that works just fine for me.

[Laughter]

BRAD WHITE:

We have a little more kinder, gentler, notification.

Ted, can we hear the actual notification?

[Timer sound]

So for those of you who were in Beijing, we had a rather jarring, abrupt sound. We've gone with a kinder, gentler sound this session.

As was mentioned, one of the things we heard in Beijing was that attendees wanted more immediate board interaction. As Steve mentioned, in an effort to do that, we are going to try and facilitate board response here at this session.

If you were in the Beijing session, Mike Silber recommended holding the board to the same time limits as the community. In other words, there will be two-minute responses.

The board used to take a lot of responses. There were a lot of board members commenting. It took a lot of time away from questions.

It was the board's feeling that this is really for you folks. We want to facilitate as many questions as possible.

What have I missed?

Finally, we ask that if you're in the room, please use the mics. Don't use the remote access channels because it takes away the ability for others outside of the room to use them.

Steve, did I miss something or is that it?

STEVE CROCKER:

No, I think we're good.

So a couple of points just to amplify and repeat.

As I said and as Brad said, we're trying to encourage dialogue, not merely a soapbox, so questions are preferable to comments but if you have to make comments, that's fine.

And something we want to emphasize this time: Feel free to explain whether you're primarily addressing the board or staff or whether you're actually trying to encourage community interaction.

In the interest of efficiency and courtesy, if someone has already made your point, you might want to consider the virtue of silence over repeating that and jumping in.

We have put some limits on the amount of repetition, so we have a two-bite-of-the-apple rule.

We have positioned key staff members up here with us to be helpful because many of the questions that we've heard in the -- over time are really ones that are best answered by the appropriate staff, and as part of the introduction of the new gTLD domain -- global domains division -- I've got to learn the terminology -- we have on my right, your left, the staff associated with that group.

Why don't you stand up or raise your hands.

Both. Yes.

[Laughter]

STEVE CROCKER: And our regular team over on the other side. Your right, my left.

>> (Speaker is off microphone.)

[Laughter]

>> (Speaker is off microphone.)

STEVE CROCKER: Yeah. We're going to start off with a session -- a focus on the new gTLD status. Cherine Chalaby will provide the orchestration, moderation, facilitation of this, and let me turn it over to you.

When we finish this -- we've allocated about an hour for it -- we'll take a break and we'll come back with a presentation about the next ICANN meeting, ICANN 48 in Buenos Aires, and then we'll pick up with other subjects of interest.

We decided not to try to subdivide the session too finely, so gTLDs continue to be a clear topic, but everything else -- and there's a number of possibilities -- are all sort of lumped together.

And we'll proceed from there.

It's your show.

CHERINE CHALABY: It's really the community's show, so we're open for questions. Thank you.

STEVE DeIBIANCO: Hi. Steve DeIBianco for the business constituency, and it's a request for the board.

The BC really appreciated the opportunity you gave to the community to comment on ICANN's response to GAC advice, but -- and there's always a "but," right? -- but we were not asked for public comment on how the board will respond to the non-safeguard portions of the GAC advice coming out of Beijing. It was just the safeguards that were open to the public.

We request that opportunity. And we'd also want to comment on any board responses that you're preparing for advice that's going to come out from here in Durban.

Your response to the GAC covers some incredibly complex issues that have broad implications.

For example, the BC thought that the singular/plural contention decision was incomprehensible and we also felt that your reply to GAC advice was incomprehensible because your main justification for sticking with the panels was the worry of setting a precedent for second-guessing panels.

But your decision creates an even crazier precedent, the precedent that applicants in the next round could suggest plural forms of any existing TLD.

So while the BC is generally appreciative of all of the GAC work, especially on safeguards, some BC members are concerned if there's a legal precedent created by accepting GAC advice on geographical name TLDs.

So again, thank you for the opportunity to comment and please let us comment on all of the actions to GAC advice. Thank you.

CHERINE CHALABY:

Thank you very much.

Would any of my fellow board members wish to comment?

Okay. Thank you, Steve, for your request. We heard it and we'll take it into consideration. Thank you.

Next speaker, please.

MARILYN CADE:

My name is Marilyn Cade and I welcome the opportunity to raise a concern with the board about the issues related to security, stability, and resiliency.

I saw the topic of new gTLDs, and as it happens, this concern is related to new gTLDs, but I will just note that our primary and overarching issue and responsibility always has to be, first and foremost, a concern about the integrity, reliability, security, and stability of the Internet.

No other innovative opportunity can ever be a trump card to that.

I know we all know that and believe that, but I just want to reinforce it because it actually surprised me not to see that topic by itself.

So that's one comment.

My question is about a concern I have about the failure to produce the report on dotless domains to the community in the time frame that there was a commitment to do that.

We all organize our work around the predictions of work that you give us, and I organized the work of one of my clients to retain a high-paid consultant with expertise.

We all organize our work. We need for you, the board and the staff, to prioritize and commit and deliver on reports like that so that we can talk about them while we're here in an informed way.

My question is: When will we have that report and what is your substitute to us for effective communication and engagement with us?

And it can't be a single 90-minute Webinar. It's going to have to be something more substantive.

I welcome the offers you're going to make to help us do our jobs in providing informed comments.

CHERINE CHALABY:

Thank you, Marilyn.

I will get staff to answer in relation to the report, but the community should know that dotless domains is on the agenda of the new gTLD committee the first meeting after Durban.

But I'll let staff answer about the report and the input from the community.

Who from staff would like to answer?

Akram will answer.

AKRAM ATALLAH: If I can make this work.

THOMAS NARTEN: It's on.

AKRAM ATALLAH: Yes. Thank you, Cherine. Thank you, Marilyn, for the question.

We are actually – we hoped that the report was going to make it before Durban, but we didn't want to rush the report and not do the work like it should be done, so it got delayed and we – but we will be publishing it next week, as soon as we get the final version from the contractor.

MARILYN CADE: And the rest of the answer to my question?

AKRAM ATALLAH: Which was?

MARILYN CADE: Delivering the report is one step.

AKRAM ATALLAH: Yes.

MARILYN CADE: The community doing our work and giving you our comments is the vital step. How does that happen?

AKRAM ATALLAH: So the next step is to post the report as soon as we get it. Then we will -
- the staff will prepare a paper and it will go to the committee for the next step, and probably we will post that for public comment.

So coming out of the committee, so...

Does that answer your question?

MARILYN CADE: No. You're going to the committee with the report before you have input from the community?

AKRAM ATALLAH: No. We're going to post the report, and then we're going to develop a paper and that paper will go for public comment.

CHERINE CHALABY: Okay. I -- Ram?

RAM MOHAN: Thank you. And thank you, Marilyn, for bringing this up.

I just wanted to add one thing. In the – the status quo, if you look at what the applicant guidebook says, dotless domains are not part of what's allowed into the root zone.

So that status quo hasn't changed.

In fact, the only way for an applicant to try to move from there is to go through an RSEP process.

So at the very base, if you look at the focus on security and stability, I think the AGB does pay attention to that and says no dotless domains at this point.

CHERINE CHALABY:

Thank you. I'm not sure we got all the timing right, in Marilyn's view, but we'll take account of your – the point and come back on that. Thank you.

>> (Speaker is off microphone.)

CHERINE CHALABY:

Yeah, I know exactly what they said.

Okay. Next speaker, please.

CLAUDIO DiGANGI:

Thanks, Cherine. My name is Claudio DiGangi. I work on staff for the International Trademark Association. We're a member of the intellectual property constituency.

I wanted to join the statement that Steve DelBianco made that we're really appreciative of all the work that the board has done since Beijing and through this meeting in Durban.

I wanted to make a brief statement on behalf of INTA, particularly on the geographic names issue.

INTA strongly supports the recent views expressed by the United States. In particular, that it does not view the sovereignty as a valid basis for objecting to the use of terms and we have concerns about the effect of such claims on the integrity of the process.

Accordingly, it is INTA's position that generally accepted principles of international law provide ICANN a framework for assessing potential noncommunity-based objections to the delegation of particular applied-for strings associated with geographic terms.

These legal norms establish that nation states do not possess exclusive rights to geographic terms and the rights of trademark owners as established under international frameworks, including binding international treaties, must be recognized.

By adhering to these established principles, ICANN will ensure its decisions advance the global public interest in the introduction of new gTLDs. INTA remains available to consult with ICANN on these important issues. Thank you.

CHERINE CHALABY:

Thank you very much, Claudio, for this statement.

[Applause]

CHERINE CHALABY: Would anybody like to comment?

Okay. Thank you.

Next speaker, please?

J. SCOTT EVANS: Yes. My name is J. Scott Evans. I'm from Yahoo!. I'm a board member and an officer of the International Trademark Association. I am also a founding member of the IPC, a current member of the business constituency, and a founding member of the Brand Registry Group.

I have two issues I'd like to talk to the board about today.

First, I would like to agree with Claudio and his statement. It was my understanding and the understanding of my organizations, both here and outside of ICANN, that the role of the Governmental Advisory Committee is to look at the laws that exist in our world today that the governments have years together, in working cooperatively and through treaties and negotiated their national laws and international laws, and provide you with advice based on those precepts as they exist.

There is no international recognition of country names as protection and they cannot trump trademark rights.

So giving countries a block on a name violates international law, so you can't do it.

Now, if they want to object under the community objection process and bring their claim and have it looked at under the law as it exists, that's correct. But a blanket prohibition from a mark like dot amazon that has

trademark registrations from the very countries that are objecting, that own all the second-level domains in the country code top-level domain from those very countries, is wrong and I believe it sets a very dangerous precedent.

Second issue. And I've talked to Cherine about this and the only reason I'm bringing this up in the public forum is because I want the entire board to hear this.

Marilyn asked when the study on dotless domains is going to be out. Well, it was actually issued 18 months ago. It's SSAC53. And it says it will be terrible for stability and security of the Internet.

So when an applicant amended their application to seek to have a dotless domain, my technical people looked at it and said, "Well, ICANN's already looked at this issue and they say it's a bad thing."

[Timer sound]

J. SCOTT EVANS:

So my question is: Why are we having a second study?

Because when I have to sit down with people who run billion-dollar businesses, they don't think that looks credible and it starts to make you all look like you don't have any credibility. So I just warn you.

Thank you.

[Applause]

CHERINE CHALABY:

Thank you very much.

Two points.

One on the country geographic names and the other one, the same point as Marilyn mentioned on dotless domains, but more so saying, you know, why are you waiting to make a decision.

We will take this input and we will come back to you about a definite time line for that. Thank you and we appreciate the concern.

Next speaker, please.

STACEY KING:

Hi. My name is Stacey King and I stand here today on behalf of Amazon and our millions of customers worldwide.

Amazon's vision is to be the earth's most customer-centric company, a place where people can come to find and discover anything they may want to buy online.

Like all online companies, the way our customers find us is through the Internet.

One of our goals in applying for dot amazon is to find new and innovative ways, mechanisms, and platforms, to surprise and delight our customers.

From 2007 to 2011, the GAC, the board, and the community negotiated rules for this process.

Many of us remember these debates. They were difficult discussions and no one got everything they wanted.

But the result of these discussions was the applicant guidebook. This is how the multistakeholder model works.

That process produced several categories of geographic names that either could not be applied for, such as dot brazil, or required government support.

Dot amazon did not and still does not appear in either of these categories.

Prior to filing our applications, Amazon carefully reviewed the applicant guidebook. We followed the rules.

You are now being asked to significantly and retroactively modify these rules. That would undermine what had been hard-won international consensus to the detriment of all stakeholders.

Applications at issue are for our company name, an amazon brand, for which we have trademark registrations in over 125 countries worldwide. Even after submitting our application, we tried in good faith to negotiate, meeting in person, by video teleconference, making several offers for resolution including reserving names such as amazonas, amazonia and OTCA coexisting with future dot amazonia or dot amazonas. We were told each time to either withdraw or change our company name.

[Timer sounds]

Under the rules after an objection was (audio problem) in Beijing and failed, our application should have moved forward. Instead without any support in the rules, our application was subjected to a second objection three months later.

We disagree with these recommendations and object to the material changes to the rules. If this board ignores the guidebook and accepts these recommendations, you will be allowing fundamental changes to the very nature and value of this multistakeholder process.

CHERINE CHALABY:

Thank you. To be fair to others, we need to stop here. But we hear the issue about dot amazon. I think my colleague Chris Disspain would like to comment on that.

CHRIS DISSPAIN:

Thank you very much for coming to the microphone and the comments that were made before. I just wanted to say, we only just received the advice. We understand that there is a significant amount of emotion and energy around it. There is a process that needs to be followed and part of that process is that the applicant concern will be able to make submissions to us formally. And we understand this is a very, very complicated issue and we will be very careful in decisions we make.

STACEY KING:

Thank you.

CHERINE CHALABY: Thank you. I will take two more speakers and then we have online questions. So please go ahead.

CAROLIN SILBERNAGL: Thank you. Carolin Silbernagl representing dotHIV, a TLD applicant for the dot hiv top-level domain.

My comment addresses the topic of the GAC advice and specifically the list of strings touched by the Category 1 safeguards. The dot hiv TLD is on that list. We also have drawn Number 160 and have successfully passed initial evaluation as early as in April. Under the pre-Beijing conditions, we would enter contracting in two weeks. Post-Beijing world is different, and sadly post-Durban is also. Our hope was to see the blockage of around 700 applications by the GAC advice result during this meeting.

Instead, we are still left in complete insecurity on timelines, directions, and general guidance.

DotHIV is a small organization. Our operations concentrate on this TLD. The situation means we are not able to make an informed judgment about our organizational core. In reality, I have people in the queue to hire and cannot sign their contracts. I have plenty of launch partners and I have organizational partners, especially the partners the GAC wants us to work with, shaking their heads in disbelief. And, of course, I have a budget that runs tighter and tighter.

I want to urge ICANN board and staff to think about organizations like ours when going forward in addressing the advice. Please be fast. Please be concise. We are ready. We are waiting. We want to work

with the guidance of the GAC. Just please allow us to move forward. A lot of the applications blocked by the advice bring initial value and innovative models to the space. And I'm convinced that by leaving us in the limbo as the situation is, this will harm not only individual applicants but the program as a whole. Thank you.

[Timer sounds]

[Applause]

CHERINE CHALABY:

Thank you very much. I think this is a question that needs some comments back from the board.

Who would like to respond? Okay. Chris Disspain, again. Thank you.

CHRIS DISSPAIN:

Thank you. I understand and I empathize. You should know that both the New gTLD Program Committee and the GAC are very well aware of the fact that having things, as you said, in limbo is of no good to anybody.

I can give you an assurance that we are aware of the fact that leaving things like this undealt with is problematic for you and it is our intention to attempt to solve the problem as quickly as we possibly can. So thank you.

CHERINE CHALABY:

Thank you, Chris.

Next speaker, please.

KRISTINA ROSETTE:

Kristina Rosette on behalf of Patagonia Inc., which everyone knows withdrew its application last week and here's why. Patagonia is deeply disappointed by and concerned about the breakdown of the new gTLD process. Consistent with the recommendations and principles established in connection with that process, Patagonia fully expected its dot patagonia application to be evaluated against transparent and predictable criteria, fully available to applicants prior to the initiation of the process.

Yet, its experience demonstrates the ease with which one stakeholder can jettison rules previously agreed upon after an extensive and thorough consultation.

In particular, the definition of geographic names which the GAC formally accepted in its May 26, 2000 letter to the board as well as the GAC's February 2011 recognition that dot brand gTLD strings that also have geographic connotations should not be excluded but should be subject to requirements and safeguards agreed upon by the applicant and the concerned government.

Moreover, as of last week, Patagonia's best information which was obtained through a reliable and informed source was that the ICANN board would almost certainly adopt any GAC consensus advice that the dot patagonia application should not proceed regardless of its stated intention to create a predictable, repeatable process for the evaluation of new gTLD applications.

Patagonia is gravely concerned about the precedence implicitly established throughout this process, precedence that call into question the viability of the multistakeholder model, that make clear that conflict of interest rules and principles do not apply to the ICANN-created and hired independent objector and that threaten trademark rights owned by thousands of entities globally.

If Patagonia had had any inkling that the process would unfold as it did, it would never have applied for dot patagonia in the first place. Instead, the thousands of personnel hours --

[Timer sounds]

-- and hundreds of thousands of dollars spent preparing and defending its application would have been put to productive use in support of its mission statement: Build the best product, cause no unnecessary harm, use business to inspire and implement solutions to the environmental crisis. Thank you.

[Applause]

CHERINE CHALABY:

Thank you, Kristina. We hear you and we hear what you had to say. And there is no presumption that we accept GAC advice without any reflection on it.

KRISTINA ROSETTE:

Understood. But I think it is probably helpful for the community to know that our source obtained its information from someone sitting at the front of the room.

CHERINE CHALABY: Thank you.

Bertrand would like to make a comment.

BERTRAND DE LA CHAPELLE: Kristina, can you clarify the comment that you made regarding --

CHERINE CHALABY: We have one member that needs to respond only.

Mike, do you want to respond or do you want to give the hand to --

MIKE SILBER: I think Bertrand is going to ask a question. What I can tell you is that as a member of the NGPC, the information you received, whether the source is reliable or not, is patently false.

CHERINE CHALABY: Okay. We still have one minute for our response.

Bertrand, do you wish to anything?

BERTRAND DE LA CHAPELLE: Just a point of clarification, Kristina. Could you clarify the comment that you made regarding conflict of interest and the independent objector? Because I'm not sure I understand what it relates to.

KRISTINA ROSETTE: It is in relation to the fact that Patagonia is of the view that the independent objector has a conflict of interest under all applicable conflict of interest standards that should have prevented him from filing a community objection against dot patagonia.

Those arguments and the information supporting them as well as supporting documents are the subject of my May 17 letter to John Jeffrey which was posted two days ago on the ICANN correspondence page.

CHERINE CHALABY: Okay. One final comment, Chris.

CHRIS DISSPAIN: I just want to make a very, very quick point because often in talking, things get garbled. I want to be really clear. There is no presumption that the GAC advice would be accepted. The bylaws are very clear.

[Timer sounds]

And the guidebook is very clear. There is heavy weight put on to the GAC advice. And if that understanding is misinterpreted by people to assume that the GAC advice, consent advice, will be accepted, then that's wrong.

CHERINE CHALABY: Thank you, Chris.

I'm now going to take a question from remote participation.

REMOTE INTERVENTION: Thank you, Cherine. We've got a comment from Vanessa Copetti Cravo. As a Latin and Caribbean citizen, I would like to stress my objection regarding the application for the string dot amazon. Amazon is a region in South America that encompasses several countries in the region including my own Brazil and the region is well-known in the whole world for its biodiversity. The region is also recognized in international treaty.

It is important to highlight that the community do not support the application, neither do the governments involved as shown in GAC early warnings. Hopefully, it will also be shown in Durban GAC communique.

The name should be preserved in defense of the public interest involved. I hope the board will take this into consideration. Thank you.

CHERINE CHALABY: Thank you very much.

[Applause]

The previous speaker mentioned similar concerns about the dot amazon and the board will take into consideration very seriously these comments. Thank you very much.

Next speaker, please.

SOPHIA BEKELE: My name is Sophia Bekele, I represent DotConnectAfrica Trust.

NANCY LUPIANO: Excuse me. Before you go on, can you remember to speak slowly. Our interpreters are having difficulty. Thank you.

SOPHIA BEKELE: My name is Sophia Bekele, and I represent DotConnectAfrica trust, is an applicant to the dot africa gTLD.

According to the Beijing GAC advice communique, DCA Trust application received a consensus advice described as the consensus of the entire GAC that our application should not be approved.

Since publication, DCA Trust has continued to question the validity of this GAC consensus and in its written response. Our understanding is that accredited Kenyan GAC advisor had objected to the GAC advice via an e-mail memoranda to the GAC secretariat with a copy to other participants. This is in line with the Principle 41 of GAC: A member country can put an objection in writing should they not be present at a meeting.

Amidst this climate of questionable consensus, the GAC objection advice was accepted by the ICANN New gTLD Program Committee. The decision is already the subject of reconsideration requests submitted by DCA Trust to the ICANN Board Governance Committee since June 19.

In the interest of accountability and transparency, DCA Trust is still looking for answers regarding how the consensus was reached by ICANN GAC at Beijing to issue a GAC objection advice against its application.

Amongst the important points to consider and which I would draw attention of Miss Heather Dryden, chair of ICANN GAC, ICANN board member, and member of the new gTLD program committee is the following: Number one, an e-mail communication was written to you by Mr. Sammy Buchara on April 2013 stating he was now, quote-unquote, the newly appointed Kenya government advisor to GAC and at the same time informing you that should –

[Timer sounds]

-- the situation arise, Kenya does not wish to have a GAC advice on DotConnectAfrica application for dot africa delegation.

And, two, why this communication was not taken into consideration as a clear indication that there was no consensus on the issue. It appears that this has been ignored, an action that has now resulted in a questionable GAC objection advice against DCA application.

CHERINE CHALABY:

Thank you, Sophia. Would any member of the board or the GAC like to respond?

Okay. Thank you. Point taken. Thank you, Sophia.

Next speaker, please.

STEVE METALITZ:

Thank you, this is Steve Metalitz. I'm here on behalf of the Coalition for Online Accountability. I have two questions to direct to the board and

the staff, having to do with public interest commitments and the dispute resolution policy.

The public interest commitments are a very important part of the new gTLD Registry Agreements. They have taken on more importance because of the board's decision -- or the NGPC's decision, which we strongly support, to take on board some important elements of the GAC safeguards advice from the Beijing communique.

A draft of the -- however, to us it is very important that ICANN make clear that it has enforcement responsibility for these public interest commitments and that it is not going to be outsourcing those to some dispute resolution process.

A draft of the PIC DRP was posted, comments were taken through April 27th. A summary was posted on May 14th. We heard at this meeting that revisions to that PIC DRP had been, quote, sent to the Registry Agreement negotiators, unquote, not to the community, and that a final version as it was stated would be posted around July 31st.

So I have two questions. One is a procedural one. Will the revision to the PIC DRP be posted for public comment or will it be a final version? And, second, in terms of the content of that, will it make clear that ICANN has an independent enforcement responsibility for everything in the Registry Agreements, including the public interest commitments?

CHERINE CHALABY:

Thank you. I would think this is better answered by staff. So who would like to answer these two questions? Will the PIC be posted and the enforcement responsibilities? Akram?

AKRAM ATALLAH:

Thank you, Cherine. Thank you, Steve.

The PIC DRP is part of the -- that's part of the agreement is already approved by the board. The DRP process, the implementation of the dispute resolution, is being negotiated as we speak and we -- ICANN is taking a major step forward in assuming all of these mandatory obligations in the PIC as part of its compliance process.

So we are developing the process right now, and that will be posted for review by the community. Thank you.

STEVE METALITZ:

Thank you.

CHERINE CHALABY:

Thank you, Akram.

I think this interaction seems to be working reasonably. We have another kind of half an hour, but I'm sure we can extend a little bit. I'm conscious of the length of the queue. So we will keep going and then see how this takes us.

I would like to give everybody as much as possible an opportunity to speak. After another two speakers, we have another outside call.

So next speaker, please. Thank you.

FRED KRUEGER:

Hello, Fred Krueger, Minds+Machines. I would like to commend the board finally after some years signing the first contract. That's the good news.

The bad news is you signed four contracts. You were supposed to sign 20 contracts. Stop the insanity. We had expected 20 contracts a week. You have been promising 20 contracts a week. You are two months late in the 20 contracts a week from Beijing when it was supposed to start and now the first time you signed four contracts. So let's catch up with the four contracts. Let's next week sign 36 contracts so over the last two weeks we will average 20 contracts.

Even better, let's catch up for the two months that we've lost in Beijing. And in my opinion, let's catch up for the whole year and call this thing a thousand contracts in 2013. I think everybody would like to get forward with the stuff and I don't see any problem with signing more contracts faster. The first question is: Why aren't we doing that?

The second question relates to auctions. I've asked in the gTLD -- one of the gTLD meetings: When do the ICANN auctions start? And I was told they could start as early as October if everybody agrees. Well, that date is meaningless to me.

The date I would like to know is: When are people going to be dragged into an ICANN auction? When is the earliest date that two parties will be dragged into an ICANN auction if they don't agree? And I would love to get a month. But short of a month, can you give me at least a calendar year in which that will occur? Thank you.

[Applause]

CHERINE CHALABY: Thank you. Two very straightforward questions. I'm going to ask staff to answer why we (audio problem) and the other one about the auction timing.

Akram again.

AKRAM ATALLAH: Thank you, Cherine.

I will take the first question, and I will let Christine answer on the second one.

The new gTLD operating team sent -- took the first 50 applications, identified the applications that have -- that can move forward in contracting. We sent over 30 requests for contract information. Out of those, we got four. So that's why we actually moved with only four. As we get more, we will do more. And we will continue to send more requests for contracting information until we fill the pipeline.

So we're not doing 20 a week and getting four. We are doing much more than that. We will up that and next week --

FRED KRUEGER: So potentially catch up?

AKRAM ATALLAH: Yes, absolutely.

We are not necessarily going to limit the contracting to 1,000. We are committed to limit the delegations to 1,000 a year spread over the years. So we will try to get as much as we can as soon as we can.

And I will let Christine answer the same question.

CHERINE CHALABY: You have got 35 seconds, Christine.

CHRISTINE WILLETT: So we discussed at the new gTLD update that auctions would begin in October, starting in the September/October time frame. I described a timeline as to when auction procedures and documentation would be published. I certainly do owe the community a deadline. I've heard the request for a drop-dead date of last resort when applicants will be pushed into an auction. We believe that it has to have dependencies that it is not a hard date .

[Timer sounds]

But it will be dependent on other activities. So we are still working on that.

FRED KRUEGER: Can we get a date to get the date, please?

CHRISTINE WILLETT: I will provide you a date by my next Webinar. Thank you.

CHERINE CHALABY: Thank you, Christine.

Next speaker. And after this, we will take a remote participation. Thank you.

HEATHER FORREST: Good afternoon. My name is Heather Forrest. I am a senior lecturer at the Australian Catholic University in the faculty of law. At the time the board commenced or voted in 2008 to commence the new gTLD program, I commenced a doctoral thesis in international law on the subject of the consistency with international law of the protection afforded by the applicant guidebook to geographic names.

My study asked two questions in particular: First, whether there was support in international law for an exclusive or priority right of states in geographic names; and, secondly, whether there was support in international law of the rights of non-state others that would disprove the exclusivity or priority of geographic names rights of states.

My study was comprehensive. I looked at international trade law, unfair competition law, intellectual property law, geographic indications, sovereign rights and human rights.

As the board approved the applicant guidebook, I completed my study and found that there is not support in international law for priority or exclusive right of states in geographic names and found that there is support in international law for the right of non-state others in geographic names.

On the basis of my conclusions, I encourage the board to consider the role and value of consistency with international law in its decisions regarding geographic names. Thank you.

[Applause]

CHERINE CHALABY:

Thank you very much. And thank you for stating your position very clearly and for telling us about the result of your study.

Would anyone like either from the board or staff to respond at this stage?

No? So we will take that as an input.

Sorry? Okay. Erika would like to respond.

ERIKA MANN:

It is a very personal comment. I hope you allow me to do this. I read your study. It is very impressive. And I'm one of the persons on the board who refers quite often to international law, so thank you for your comment.

HEATHER FORREST:

Thank you very much for your feedback.

CHERINE CHALABY:

We still have got a few seconds. Anybody else would like to answer? Okay.

Thank you very much.

We appreciate it.

I will take a comment from remote participation.

Brad, I can't see the length of the line from here. I want to make sure everybody has an opportunity, so could you manage, please, the line for us.

BRAD WHITE:

Sure, we will, Cherine.

REMOTE INTERVENTION:

We have a comment from Jillian Andrews, an educator and tech researcher. My question for the forum pertains to ICANN's plans for the allocation of proceeds from auctions.

In Footnote 1, Section 4.3 of the applicant guidebook, at page 4 through 19, ICANN stated that it would like to allocate funds to projects that are of interest to the greater Internet community such as the creation of an ICANN-administered community-based fund for specific projects for the benefit of the Internet community.

The majority of users alive today have no idea of the centrality of ICANN's work to the infrastructure of the Web they use on a daily basis. Most completed their schooling before Web addresses existed. The overwhelming majority of schools lacking unfiltered Internet access, savvy teachers, or connectivity in the first place still don't teach about the infrastructure of the Internet. They tend – the trend in browser design to increasingly hide addresses means users will be thinking about addresses less and less.

This means most people don't know how to identify and avoid spoofing, have no idea that WHOIS is available to them, and could be confused by the influx of new TLDs.

Given the drastic change to the landscape of the Internet as a result of the new gTLD program, I'd like to know what, if any, thought ICANN has given to the idea of developing and providing public education programs, not just for youth but also for adults about the new DNS landscape.

Such a program, in my opinion, could greatly contribute to the overall success of the new gTLD program and generally ensure greater public understanding of and participation in ICANN. Thank you very much.

CHERINE CHALABY:

Thank you very much.

Steve, you want to say -- Steve will respond to that. Thank you.

STEVE CROCKER:

Thank you very much. So I want to divide this up into two aspects.

And, Fadi, if you would comment on the public education part after I talk about auction proceeds.

We don't have any proceeds yet. And I have been clear on multiple occasions and I will try to be clear yet again, we are going to -- first of all, we don't have any proceeds yet. We don't know how much proceeds are going to be. We are being very, very careful and scrupulous about accounting for the funds, about segregating gTLD

funds, whether they're revenue or whether they're potential auction or whatever.

When it is clear that there's a surplus and it isn't yet clear at all – in fact, the indications go the other way -- we will make a separate careful and fully consultative decision about what direction to use those funds for.

So there's no commitments that have been made at all. There is many, many good suggestions, each one of which is on its own -- there is a strong case to be made. But we haven't gone through that process at all.

As a separate matter, which may or may not be tied to whether or not there is any surplus funds, part of the question has to do with assisting the community at-large in understanding some of the security threats and engaging in education.

Fadi, would you like to comment further on that?

FADI CHEHADE:

Two things quickly. I have six seconds. We have launched the first ICANN learning platform, digital learning platform. It was announced this week.

[Timer sounds]

It will be open in about a month. And, secondly, we have just launched the ICANN strategy panel on public responsibility so that we can work together as a community and define how best to engage deeply in programs and activities to support our public responsibility role. So these are the active things we're doing to answer your question.

CHERINE CHALABY: Thank you, Fadi.

Next speaker?

DIRK KRISCHENOWSKI: Yeah, this is Dirk Krischenowski, founder and CEO of dotBERLIN. And I'm very happy to contribute something very positive here on the microphone.

And I'm speaking here on behalf of a group of 50 geo top-level domain applicants which are out there and have been working for meanwhile nine months very closely together with a lot of meetings there.

We are quite different from the rest of the geo TLD – gTLD applicants due to the involvement and influence of governments into our initiatives, and we are accountable for very large communities in this sense.

We have worked very well together and, therefore, we are going to seek formalization of our group as a constituency here within the ICANN structure, especially within the Registry Stakeholder Group.

And we are – would appreciate working with you, the board, on this issue and the other stakeholders in the community. And I hope the board will support us in our constituency forming within the next couple of months. Thank you very much.

[Applause]

CHERINE CHALABY: Thank you very much, Dirk. Would anyone like to comment? Anyone from staff? David Olive.

DAVID OLIVE: David Olive, vice president of policy development support. Thank you very much for those comments, and we welcome you into the constituency process and work with you to make sure that goes forward with recommendations to the Board.

DIRK KRISCHENOWSKI: Thank you, I appreciate it.

CHERINE CHALABY: Thank you. I believe I'm told the line has now closed, but if we continue with this, which I think is a very good thing, we will do with this interaction, we will go past the hour. So with everyone's agreement I would like to continue because this is really a worthwhile dialogue. Yes? Okay. Thank you. Next speaker, please.

PAUL FOODY: Paul Foody, Ours Sold. In Beijing I asked – I mentioned about the antitrust problems and the fact that rather than improving competition the new gTLD program is actually going to destroy it. And the response was to be, you know, referred to the 2010 economic studies. Now those 2010 studies referenced reports which were carried out by Paul Stahura, Antony Vancouvering, and Mr. Krueger, Afilias and they reported Nick Wood. Between them, those people are responsible for about 600 TLD applications. On the basis of the conflict of the interest

standards as set out so eloquently by Kristina Rosette in her letter regarding Patagonia, surely that economic study must be thrown out. Equally, the initial decision to go ahead with new gTLDs which was made in 2007 by the GNSO, the number of people on that body who are either applicants or involved in assisting applicants is such that you really have to invalidate that vote as well. We're in a situation, however, where there is demand for new gTLDs but again, in the economic study the benefits of new gTLDs are calculated as net social benefits equals benefits to registry operator minus costs to registry operator. The important point there being, we're talking about registries rather than the dotless domains that so many people applied for. As a result, might I suggest that ICANN consult with maybe Chris Disspain who so eloquently referred to certain applications –

[Timer sound]

-- as blindingly obvious and let the blindingly obvious registries operate. Thank you.

CHERINE CHALABY:

Thank you very much. Would anyone like to respond? Okay, Paul, thank you for your -- Fadi would like to respond.

FADI CHEHADE:

Yeah, just one comment on something you said. I'm tired of people saying that the GNSO process is not open. The GNSO policy process is open. All of us are welcome to it. The fact that the constituencies are made up of the people who have an interest in the gTLD program does not preclude you or anyone from participating in making policy. They

welcome us, they invite us, their working groups are open, they're free, and they're public. Thank you.

PAUL FOODY:

The root that we're on --

[Applause]

--The point is ICANN is about to give away rights to people claiming rights that simply don't exist. At the same time if you go to Google you'll realize that if you try to get to Google from Canada or America or England you end up at a different site. You end up at dot ca Google dot com or dot google dot ca dot uk. If we recognize that the Internet of the future is going to be far more like a Google search engine of today. We can use that facility to allow each nation to determine what they want to do with the various terms people are wanting to buy. I said that in -- in San Francisco in 2011. So why are we having this debate now about dotless domains like it's such a surprise. Thank you.

CHERINE CHALABY:

Okay. Thank you very much. Next speaker, please. We'll take two more speakers and then one more online.

KIRAN MALANCHARUVIL:

Hi, my name is Kiran Malancharuvil, and I'm here representing MarkMonitor. MarkMonitor endorses gTLD applications for by dot amazon and IDN equivalents applied for by Amazon. Respectfully we ask the ICANN board to allow these applications to proceed to delegation. Furthermore, we request that the ICANN Board solicit

public comment and -- on this and all other future GAC advice to encourage the community and the GAC to cooperate and communicate within the ICANN multistakeholder model and so that the Board can arrive at a reasoned and impartial decision. MarkMonitor respects the important role of the GAC and the ICANN community. However, we believe that the GAC's objection to dot amazon is not consistent with the multistakeholder decision-making process. Furthermore, this advice appears to be averse to established rights and international legal conventions. To date, governments in Latin America, including the Amazonas community countries have granted Amazon over 130 trademark registrations that have been in continuous use by Amazon since 1994 without challenge. Additionally, Amazon has used their brand within domain names including some registered by MarkMonitor and including registrations in Amazonas community ccTLDs without objection. Amazonas community countries and all other nations who have signed the TRIPs agreement have obligated themselves to maintain and protect these trademark registrations. Despite these granted rights, members of the Amazonas community signed the Montevideo declaration in April 2013 and resolved to reject Amazon and Patagonia in any language as well as any other top-level domains referring to them. This declaration appears inconsistent with national and international law.

In conclusion, MarkMonitor urges the ICANN Board to reject GAC objections to dot amazon. We also ask the Board to seek public comment on this and future advice and to --

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–fully analyze the potential impact that any advice may have on the ICANN model and applicable law. Thank you.

[APPLAUSE]

CHERINE CHALABY: Thank you, Kiran. We hear your comments about dot amazon and we hear about the international laws, the comments you made about that. Mike Silber would like to respond.

MIKE SILBER: Actually, Cherine, I think there's some very interesting responses coming up and certainly it's going to present some interesting consideration for the NGPC. I actually just wanted to take on the previous comment and just indicate that I think there's effectual inaccuracy about some of those economic studies because while they're not perfect, they simply weren't conducted by applicants for new gTLDs.

CHERINE CHALABY: Thank you. Thank you, Kiran. Next speaker, please.

JONATHAN ZUCK: Good afternoon, Jonathan Zuck from the Association for Competitive Technology. We're part of a community of thousands of app developers around the world and have, in as many fora are available to us, expressed some concerns about Google's application for dot app. And the one that seems to be most likely to bear fruit at this point is the comment process on that application. And so my question is simply

this, what is going to be your process to evaluate comments on TLDs that have not yet been accepted so that we know how those comments might fare once they enter that process.

CHERINE CHALABY: Thank you, Jonathan. Would Christine or Akram like to answer this question about process?

CHRISTINE WILLETT: Thank you, Cherine. Application comments were accepted and provided to evaluators for the initial evaluation as of September 2012. The only additional comments that would be going to evaluators are those participating in the community priority evaluation. So there was an opportunity for comments on individual applications that – for consideration by evaluators. The application comment forum is still available. Anyone may make application comments, but at this point in the program there is not a mechanism for those comments to be considered for evaluation purposes except for community priority evaluation.

CHERINE CHALABY: Okay. Thank you, Jonathan. Next speaker.

>> I think we had one from the queue.

CHERINE CHALABY: Sorry. Did we have a remote participation?

REMOTE INTERVENTION: We do. Thanks, Cherine. This is from George Kirikos in Toronto, Canada. According to section 1C of the minutes of the June 27 Board meeting ICANN negotiated in good faith terms for a \$650,450 contract related to the development of the Automated Register Onboarding System, AROS, with a third-party vendor. The Board authorized the proposed agreement. I was surprised to read that it was negotiated in good faith rather than being put out to a competitive tender. ICANN maintains a list of open and closed RFPs and the AROS contract is not listed. ICANN has procurement guidelines which state in section 3.2 that a broad solicitation is recommended for use whenever the estimated purchase contract exceeds \$150,000. And is required whenever the estimated contract exceeds \$250,000. Note the word "required" is open to only one interpretation. While section 3.3 lists a number of exceptions, they apparently apply only to contracts worth less than \$150,000. One of the exceptions is, for example, quote, when the incumbent provider demonstrates a clear historic pattern of charging reasonable prices and providing consistently good quality service the exception appears ripe for abuse by ICANN staff. Since how does one know reasonable prices are being charged when one doesn't -- does not know what competitors would have charged for the exact same contract.

One, did ICANN issue an RFP for an AROS contract. If not, why not? Two, if there was no RFP, how does ICANN know it received the best possible price for the contract terms? Three, are there any other contracts exceeding \$250,000 that ICANN has entered into in the past 12 months that have been awarded without competitive

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RFPs? If so, which ones and with which vendors?

CHERINE CHALABY:

Thank you. I will ask Fadi or who from staff would like to describe the process of – okay. I've got Akram saying he wants to do that.

AKRAM ATALLAH:

Okay. So in particular the AROS project was a specific implementation and we did not open it up for a – we didn't do an open RFP. We actually identified four different kinds of implementations that we wanted to look at and we had four different vendors bid on the contract and we identified the implementation that both meets our technical need as well as our long-term needs in the sense that it -- it actually allowed us to leverage our future CRM platform in developing the software. The other thing that was a key in the -- in the choice of the solution was that the particular vendor had already developed a very similar solution for another -- for another registry, I think. So those two requirements made -- were actually the leading reason why we picked that particular vendor out of the four that applied. And the process actually does require us to do an open RFP for any job that is over \$250K, but there are exceptions, and the exceptions that apply for this particular RFP is that it was a very specific need and the knowledge was -- that we -- that we needed to go after was very specific and it wasn't an open technology that everybody -- anybody could have done in the time frame that we need to do it. So there were urgency as well as specific considerations. So we followed the RFP --

[Timer sound]

-- process on every bid and we do the RFPs always. In certain exceptions we don't. Okay? I hope that answer.

CHERINE CHALABY: Thank you, Akram. Next speaker, please.

KEITH DRAZEK: Okay. Thank you.

Good afternoon, my name is Keith Drazek. I'm here speaking in my capacity as chair of the registry stakeholder group. I'm going to read a prepared statement regarding GAC advice. From 2007 to 2011 the GAC, ICANN Board, and the community debated numerous aspects, rules, and policies around the Applicant Guidebook. None of us got everything we wanted, and all of us at times felt we were not being heard. While different stakeholders have different views about particular aspects of the GAC advice, we have a shared concern about the portions of that advice that constitute retroactive changes to the Applicant Guidebook around the issues of sovereign rights, undefined and unexplained geographic sensitivities, sensitive industry strings, regulated strings, et cetera. These changes in essence only override the rules set forth by this community but also exceed what those same governments could do under their own national laws. GAC advice needs to be consistent with existing national and international law and the GAC should not use ICANN to create new rights or take away existing rights. ICANN should not be used by the GAC as a substitute for international treaty-based organizations like the ITU or the WTO or to

regulate an industry they don't regulate at home or prohibit the use of strings that are expressly permitted within their national borders.

We respect the challenges facing the GAC. It is reasonable, however, to expect this advice will be consistent with the GAC's own principles for new gTLDs, including specifically its advice that no material changes to the Applicant Guidebook should be made after the application deadline. It is also reasonable to expect that their advice will be consistent with international law. We asked this Board to act today and in the future to protect the stakeholders before you and the people, companies, and organizations who they represent. We specifically call on you to accept the GAC advice only with respect to category 1 --

[Timer sound]

-- only where specific international conventions, treaties, and other legal instruments applicable in most jurisdictions regulate the implied use of such strings, and with respect to geographic names only where such names are precluded or regulated by the guidelines set forth by all of us in the multistakeholder created guidebook upon which applicants relied. At the very least we urge you to ensure that ICANN is not used to route around national and international law. Thank you.

[Applause]

CHERINE CHALABY:

Thank you, Keith. Thank you, and we hear you very well and you're saying that any advice or solutions that we find together must be supported by international and national laws. Thank you. Message understood.

BRAD WHITE: Cherine, if I can interrupt for one second. Our scribes and our translators – people are talking a little fast for them, so if I could just remind people to slow down just a bit, that would be helpful.

CHERINE CHALABY: Thank you. Next speaker, please.

STEVE DeBIANCO: Steve DeBianco of the business constituency. And it's a question for Board. Wednesday's security, stability and resiliency session on name cert -- internal name certs and collisions was a remarkable improvement from a similar session we held in Beijing because we moved from denial and defensiveness to data and discovery. So now it's time, and we're in the middle of some real debate and discussion on how to solve the problem. We saw data from Interisle on the number of collisions at the root in a single day. Some collisions occur on nearly all of the new gTLD strings, but an awful lot of collisions occur on a short list of strings, including things like corp and home, meds, site, and ads. And so at the end of that session I had an interesting exchange with the chief security officer of ICANN, and Jeff Moss said that the company line is that ICANN will do nothing to undermine SSR – and I heard Fadi say it many times -- and Jeff added if there's a show-stopper deadlines could be moved. But I really do believe the data indicates that it's a more fine grain problem than a show-stopper. Maybe you don't have to stop the show but you keep the high collision, high impact strings off the stage until they've been mitigated in the user community. The show may go on then for

the other strings, but here's the question from the B.C. For strings that do go in and for which collisions occur, who would be liable for the costs of business interruption and the costs of mitigation? Would that be ICANN? Would it be the registry that proceeded with the string that caused expensive and destructive collisions. Thank you.

CHERINE CHALABY: Thank you, Steve. Who would like to comment?

STEVE DeBIANCO: Everyone is pointing at the lawyer.

FADI CHEHADE: And the lawyer doesn't want to talk so I will, and I'll get into trouble.

CHERINE CHALABY: Fadi the lawyer will talk.

FADI CHEHADE: Fadi the lawyer will talk. So Steve, what is the legal right of people to use corp within their network?

STEVE DeBIANCO: I'm a programmer, not a lawyer.

FADI CHEHADE: Me neither. I'm a programmer, too.

STEVE DeBIANCO: And as a programmer, when I was setting up the provisioning on my internal assets on my network, there's no restriction at that point. It's an internal name.

FADI CHEHADE: I don't have the answer either because I did program things that used dot corp myself, but the question is you're saying what is the legal implication. I ask you the other way. What is the right of people to use these things within their networks?

STEVE DeBIANCO: Got it. But I didn't ask a rights question at all. I asked about real hard dollars because business constituency members and small businesses are going to spend money solving that problem. So that won't be a rights lawsuit, Fadi, it will be a cost and business interruption lawsuit.

FADI CHEHADE: Lawsuits are around law. Having said that, I must be clear, we will not move forward, based on the reports we're receiving, on anything that will jeopardize the security and stability of the Internet and we will look at the strings that will cause issues and we will make sure we take our time and corrective action without stopping the show. Having said that, your use of lawsuits and rights and things like that, this is not for us to discuss because the people who are using these also do not have any legal standing on using them.

STEVE DeBIANCO: Interesting, thank you.

CHERINE CHALABY: Thank you, Steve. Just to inform everybody, I've just spoken with Steve and everyone in this line will be heard but the suggestion is we will take a break at 5 past 3:00 as expected, we will come back, we will have a presentation for 10 minutes, and then the exact line will resume again and each one will be heard. Okay? Brad, you okay with that?

BRAD WHITE: That works very well.

CHERINE CHALABY: We'll take one or two more questions and then we'll stop at 5 past 3:00.

BECKY BURR: Thank you. Becky Burr with Neustar. I would like – Neustar would like to associate itself, as other registries have done, with the registry stakeholder statement. But in particular, I would like to focus on the imperative for ICANN to act in accordance with the rule of law and in particular international law. Many people have stood up today and talked about trademark rights under international law. I would like to suggest to you that this is not simply a matter of trademark law and it has significant and I think very important implications for ICANN's future.

Under international -- there are international laws relating to expropriation of property and there are international laws relating to

regulation of speech. The lawyers on the table are saying ah, but ICANN is not a state actor, therefore, it doesn't apply. Unfortunately, I don't -- I am not confident that is the case, and although I never disagree with Chris Disspain, the fact is that the Applicant Guidebook says that a government -- a GAC objection creates a strong presumption for the Board that the string will not be approved. So all I'm saying is the -- the strong presumption, based on government direction followed by GAC action, says to me you better be a little worried about whether those laws relating to regulation of expression and expropriation of property apply.

[Applause]

CHERINE CHALABY:

Thank you, Becky. Those are strong comments, so far everybody saying make sure international laws and national laws are being supported. Chris, do you want to respond?

CHRIS DISSPAIN:

So I just want to make sure that I'm clear about what it is I said. What I said is, you should not presume that we will just accept the GAC advice. That's not the same thing as saying there isn't a strong presumption. I said, you should not presume that we will just accept the GAC advice. There is -- and I forget where it is written, but there are things like we have to do due diligence, we have to reach out to people and so on and so forth. So I'm not suggesting there isn't a strong presumption in the guidebook, but you should not presume -- and I was responding to

Christina's point -- you should not presume that we will just accept the GAC advice. Thank you.

BECKY BURR: I hear you. I just want to say the fact that the GAC Applicant Guidebook -- or that the Applicant Guidebook contains those words creates some issues for us.

CHERINE CHALABY: Thank you, Becky. We're going to take one more question, and then we will take a break after that. So next speaker, please.

EDMON CHUNG: Edmon Chung here, and don't worry, I'm not going to talk about IDN variants.

[Laughter]

So actually the topic of the day is about international treaties and conventions. I wanted to take the -- I guess on a positive way. I note that the Board has accepted the GAC advice on the overall -- all the new gTLDs and they have been implemented as public interest commitments. They've banded it public interest commitment.

I want to point out that, however, one I think very important part of the GAC advice seems to be missing in the implementation and that is the description about the international treaties and including the Universal Declaration of Human Rights. The reason I want to bring this up is that, you know, there are certain examples of strings that fall under that.

One of the treaties, for example, under the Universal Declaration of Human Rights is the Convention on the -- on the Rights of the Child. And they -- they apply to certain strings. And I think it's very important to as we implement it, actually we're signing contract now and we're getting to some of those strings that potentially have implications on -- or regulated by certain international treaties. And I think, you know, I'm looking to the Board and the staff to implement it such that those safeguards could be in place as well. And for example, you know, I take the example of the Convention of the Rights of the Child, it is very important for the protection of children and their rights for those -- those strings that, you know, not necessarily what the GAC has identified but in general because that -- that advice is for all the gTLDs. And I look to -- I guess I look to the Board and the -- and the staff to actually implement that part of the GAC advice as well.

CHERINE CHALABY:

Thank you, Edmon. Would anyone like to comment? Erika.

ERIKA MANN:

I think one has to be very careful. Not everything that relates to international law can come automatically into, you know -- or shall be automatically evaluated. We have a discussion, not -- not a strong discussion on the Board but I'm pretty sure we will look into this. Everything related to international law as far as, you know, we shall take it into consideration, and I'm one of the members who is actually pressing forward, you know, to do so. So have the assurance we will look into it, but we can't reply to it at this stage and the moment here.

EDMON CHUNG: Sure. I just think it's important. I believe it makes sense for registries that operate these strings to abide by those international treaties, and that's – that's, I think, the point.

ERIKA MANN: Let us be a little bit more cautious and let's evaluate it first.

STEVE CROCKER: Thank you, Erika. Thank you, Edmon. So as Cherine described, we're going to take a break now. We're going to continue with the line after we come back and after we have the presentation on the Buenos Aires ICANN meeting. 3:25 will be our start time. Thank you.

NANCY LUPIANO: The coffee breaks are located in 3A where they have been all week. Please enjoy and return promptly. Thank you.

[COFFEE BREAK]

NANCY LUPIANO: Ladies and gentlemen, if you would be kind enough to take your seats, we are going to start the second part of our public forum.

Once again, just a reminder to please speak slowly so that not only the scribes and the interpreters can understand you, but the board members that you are addressing your questions to.

Thank you.

BRAD WHITE: Folks, if you could all take your seats, we'll get goings in one minute.

Ladies and gentlemen, our next ICANN meeting, ICANN 48, is going to be in Buenos Aires, Argentina in November. We're now going to see a short presentation, a little preview look of that meeting. Carlos Liuzzi from NIC Argentina is going to speak to us.

Carlos.

[Applause]

CARLOS MARCO LIUZZI: Good afternoon, everyone.

As Brad recently said, my name is Carlos Liuzzi. I am from NIC Argentina, and the manager of international liaison unit.

I would like to start, first of all, by thanking the local host for having us in the beautiful city of Durban. Also I would like to congratulate them

on this very special day, the 95th birthday of Nelson Mandela, and I would like everyone to give a big applause, I think, for that.

[Applause]

Thank you.

Buenos Aires.

We're really looking forward to it. I'm going to give a little news to everyone. Buenos Aires is not in Brazil, as many – we had a lot of questions about that. It's in Argentina, a little bit down, south from Brazil. Even though we're very fond of our neighbors, it's another country.

[Laughter]

[Applause]

Yeah, Chile is also another country.

Very good.

I think that I have been talking to a lot of you these past days.

Everyone, most of you have already been to Argentina or know something about it. For those of you who have not been there, it's -- maybe you'll find, like, it has its European feel about it, still with a Latin - - Latin flavor, maybe. So I don't know if that's a good thing or -- I think you will decide that when you go there.

So what can you expect there? I think wine, a lot of meat, maybe some more wine, tango, and football matches. So I think that pretty much sums up what the Argentinians are all about.

And, well, you can have the video right now. I don't know, are you ready?

Okay. Thanks.

[Video playing]

[Music]

[Applause]

CARLOS MARCO LIUZZI:

Thank you for that. If you are wondering, that was electro-tango, something kind of new.

So last but not least, I would like to thank ICANN for choosing us and trusting the whole organization on us. We're under a new administration, and that is really important for us. And I would like to thank also Nick and Nancy's crew who have been very helpful with everything.

So we are very eager and looking forward to it, and you're very much welcome in Buenos Aires.

Thank you.

[Applause]

STEVE CROCKER: Welcome back, everybody. We continue with the line as we had it before.

ALEX STAMOS: Hi. My name is Alex Stamos. I work for Artemis Internet, and I am a member of the New TLD Applicant Group.

We have been talking a lot this week about security and stability recommendations, and the NTAG has put together a response. We haven't been able to vote on it yet, so you guys will be getting a detailed letter, both the Board and the GAC, next week, with both our response to the SSRs as well as some recommendations on how we can set some reasonable technical controls we can all agree to.

I am also not a lawyer. I am a nerd and have been in the information security industry my entire career, and there is very broad consensus among the NTAG that we are conscientious parts of the Internet community. We have no desire to see any kind of safety or stability impacts. In fact, part of the goal of diversifying the Internet infrastructure in the new gTLD program is to reduce those kinds of risks in the future. And so I have been actually personally surprised at how willing people are to compromise to make sure that these things don't happen. Particularly on the talk of colliding name spaces, both colliding internal split DNS as well as cryptographic certificates. We recognize that that's a big problem, and the NTAG has consensus that we are willing to allow these small numbers of TLDs that have a significant real risk to be delayed until technical implementations can be put in place. There's going to be no objection from the NTAG on that.

What we do object to is the use of the risk posed by a small tiny, tiny fraction, my personal guess would be six, seven, eight possible name spaces that have any real impact to then tar the entire project with a broad brush for contracted parties to go out to the Washington Post and plant stories about the 9-1-1 system not working because new TLDs are turned on is completely irresponsible and is clearly not about fixing the Internet. It's about undermining ICANN and undermining new TLDs.

We strongly urge the Board to reject the idea that safety and stability recommendations means that the whole TLD program has to be delayed. There are reasonable technical mitigations that can be put in place. We're willing to work with you, with the SSAC, with the RSSAC, and with all the interested parties. And we're looking forward to reports coming out in the next couple of weeks and for us to be turning over the recommendations, like I said, next week that we hope start the discussion.

Thank you.

CHERINE CHALABY: Thank you, Alex. Would anyone like to comment?

STEVE CROCKER: Thomas, do you want to comment on that at all?

THOMAS NARTEN: Not particularly, because I think actually there's a policy thing here.

What you're suggesting I think in the case of names that exist in the wild, so to speak, that people are using internally, and there's work going on to produce a report on that. I mean, the idea that there is a relatively small number of names that pose the greatest risk seems to be the case. And what I'm hearing here is that if that's the case, let's work on mitigating the concerns around those but not block everything pending that.

ALEX STAMOS: Absolutely. That's exactly right. Yes.

THOMAS NARTEN: That to me certainly sounds reasonable. That's really a policy discussion, less a technical discussion.

CHERINE CHALABY: Thank you. Fadi, do you want to comment on no delay to the program?

FADI CHEHADE: Simply to say your comments are extremely reasonable. So we appreciate it.

ALEX STAMOS: Thank you, sir. I've never been called extremely reasonable before. I'm going to take that to heart.

[Laughter]

CHERINE CHALABY: Thank you reasonable Alex.

Next speaker, please.

JACOB MALTHOUSE: Hi, my name is Jacob Malthouse with big room dot eco speaking in a personal capacity. This is a comment for the community. So Board and staff, I will ask your indulgence.

Hello, community.

So we've had a great meeting this week. As always, we've been impressed with the – inspired and refreshed by the entrepreneurial energy and community spirit that surrounds ICANN meetings.

Our one fly in the ointment for us has really been this persistent meme around the impossibility around the community priority evaluation.

When we talk about this evaluation being impossible, we're talking about our community creating an impassable barrier for other communities to interact with us by the new gTLD process.

And I urge us to all be aware of the impact of this. I hope we can all agree that it is important that an evaluation we create is understood to be achievable. Not easy or simple, but effective, fair, efficient, accurate, and, above all, passable.

Let's ensure that the door to the ICANN community's new gTLD process is open to other true communities.

Thank you.

[Applause]

CHERINE CHALABY:

Thank you, Jacob.

And next speaker, please.

JEFF BRUEGGEMAN:

Good afternoon. Jeff Brueggeman with AT&T.

I wanted to pick up the theme of security, stability and resiliency. I want to applaud the work that was done by the SSAC. It was excellent analysis.

My conclusion from the report is that further analysis is needed to more precisely refine the extent of the potential impact and decide what to do next. And my request is that as that be done, ICANN take responsibility not just for the decision about what goes forward but whether we think there is a limited impact or a broader impact; that we really have a coordinated plan for working with the users who are going to be impacted.

And as a company who is a major user of the Internet and has millions of customers, I think our request would be that you work with those of us who are on the front lines with customers to really make sure that is a successful process. And I think this is a chance for ICANN to really show it is going to take that responsibility seriously.

My question is, having been on the Security, Stability and Resiliency Review Team, one of our recommendations was that ICANN take a

comprehensive look at the new gTLD program from an SSR perspective. And I think the issues I was hearing about this week, for me to confirm that in addition to looking at that from a budget and a resource perspective, this really would be a good time for ICANN to do that kind of a sophisticated SSR type analysis of thinking ahead as part of your strategic plan. And I think it fits very nicely with SSAC 59 that calls for an interdisciplinary approach for this.

So my request would be ICANN really proactively look ahead at not just whether -- its resource and employee needs, but also trying to think through all the strategic implications, even if it's not what ICANN is directly responsible for. I think you are in a unique position to do that analysis and provide very valuable information to those of us who operate in the general meeting space.

Thank you.

[Applause]

CHERINE CHALABY:

Thank you, Jeff.

So a request for a comprehensive look at the new gTLD program from SSR perspective.

Would staff like to look at that? Answer question?

Who would like to comment?

FADI CHEHADE: Simply to say thank you, Jeff. There's something very important in what you said that I think we will take very much to heart, that as we go out, once a plan is in place, frankly, or once a view is in place, we should plan the rollout of these things in partnership with the community. Right?

I think that's a very good thing you bring to the table. That you, in this case, could be a good partner in the education process, in the getting the community to appreciate what these things mean as opposed to us just trying to do this all on our own.

JEFF BRUEGGEMAN: And I'm not sure how much awareness there is on some of these potential issues, and you don't want to find out about it in the Washington Post if you are running a network; right?

FADI CHEHADE: Precisely. So two areas we can cooperate. One, as you said, education, planning together how we ensure the least impact. And second, frankly, in making sure we can get to the Washington Post first next time, all of us. Make sure we get the right story out, which we will do as well with you, in partnership with you.

Thank you, Jeff.

CHERINE CHALABY: Thank you, Fadi. Next, I think we have – sorry, we have a very patient remote participation comment. So if you don't mind we'll take this one first.

REMOTE INTERVENTION:

Thank you, Cherine. We have a comment from Hector Ariel Manoff of Argentina: I am a lawyer and a member of the Intellectual Property Constituency. My comment is in my own name, because the resolution of GAC affects me personally as an Argentine citizen and also as a world citizen.

Also, my comment is for the benefit of my clients who are affected in their rights. I also want to stress I was one of the experts engaged by ICANN to work in these issues for the IPR; i.e., Recommendation Implementation Team.

I am absolutely convinced that the position of the GAC with respect to what they call geographic names is wrong, and it is a bad precedent for corporate governance of ICANN.

Countries or the governments of these countries cannot deprive businesses and people of good faith in the use of language, of words, and even of names of places in their countries. They do not legally have the monopoly on the language. It would be very bad to have that.

For example, I ask if some state may be the owner of the word "freedom." According to the advice of the GAC, the State of New Jersey of U.S.A. could prevent the use of the word "liberty" because there is a place named Liberty Township in Warren County, New Jersey.

For the same reason, the use of the word "liberated," which is "freedom" in Spanish, could be objected by Uruguay because there is a town with that name in that country.

I appreciate the work of the GAC to protect the citizens of their countries against abuse in Internet domains. I agree that they monitor gTLDs and are not granted to those who have committed fraud or misled users, consumers, or clients who have them removed from those who may commit problems in the future.

But it is wrong using censorship with the use of any word to conduct legitimate business activities in this specific space.

I consider also that if the Board followed the advice of the GAC, a very bad precedent would be set, allowing it to violate the rules of ICANN's corporate governance.

[Timer Sounds]

The discussion about which words that could be used as gTLDs was made long ago.

[Applause]

CHERINE CHALABY:

Thank you. This is another comment about geo names, about international and national laws, and respect of those.

Can anybody like to make one more comment on that?

No?

Okay.

Thank you.

Next speaker, please.

TIM MCGINNIS: Thank you, sir. I'd like to thank you all, but first of all, my name is Tim McGinnis. Many of you know me. I'm with NCSG this week, and I would like to read three sentences from the NCSG statement regarding the Beijing communique.

In short, the GAC's Beijing communique is positioned not as advice but as a substitute for the policy work of the broader ICANN community.

As such, it constitutes a threat not only to the implementation of the new gTLD program but to ICANN's status as a multistakeholder policy development institution.

Unless this advice is rebuffed by the Board, ICANN undermines its supporting organizations, its policy development process, and the Applicant Guidebook, under which hundreds of companies applied for new domains.

And I'd like to add personally that I view it as a threat to the multi-equal stakeholderism that Fadi Chehade has inspired us with.

Thank you.

CHERINE CHALABY: Tim, thank you. Which part of the advice are you talking about?

TIM MCGINNIS: Well, we were talking about in particular the categorization. Large numbers of strings that are not exhausted, given exhaustive lists, but

the active – making categories, taking a second bite of the apple, things that are not in the guidebook.

CHERINE CHALABY:

Thank you.

Would anybody like to comment?

Okay.

Thank you very much.

Next speaker, please.

AMY MUSHAHWAR:

Hi, I am Amy Mushahwar. I represent the Association of National Advertisers, which its member companies advertise and contribute to over \$250 billion worth of advertising globally. We're major employers, and we're major revenue producers across the globe.

I'm here today to comment about SSR issues.

We learned in yesterday's presentation that there is a huge bell curve of new gTLDs. Almost all new gTLDs will be impacted by the domain name clash issue.

What we have not done is drill down into the individual gTLDs and actually discover what are the potential use cases and what are the potential impacts within each new gTLD.

Please be advised, even if there is a new gTLD that only has a few potential name clashes, perhaps that call could be a SCADA system or a

critical piece of infrastructure that is only called periodically and episodically.

What we did as the ANA is we talked to our members and we asked what are the potential uses of the DNS for critical infrastructure? What are the potential uses of the DNS that can be impacted?

Here is what we learned. 9-1-1 calls using VOIP. We learned also yesterday in the SSAC meeting that many of the communications --

[Timer Sounds]

AMY MUSHAHWAR:

Oh, okay. Well, 9-1-1 calls, oil and gas pipelines, smart energy grids, wireless medical devices, wireless area networks. I urge you, this is not an SSR issue. This is a public safety, health and welfare issue for all of the globe.

If we proceed in the face of these dangers and we do not study this issue, we proceed to all of our peril as a global community.

Thank you.

[Applause]

CHERINE CHALABY:

Thank you, Amy. Would anyone like to comment on Amy's...

No one would like to comment? Amy, you've said it so well, nobody can comment on it.

Thank you.

Okay. No, we have a comment.

Amy, wait.

Ram Mohan would like to comment.

RAM MOHAN:

Thank you. I'm Ram Mohan. I'm the SSAC's liaison to the Board.

So just from the ICANN Board's perspective, there is a study that has been commissioned about namespace collisions, and it's not – all of the work is not done yet.

The Board is also asking other advisory committees, including the SSAC, for instance, that have subject matter expertise to provide advice on that.

So I think the point's well taken, but I'd also like to say that when we're looking at these kinds of issues, we look at it – we should look at it not just as is there a risk but also what is the likelihood and the severity of the risk. So it's kind of on some sort of a continuum.

AMY MUSHAHWAR:

I understand.

RAM MOHAN:

But leaving that aside, work is in progress, and there is very serious consideration from the Board, and from what I understand from the NGPC on this topic.

So you can rest assured that this will not just be brushed aside. There is going to be very strong consideration.

AMY MUSHAHWAR:

You know, Ram, I don't want to rest assured. What I want to do is bring my companies to ICANN and work with you.

We've tried to do that on the trademark issue, and, quite frankly, we weren't listened to about our security issues that link to trademark and consumer protection.

This is an issue that if ICANN fails, the global community fails.

We stand here ready, willing, and able to work with ICANN.

I personally publicized this issue to the chief information security Officer's executive network –

[Timer Sounds]

AMY MUSHAHWAR:

Between Beijing and this meeting, and there are still so many corporate actors who have no idea how ICANN impacts them and how new gTLDs impacts them.

Do not fail on this issue, and we stand ready, willing, and able to help you not fail.

Thank you.

CHERINE CHALABY: Okay. Don't go. Fadi wants to say something.

FADI CHEHADE: Amy, first of all, congratulations on your baby.

AMY MUSHAHWAR: Thank you.

FADI CHEHADE: As you told you outside, I think I say it publicly as well, and as I mentioned to Jeff, we are committed to work with the companies that want to work with us. We will put together a plan. We will see how we can partner both on the education side and on ensuring the proper decisions are made here, just as ram said.

But, frankly, I want to be clear on something. Creating an unnecessary alarm is equally irresponsible.

AMY MUSHAHWAR: Exactly. And we're not. We're not.

[Applause]

AMY MUSHAHWAR: We're not.

FADI CHEHADE: So, please, let's work together. Let's check on each other, as I know you do very well, and I respect and welcome that.

But creating unnecessary alarm when the experts' report, which we have not fully reviewed yet but we have seen and we will share with everyone to see, does not point to major issues beyond a number of names which we will quickly identify and go do very serious studies on. But that's a very, very small percentage of all the gTLDs.

AMY MUSHAHWAR: With all due respect, the current report doesn't go into any of the use cases. So we have no idea the severity of the problem.

FADI CHEHADE: Understood, understood. But they identify the number – They did some tests. They gave us results. We will continue working these things. As I mentioned to you, we'll do tests. But, please, I think as publicly responsible members of one community, let's measure how much alarm we raise.

And in the trademark case, with all due respect, it ended up, frankly, not looking good for anyone at the end.

So let's do it calmly. Let's do it together this time. That's my commitment to you.

AMY MUSHAHWAR: Yeah, and let's do it with data. That's what we hope.

FADI CHEHADE: Absolutely.

AMY MUSHAHWAR: And we want to work with you.

FADI CHEHADE: Thank you.

CHERINE CHALABY: Would anyone else want to work with Fadi on this, please, his door is open.

This was a true invitation.

Okay. Next speaker, please.

MARK PARTRIDGE: Thank you. My name is Mark Partridge with Partridge IP law.

I have a new issue to present involving TLD objection process.

I'm counsel for parties engaged in community and limited public interest objections administered by the ICC.

I'm also a panelist with the WIPO legal rights objection procedure administered by WIPO.

I served on the IRT, and I'm a member of the Intellectual Property Constituency, but I make these comments in my private and personal capacity out of concern for that process.

I stand to express concern about the high amount of the deposits that are being required by the ICC. It has been reported that the deposits

required from individual parties have, in some cases, exceeded 100,000 euros.

I'm aware of a consolidated proceeding in which the total deposit required was 1,134,400 euros.

I'm also aware of not-for-profit associations that have found the amount of the required deposit to be prohibitive for that not-for-profit association to advance.

I would note that these fees and deposits charged by the ICC are in stark contrast to the fixed fee charged by WIPO for the LRO objections. Thus, my concern and comments apply to the ICC proceedings.

My fear is that the unusually high deposits required for the ICC objections threaten to undermine the fairness and viability of the objection procedure going forward.

My question is, what can and will ICANN do, going forward, to address and correct this emerging problem?

Thank you.

[Applause]

CHERINE CHALABY:

Thank you for the question. Who would like to address this from staff?

Christine Willett. Thank you.

CHRISTINE WILLETT:

Thank you, Cherine.

So thank you very much for the question.

The limited public interest objections and the community objections being considered by the ICC are substantial considerations. They are affecting -- considering cases with considerable commercial impact, and they are a different type of case than the other fixed-fee objections that were clarified in the guidebook and specified in the RFP process as dispute resolution service providers were selected.

Due to the nature of the limited public interest and community objections, the fees for those disputes were not capped. The hourly rate of the ICC and the expert panelists has been disclosed. It -- we -- they are identifying and impaneling expert jurists to consider these matters. So, while we acknowledge these are substantial fees and they may certainly be higher than expected, they are within the same order of magnitude of the range of fees that were identified in the guidebook. The applicant guidebook specified objection fees up to \$122,000. And we are aware of objections up to approximately \$200,000 in U.S. So, although it is substantially more, it is in the range. That applicant guidebook was also written four or five years ago. So some of those costs certainly may have increased in the intervening years.

The other point I would like to make sure everyone is aware of that the prevailing party in the objections will have their fees refunded to them. So that is one benefit. So the objector is -- sorry -- the DRSP is collecting funds from both the applicant and the objector to cover all of the anticipated costs with the intention of not going back to either applicant or objector to collect fees with the prevailing party getting their fees returned.

CHERINE CHALABY: Thank you, Christine.

CHRISTINE WILLETT: Thank you. Cherine, may I make one more statement?

CHERINE CHALABY: Yeah. It's important to answer comprehensively on this one.

CHRISTINE WILLETT: Thank you. We have requested from the ICC further information about the details of their fee structure to provide clarity to the community. As soon as we have that, we will make that – publish that and make that available.

MARK PARTRIDGE: I very much appreciate the explanation. And I think the community -- that helps them understand. I'm still very concerned about the chilling effect that these high fees have going forward. And I think it's a problem that needs to be addressed going forward. Thank you.

CHERINE CHALABY: Thank you, Mark. Thank you. And thank you, Christine, for leaving a comprehensive answer. Next speaker, please.

SIVASUBRAMANIAN MUTHUSAMY: I'm Sivasubramanian Muthusamy. I'm a community participant who greatly admires ICANN governance and the people here. Raising an unusual issue. So don't take it as a wrong signal. My firm, Nameshop, applied for the string dot IDN as an ASCII string. The idea is to make IDNs identifiable and accessible by everyone on the Internet. The larger idea is for TLDs to contribute to the community's efforts to keep the Internet as one Internet. As an application, this new gTLD idea revolves around global public interest. In addition, Nameshop has recorded commitments to give away one quarter of its profits for the good of Internet year after year as a public interest commitment. The string applied for IDN was denied because it's an alpha-3 country code. Nameshop applied to change the string to dot Internet. The new string is not a geographic string, not really – okay.

Nameshop applied to change the string to dot Internet by a change request. The new string is not a geographic string, not related to any country, not reserved, not prohibited. And it's not an already applied-for string.

The change request in order within the new gTLD evaluation framework. There are no provisions to discriminate this application for dot Internet. But it's unfairly denied without assigning reasons.

Nameshop's application is also an applicant support, which is also denied, which strengthens that change request denial.

It is not known if ICANN has unwritten rules related to the generic string dot Internet. And, not finding any reasons within published guidelines or available process, the new gTLD process attempts to suppress this

application vaguely citing multiple criteria, absence of public interest, even when the application revolves around global public interest.

Under what criteria do we deny the change request? What is the specific reason? Under what criteria do we deny the applicant support request? What is the specific reason? In place of transparency, there is secrecy and in place of accountability, there is evasiveness, total evasiveness. No one wants to look at the round. Are you prohibiting the string dot Internet or reserving it for someone in the future? Is it fair?

CHERINE CHALABY:

Thank you. I think we get the message. I just want to know if staff would like to respond to that. Thank you. Staff?

AKRAM ATALLAH:

Yeah. So the change request was not denied based on the string. It was denied based on the request to change a string that was applied for. We do not accept any changes to the strings after the fact. If you remember, the applications were all closed until the reveal day because we cannot have applicants changing strings when they find out that the string was applied for, this wasn't applied for. So after the fact there were no string changes. And that's why the change request was denied, not because of the string itself.

CHERINE CHALABY:

Sorry. Bruce.

BRUCE TONKIN: Yeah. Thank you, Akram. You might just want to clarify. I believe there might have been some spelling changes that were accepted. So just perhaps make that clear.

AKRAM ATALLAH: Yeah. The only changes to strings that were accepted were minor changes to either a -- the wrong spelling or some editing mistake. But, other than that, no string was allowed to change.

SIVASUBRAMANIAN MUTHUSAMY: Yeah. But it was not stated in any of the replies to me. And I went through the reconsideration process, which also did not say that this is the reason. So thank you for clarifying.

CHERINE CHALABY: Thank you, Akram. Thank you, Bruce. Okay.

So we have three -- three or more in the -- and we have a couple of people waiting patiently. But I think we can keep the online until the queue is finished. So next speaker, please.

JORDYN BUCHANAN: Hello. I'm Jordyn Buchanan with Google. I'd like to make some of the SSR conversations that we've had today a little more concrete, at least with a couple of examples that we're happy to discuss as an applicant for new gTLDs.

First, I'd like to very briefly address dotless TLDs. As people may know, we have submitted an application amendment for our dot search TLD

that does include a registry service that includes dotless and a dotless element.

We fully expect -- and I understand that the guidebook provides that, if an applicant proposes to operate a dotless service, that there will be additional scrutiny and that ICANN will review that process and make sure that any security concerns are mitigated. We appreciate that there are potential SSR concerns, and we are delighted that ICANN will fully review that before deciding whether or not to allow that service to be operated. We do not intend to bypass the process or otherwise have our amendment approved prior to the full evaluation of the proposed service.

Second, I'd like to point out we are -- we're the applicant for dot ads. It has a low priority number, 392.

It's uncontended. There are no objections. I expect that under normal circumstances we might be able to start to operate it in the relatively near future. But it's not quite normal circumstances, because it also appears on the top handful of potential name collisions identified in the Interaisle report, or at least the preview of it that we've seen. To that extent, I'm here to commit today we are not going to operate dot ads prior to a full evaluation of any potential security interactions. We'd love to talk to Amy and others in the community that may have issues. And we'll start to work on mitigation now. We have a concrete example. Let's start to work on the process and make sure that by the time we get to the point that we're ready to start to work through some of the other TLDs that maybe other people operate or are contended, we work through this issue. We won't delegate it until it's solved.

[Applause]

CHERINE CHALABY: Thank you, Jordyn. Anyone wish to comment on Jordyn's – Fadi.

FADI CHEHADE: Yeah, Jordyn, just to say thank you for the responsible approach you're taking and Google is taking here. It's appreciated. And I think even Amy and others would appreciate the way we are dealing with these potential issues. So, really, that's the way I hope all of us will cooperate to address these issues as a community. Thank you for that.

CHERINE CHALABY: Thank you, Fadi.

Next speaker, please.

JAMES SENG: Hi, my name is James Seng, IDNs. I'm here representing Zodiac Holdings. Zodiac is an applicant for 15 new gTLDs. All the strings, all 15 are focused on the Chinese market. And, as such, we have our HQ in Hong Kong. But most of our staff and operation in Beijing, China.

As we move on to prepare our launch, we are formulating some of policy. We encounter several issues I would like to share with the community here and perhaps also to the board and the staff.

Previously, at the public forum we talked about ICANN has to abide with international laws and treaties. We fully support and appreciate that.

But the reality is that operators like us -- would-be operators like us is subject to local laws and regulation. Domain name industry in China is a regulated industry that requires approval from Chinese government.

So we found ourselves stuck between the international convention that ICANN is used to and how the local government expects and demands of us being a registry operator in the industry. This challenge is not just limited to data privacy like WHOIS but also in trademark protection and the priority of the trademark protection the way we deal with reserved names. The way that we take -- to take down the data escrow. Another example, there are particular regulations that talk about forbidden blacklist or names that are not ever allowed to register. But the list is considered trade secret, and we're not able to publish that list ever. So much for open and transparency.

So, as we move on to the launch, I hope that these issues have been -- that the ICANN community is aware. And I hope that the staff will look - be more flexible and look kindly upon us for those who are stuck between this issue of international norms and local regulation. Thank you.

CHERINE CHALABY:

Thank you, James. Would anyone from ICANN management wish to answer to this or any board member wish to comment? Okay. Thank you.

So last speaker. Thank you. And then we'll take two comments from the online, and then we'll close this session.

PETTER RINDFORTH:

Thanks. Petter Rindforth, intellectual property constituency, IPC.

The IPC greatly appreciates the role governments play in the ICANN multistakeholder model, particularly in matters where there may be an interaction between ICANN's policies and various laws and international agreements and where there may be – may affect public policy issues. Having said that, we speak today to express concerns regarding the GAC's advice on specific geographic geo leads. The GAC's advice appears to be an effective retroactive change to the GAC position accepting the guidebook's definition of geographic names and calling for applicant government resolution, multi applicant reaction, where brand strings have geographic connotations. The IPC believes that GAC advice on geographic geo leads should be consistent with existing national and international law. We ask the ICANN board to solicit and consider public comment on how it should address GAC's geographic gTLD-related advice in its communique. The IPC is concerned about the procedure that the GAC's advice and action regarding geographic gTLDs regarding future and current gTLD application at the second level. Thanks.

[Applause]

CHERINE CHALABY:

Thank you very much.

Would anyone from the board or ICANN management wish to comment? Okay.

PETTER RINDFORTH: You fully agree. Good.

[Laughter]

CHERINE CHALABY: Silence is a virtue. Thank you. Okay.

We now have closed the line. And, Brad, could you please tell us --

BRAD WHITE: Sure, Cherine. Thank you. We have two very short one-sentence type questions from two different parties. I might add these did come in before you shut down the queue.

The first is from Angus Richardson, CFO and director of administration for dot kiwi, limited.

REMOTE INTERVENTION: Can we please have more color on the potential for trademark prioritization for regional gTLDs?

CHERINE CHALABY: Any more details on that?

BRAD WHITE: There are none. That's the extent of the message. I'm assuming by "color," we're talking about details. That's just a guess on my part.

CHERINE CHALABY: So -- okay. Who would like to answer from the ICANN management team? Karen? Please, go ahead.

KAREN LENTZ: Thank you, Cherine. The question, I believe, is a question that was asked yesterday during the trademark clearinghouse session. I mentioned that one of the issues that had been discussed in the community in relation to the rights protection mechanisms for the clearinghouse, the sunrise and the trademark claims, one of the issues that was discussed was the allocation mechanisms used by the registries and whether those could include, for example, a geographically-oriented TLD prioritizing in the sunrise among trademarks according to a certain region.

CHERINE CHALABY: Antony.

ANTONY VANCOUVERING: Thank you, Cherine. Dot kiwi is our client. I have some idea of the concern that is general to geographic TLDs. I believe the question refers to the importance for municipal governments and people who represent a geographic region, even if it's not designated as geographic as dot kiwi is, where there are some names that may want -- that people believe should trump a trademark right. For instance, police dot London should go to Sir Robert Peel's Metropolitan Police Force and not the band. This is a concern.

I don't know if I'm accurately representing the question that was asked. But that certainly has come up a number of times.

CHERINE CHALABY: Just for the record, could you state your name and your affiliation.

ANTONY VAN COUVERING: Yes. I'm Antony Vancouvering. I'm CEO of Minds+Machines.

CHERINE CHALABY: Thank you very much.

REMOTE INTERVENTION: The last question is from Rami Schwartz. When will the definitive list of strings representing generic terms be published by the GAC?

CHERINE CHALABY: Would anyone like to answer this question? No? I -- we will take the question. And I'm sure that there will be a response some other time. Thank you very much.

Okay. So we have, I think, for this session, hopefully, had a good interchange and a good dialogue. We hear a lot of questions on international laws and national laws and respecting those into any solution. We hear concern that the security and stability has to be a very important priority. We hear a lot of comments on geo names. We heard comments on costs and a lot of comments on community

involvements. I'm not saying this is an exhaustive list. I'm just trying to summarize the major themes.

So thank you very much. And this session is closed. I'm now passing on to Steve.

STEVE CROCKER:

Thank you very much. So the remainder of the time here is devoted to non-gTLDs. Maybe it will be very short. I'm going to attempt to match Cherine's moderation for a while. And then I'm going to turn things over to Olga, who will provide a high-energy finish for our session.

And we have – it's about 4:20 here. We end at 6:00. I'm going to take less than half the time and turn things over to Olga.

So, with that, we just plunge right in. And I see the line has already formed. Take it away.

PHIL CORWIN:

Good afternoon. Philip Corwin speaking as counsel to the Internet Commerce Association. Several weeks ago CEO Chehade stated that domain registrants were ICANN's primary customer. We welcomed that recognition. Yet, while he talked that talk, we have just seen ICANN retreat from walking the walk. I'll cite two examples. At the Beijing public forum, we asked if ICANN intended to implement the unanimous STIRT recommendation that URS providers be placed under standard contract. One month later ICANN answered our question in writing and said, yes, a contract was under development. But, when we asked at yesterday's URS session about the contract status, ICANN's staff stated

that no contract was contemplated. This breach of a written commitment is unacceptable. Second, in regard to the new RAA contract, we filed comments supporting the NCSG's position that the statement of registrant rights and responsibilities should be strengthened. ICANN's response was to leave the substance of the document unchanged but to downgrade rights to benefits in the title. Words do matter. Rights are enshrined in constitutions and universal declarations. Benefits are doled out by social welfare programs. We bring these retreats on registrant due process and substantive rights to the board's attention with the aim of working with you and staff to match reality to rhetoric in the days ahead. Thank you very much for your attention.

STEVE CROCKER:

Thank you. Do we have a management reply? Go ahead.

CHRISTINE WILLET:

We have MoUs, memorandums of understanding, with our URS providers. I'm looking to the legal team to confirm that. So we do have agreements in place with the URS providers in terms of contracts. So perhaps there was a misunderstanding about that. I wasn't part of those written communications, but we can certainly go back and look at the communications and clarify any misstatements.

PHIL CORWIN:

Well, may I respond that my question in Beijing on the record was quite clear in stating that I did not view, on behalf of my client, the MoU to constitute an enforceable contract and asked if something bigger with

enforcement provisions was forthcoming. And that was the question that ICANN answered in writing a month later. So my question was quite clear that I was not referring to the MoU. And the response, I had assumed, took the full substance of the question into account.

STEVE CROCKER: Amy?

AMY STATHOS: So, Phil, I understand your point. But just to clarify that an MoU is a contract. I recognize that you don't necessarily recognize that as the full contract that you were contemplating or that had been contemplated. But that is a contract. And it calls and requires the URS providers to comply with all the rules and procedures that are in the guidebook. So, in fact, it does actually require them to comply with the procedures as well as the rules that have been developed in the processing of the URS procedure.

PHIL CORWIN: Final quick response. I don't want to hold up the others. But, when you answer a question that a contract is being developed when the MoU existed before my question was raised in Beijing, I don't see how something could have been in development when it pre-existed the question. Thank you.

[Applause]

STEVE CROCKER: Thank you. Evan.

EVAN LEIBOVITCH: Thanks, Steve. I'm Evan Leibovitch, vice chair of the ALAC speaking on my own behalf. But this is based on a number of conversations with a number of people within the At-Large and elsewhere. Without coordinating it at all with Phil, it relates to something he said and it has to do with the relationship between benefits and rights. Somewhere, somehow, section 9 of the RAA had some strange search and replace happen where the words "rights" were taken out and "responsibilities" put in. Not only that but it was done in a confusing way. The document for section 9 heading says "benefits and responsibilities" and the first section talks about rights. Since then there have been many talks this week about rights and responsibilities. The "B" word hasn't been used anywhere, but there it is in the RAA. Can someone explain how it crept in, why it's there, and what is meant by the distinction between rights and benefits? I think to a lot of people, there's a very real distinction in the word. I'd like to know how it crept into the RAA.

STEVE CROCKER: Management response here?

FADI CHEHADE: We'll look into that. That's all I can say. I'm trying to find out some facts, but I appreciate your comment. I appreciate the distinction between the two. That's all I can say.

STEVE CROCKER: Thanks. Thank you. Next.

VOLKER GREIMANN: I'm Volker Greimann, general counsel of Key Systems, GMBH. I am an GNSO councillor of the registrar stakeholder group, but I'm now speaking in a personal capacity.

I'm not here with a question. I'm here with a suggestion mostly directed towards ICANN staff. I have been a participant in the RAA negotiations. And this and other recent events have shown a certain deficiency or lack of knowledge within ICANN with regard to the needs of businesses with regard to local data protection regulations and laws.

In my opinion, it would, therefore, be helpful that ICANN hire an expert on international and national data protection regimes around the world as an attachment to the ICANN legal team and use this person to provide advice to ICANN staff and also advice to the GNSO working groups that face these questions. I would also encourage ICANN to continue to reach out to national data protection officials and encourage them to participate in the ICANN processes instead of denying their legal statuses. That's it.

[Applause]

STEVE CROCKER: Thank you. You want to say something?

JOHN JEFFREY: Thank you for the comment. And we certainly do work with experts on privacy issues. We've had many a discussion with you during the RAA negotiations about privacy. I think there were some comments that were sort of out of context that were reported in the media this week. We certainly don't want to diminish the role of privacy experts. That certainly wasn't what the comment that was made in the media was intended to be. So we take the role of privacy experts in these discussions to be very important, and we'll continue to do so. And we appreciate your request for additional expertise to be part of the discussion.

VOLKER GREIMANN: I just wanted to suggest that something more permanent be added to the ICANN staff. That would be helpful.

JOHN JEFFREY: We'll certainly take that under advisement.

STEVE CROCKER: Bertrand.

BERTRAND DE LA CHAPELLE: Yes. If I may chime in. You raise a very important issue, Volker, on the two sides. One, which is the competencies or the -- yeah, the competencies that can be acquired by ICANN or integrated within ICANN. I want to raise a slightly different issue, which is complementary, which is the participation of individual agencies from governments in ICANN's work.

And I raise it because it raises a fundamental subliminal issue, which is the channel of the GAC is the main channel for government input. And, at the same time, there are many agencies, some of which are independent in the different countries, that are not represented, per se, by the governmental representative from one ministry or the other.

And so it is an issue that I think needs to be put on the agenda of some of the processes that are under way, particularly, on the panels that Fadi has mentioned the other day. Because it's part of the model to understand how they can fully participate, just like the law enforcement agencies began participating in the RAA in negotiations and so on. So I wanted to highlight this. Because it's broader than just enhancing the competencies of the staff. It is also how to engage the diversity of actors. And it is not an easy issue because it goes also to competition authorities and so on.

VOLKER GREIMANN: I fully agree.

STEVE CROCKER: Thank you, Bertrand.

We have a question online.

REMOTE INTERVENTION: Thanks, Steve. We have a question from (saying name.)

In April at ICANN's 46th public meeting in Beijing, ICANN announced your Beijing office foundation formally. Thank you so much for the

office formation. I think it is a very exciting bit of news for users of the Chinese Internet community. Three months have passed. While I want to consult with your ICANN Beijing office, I've not been able to figure out the address and/or any other contact information of your Beijing office. Shall I contact your headquarters directly? Can you possibly publish that contact information?

STEVE CROCKER: This is definitely a management question.

FADI CHEHADE: So the office will be at CNNIC. So it's very easy for you to find it. It's the most important Internet place in Beijing. We are – we have been waiting for the new vice president for Asia to start. He was here. Many of you met him, Kuek. And he will be starting officially very shortly. And we'll be setting up the details of that office.

One of the things we are discussing with them is also setting up an office that has a link in to all the stakeholders in China. And so we're discussing a form for that office that is unique so we don't end up with an office that has single stakeholder representation. So that's taking a little bit of time, but we're certain that Kuek will get all of this under control very shortly. And we will publish this on our Web site, and you'll be able to find it easily.

STEVE CROCKER: Thank you. Michele.

MICHELE NEYLON:

Good afternoon, Steve. Michele Neylon, CEO founder of Blacknight. I'm also chair of the registrar stakeholder group and a member of the EWG, which is rebooting WHOIS.

Not speaking on behalf of the registrar stakeholder group, but speaking on behalf of myself and my own company.

I think I've raised this in the past, but I'll raise it again because it still seems to be something that hasn't quite been sorted out. And this goes to a certain degree of transparency.

ICANN publishes correspondence on its Web site. It publishes correspondence from stakeholders, from third parties, from governments, private companies, individuals. And it publishes them in a particular order. And that page actually has improved a lot, and thank you for that.

However, it's not at all clear what process, what policy, what -- how you decide which letters get published and when.

In many instances, the lack of a letter can lead to decisions being made without all the information required to inform them.

I would refer specifically to the case of the article 29 working party letter, which was submitted to ICANN well over a month before it appeared on the ICANN Web site. And, from conversations I've had informally with various ICANN staff involved in the RAA negotiations, they were not aware of that letter nor were they aware of its contents nor did they have a chance to fully understand its implications.

Now, I'm not interested in discussing the RAA. I'm just interested in raising the issue with respect to the correspondence in general. So please don't get into the entire thing around this letter. That's just one example.

Since the letters get published by the date of receipt, not by the date of actual publishing, it's very easy for you to go to the correspondence page and miss out on a letter. Now, if I was being particularly nasty and wanted to beat up on you, I could say that you were actually trying to hide something. I may not say it, but I'm sure others will. So sorry. Okay. So thanks.

STEVE CROCKER:

I think that's a question for legal, yes.

JOHN JEFFREY:

I think you make a good point, and we have been discussing it internally and with a number of different board members as well. Letters come in a whole bunch of different ways. They come into parts of the organization and unfortunately sometimes they get different treatment based on where they come in. So we're undergoing an effort internally to make sure that we figure out a better way to approach that. We've had discussions this week about a specific process that could be published where we have a central location where correspondence can be sent. And if you are intending for it to be published, it would then immediately appear. So we are looking at ways that we can address that. And I agree with you we have some deficiencies there that we are working on.

MICHELE NEYLON: I will ask you one quick very specific follow-up question. Who on the ICANN staff do I need to go to ensure that that actually has happened? I mean, I don't want to -- a kind of "We're looking into this."

JOHN JEFFREY: I'll personally take responsibility to make sure that that moves forward. And if you have any question about correspondence that you would like to post, please make sure you send it to me and/or the CEO. And I'm sure we'll make sure it's published.

MICHELE NEYLON: Okay. Thank you.

FADI CHEHADE: We now have a full registry/registrar relationship team. So I think you pick up the phone and you call your good friend Cyrus or his great growing team now and ask them. You're my relationship manager. I submitted a letter. Where is it? I need to know the following. And they should be there to support you on that.

MICHELE NEYLON: With all due respect, Fadi, I wasn't referring to letters from me or from any of my stakeholders. I was referring to letters and just -- you know, this kind of issue because, unfortunately, what can happen is that you and your staff will say, We're looking into this. We're going to deal with this.

FADI CHEHADE: Yeah.

MICHELE NEYLON: But not one specific person has said, "I will take ownership of this issue and I will deal with it." And I find that at times that is very helpful.

It is the same with some of the reports where you say "staff said." It is not which member of staff.

FADI CHEHADE: Understood. Again, it will be very hard to get every issue to one person.

MICHELE NEYLON: I appreciate that.

FADI CHEHADE: I receive 3,200 e-mails and letters a month alone. Multiply everybody. It is very hard to pin it down to one person. we are rolling out the CRM system. We will be able to record for every stakeholder dealing with ICANN all the correspondence coming. And we're getting into a more organized shape. So I'm seconding what you're saying and agreeing with it, Michele.

I think we have a long way to get there. But we are working on it. And I think you will see improvements in that area in the near future.

MICHELE NEYLON: Thank you.

FADI CHEHADE: Thank you.

STEVE CROCKER: Thank you. Next? I'm sorry. Akram.

AKRAM ATALLAH: Sorry. I just want to make sure that we complete the answer to Michele. When we receive letters, if the sending party requires it to be confidential, then it's not posted.

Is that correct, JJ?

So, otherwise, every correspondence is posted.

MICHELE NEYLON: Yeah, thanks. That would have been fairly obvious anyway. You don't need to state that.

JOHN JEFFREY: Although it is worth noting that it is sometimes ambiguous whether it is to be posted or not when things come in. So people submitting letters, it would always be a good thing to tell us whether you are intending for it to become part of the public record.

MICHELE NEYLON: Just following up very, very briefly, that's fine for those people who are in this room or who come to this room and engage with you on a regular basis. But please do not ask governments or large corporates who do not engage actively in the process to follow something like that. That just won't work. If they mark it confidential, it is marked confidential.

JOHN JEFFREY: I wasn't trying to amend the process by that comment. Just merely since we have so many people that do send letters in the room, trying to provide some help to us. Thank you.

MICHELE NEYLON: I fully appreciate that. I fully appreciate that.

STEVE CROCKER: Good afternoon.

KHALED FATTAL: Thank you. Excuse my voice. I lost it trying to advance the multistakeholder model.

[Laughter]

KHALED FATTAL: I'm not the first victim either. My name is Khaled Fattal. I'm co-chairman of the Multilingual Internet Group. I will keep it brief. And I'm not talking about IDNs, by the way.

It is another acronym which I think fits and serves to the heart of what we all work for which is multistakeholders and transparency and the mandate of ICANN in serving the global public interest. The subject matter is something that I haven't heard anybody talk about here during the last week we have been here in Durban. And it is a subject that has actually taken the world by storm. And it is another acronym which is called PRISM, P-R-I-S-M.

We all believe in the multistakeholder model. We all believe in the free and open Internet. But at the same time, this has shocked the international community about what needs to be done and how transparent is this free and open Internet.

And I think ICANN -- And I hope Fadi will actually give us a response to this. ICANN has a responsibility to actually clarify that it has had no role, just like the other big U.S. companies. The Google, the Microsoft have clarified they have had no back door to their service on the privacy of users.

ICANN in its mandate on serving the global Internet should clarify that it also has had no role in that because while you think I'm making a case that might make you feel uncomfortable, trust me, the conversation is better made while we're here rather than being made while it's in private conversation when Fadi is having private conversations --

[Timer sounds]

-- with ministers and prime ministers and presidents of countries. It goes to the heart of the multistakeholder model being transparent.

So question here: Could you please clarify that ICANN in no way, shape, or form has actually received or worked with, or a court order, that it has provided that kind of access or back door? This would go to the heart of actually securing the role of the multistakeholder model and the credibility.

And last point: Perception is king. We need to take away the perception and (indiscernible) for it from here before we let it become a juggernaut that is insurmountable. Thank you.

[Applause]

STEVE CROCKER:

Thank you.

Fadi?

JOHN JEFFREY:

So just to be clear, for – everybody in this room probably knows this, but we don't want to be ambiguous. ICANN is a private entity. It is a non-profit organization based in California. It is not a part of the United States government. We do not – we're not aware of any relationship to PRISM or any of these services. And that's just the simple answer.

KHALED FATTAL:

Thank you for the clarity. But I don't think that addresses it clearly enough. And with all due respect, let me explain why.

ICANN has a mandate from the U.S. government in certain services, including IANA. The new gTLD, as I've highlighted for the last few years,

does have an integral part of its performance, which is subject to the U.S. Treasury's OFAC and the SDN list, which is part of the U.S. government. So the perception can be that ICANN may be complicit.

The clarity that – I'm actually putting the ball in your court, is step up to the plate and clarify that you have nothing to do with it. The explanation sounded very somewhat ambiguous. I think -- you remember, you are managing the IANA function. So that actually can go to the heart of people's perception that there may be a role. Perhaps, somebody else could add more to this.

JOHN JEFFREY:

I can ask two points if it helps. So, one, you mentioned OFAC. So OFAC, there is a set of laws under U.S. law that requires us to do business -- to be careful in who we do business with so we don't do business with people who are on a SDN list, Specially Designated Nationals list, a terrorist list.

So like any entity in the United States, we do checks against that list and we make sure no one we do business with is on that list. That's a common practice.

If we weren't in the United States but were located somewhere else, we would be doing the same sorts of checks for those places.

[Timer sounds]

JOHN JEFFREY: As to the second point, as to IANA, the information about IANA is all very public. It is very published. There is no secret information. The rationales for the decisions on IANA are reports that are made.

You know, I don't know how to clarify any more than what we've already said. So I hope that answered your question.

KHALED FATTAL: It does answer the legal ramification. It does not answer the "how to deal with the perception" that there is – Look, I have been in WCIT. I was in WCIT for 14 days. And I listened to the conversation, how people talk about, you know, we need to keep the Internet open and free. And to keep it open and free is not a blanket for others to come and spy on you.

The perception is alleged. That's fine. But the key point here is making it to the heart of the case that what we do -- my last point and I will leave you.

STEVE CROCKER: Khaled.

KHALED FATTAL: Listen, I'm making the point for you to actually be clear on it because this will become a juggernaut that ICANN will need to deal with as the time comes.

STEVE CROCKER: We appreciate the concern. Thank you.

KHALED FATTAL: My pleasure.

STEVE CROCKER: One other element here. We believed that we had exhausted the gTLD queue of questions before. So let me ask that we focus on non-gTLD -- not that the last one was related, but just going forward that we keep it to other topics.

Go ahead.

CHRIS CHAPLOW: Thanks, Steve. This is Chris Chaplow, vice chair of finance and operations for the business constituency. The BC has an ongoing focus on the budget and operating plan. As a result of the request from the CSG and others, the board and management are taking steps to provide -- by providing staff recommendations for the SO/AC support requests ahead of the formal board approval. We thank you for that responsiveness.

We also appreciate you adding a second round of budget comments closing on August the 4th.

But we did truly struggle this year. ICANN is undertaking a set of changes called AtTask, which in the long-term will provide sufficient detail to assist us all in the fulfillment of our responsibilities to contribute to the development of a budget reflected of the broadest possible stakeholder support.

However, there is no public detail on several large buckets of money. So we ask for further breakdown of such programs as the 5.5 million for implement regional strategies or the new exceptional item of 3.5 million, strategy panels. The subcategory costs here are not visible to the community nor is the ICANN Labs project.

Looking forward to next year, to make the budget comment process more efficient, we formally propose a half-day session ahead of the meeting, perhaps Saturday or Sunday, for those who carry responsibility within their groups and the constituencies to interact, not just with the finance team but together with senior staff who are, after all, the decision makers. Thank you.

STEVE CROCKER: Thank you. Anybody want to comment?

FADI CHEHADE: Good idea.

STEVE CROCKER: Thank you.

ELISA COOPER: My name is Elisa Cooper. I'm the chair of the business constituency, although I'm here speaking on behalf of MarkMonitor. MarkMonitor wishes to thank the expert working group for all of their hard work. And we're sincerely appreciative of the fact that they've developed a

centralized purpose-driven approach to accessing WHOIS data which promises to solve many of the issues we currently face in today's model.

We ask that the expert working group prioritize the development of a bright-line test between commercial and noncommercial use on the Internet. And we believe that this will drive the resolution of some current questions related to privacy and access to data to stop abuse.

Additionally, MarkMonitor believes that any Web site that derives economic benefit on behalf of an individual or entity should be required to disclose the identity of the registrant.

Additionally, we also support the development of a comprehensive system including accreditation for privacy and proxy services to restrict use to only legitimate purposes.

We appreciate that the expert working group faces a very difficult task in anticipating the possible use cases for the service and developing access models for each.

We also look forward to the analysis regarding normalization of data and the development of systems that support identifying and enforcing abusive domain name systems by legitimate law enforcement agencies and business while still respecting the rights of users. Thank you.

STEVE CROCKER:

Thank you very much. And I appreciate you highlighting the work of the expert working group. Chris Disspain and I are both on that working group as liaisons from the board. And so we have firsthand experience

with how hard that group is working to bring those ideas forth. There will be a vigorous public comment period.

[Timer sounds]

And I expect that you will bring these ideas into that process and very effectively.

Chris, do you want to add anything to that?

Thank you.

ELISA COOPER: Thanks.

STEVE CROCKER: Let me hold up. We have a couple of online -- Brad?

BRAD WHITE: Thanks, Steve. We have got one comment, one question. I can deal with them both at the same time, if you so desire?

STEVE CROCKER: Please.

REMOTE INTERVENTION: The first is a comment from Celia Lerman and Gabby Schlack (phonetic) from El Instituto, a Latin American e-commerce institute and a Latin American member of the business constituency.

We would first like to thank ICANN for making sure that remote participants are given the fair opportunity to be heard as part of the line at the microphone.

We would like to state we do appreciate the GAC advice on geographical names and we do support it as do some other BC members, considering the implications for businesses in the geographic regions at stake.

It is not only the principles of trademark law that are at stake but also the open access to the Internet that we embrace and thrive in as well as respect for multiple communities around the world that have not participated in the new gTLD process, a process which did not adequately reach all regions of the world.

As active business participants in the ICANN community, we thank you for considering the GAC advice on geographic names that impact the businesses in our region.

BRAD WHITE:

And then do you want me to do the second one or do you want to ask for comment on that?

STEVE CROCKER:

I'm not sure I know how to respond to that. Is there any – I think we just leave that there. Thank you.

REMOTE INTERVENTION: The next item is a question from Uday Paralukar (phonetic). I hope didn't mangle that too much.

If the applicant has received an early warning from GAC and there has been no resolution till date, can the GAC still raise the early warning status and make it a GAC advice? And if so, by when can this happen beyond which ICANN will consider the early warning null and void?

STEVE CROCKER: Yeah. First of all, it is a gTLD question, which I would prefer we were past. But is there a management response here?

Yeah, this is probably – the detail – this is a very detailed question. Let me suggest that you take the – an online access and e-mail address.

BRAD WHITE: If I understand correctly, you want me to follow the rules that I helped invent?

STEVE CROCKER: Yes.

[Laughter]

BRAD WHITE: My apologies.

STEVE CROCKER: Hi there.

JONATHAN ZUCK:

Hi. So this may not adhere strictly to play those rules of sophistry when I say that I think this comment only vaguely applies to new gTLDs. And it is by accident that I'm here in the second session and not the first. So forgive me in advance.

I just wanted to – I know that the board is going to be considering a motion on the formation of the review team on consumer choice, competition and trust. And I'm excited to hear that because many of you know me in my alter ego as "metrics man" that I've raised from time to time at this microphone.

And so I just want to encourage the board to be as explicit as possible about the need to begin to collect data even if it won't eventually be a part of a metrics that's used by the review team because if the data isn't collected, it can't be used. And certain baselines need to be discovered, and I think there are plenty of metrics that were suggested by the GNSO and ALAC who have put a lot of effort into providing that advice pursuant to Bruce's resolution that was passed by the board in Cartagena. So I just want to encourage the board to be as explicit as possible in that process and to encourage staff to begin to collect data, especially those that are free or cheap to collect in advance. And I really appreciate that.

I also want to take my last ten seconds here to make a call-out to Maguy and her team at compliance who have really begun to build data into their processes. So I think if anybody is going to be ready to be a part of this review team a year from now, it is going to be the compliance team.

And I really want to congratulate them on the worth that they've done.
Thanks.

STEVE CROCKER:

Thank you.

Does anybody on management want to -- no? Thank you very much.

I like metrics, too, so you have a friend here.

JONATHAN ZUCK:

Will hold you to it.

BRUCE TONKIN:

I might just comment quickly, Steve. Jonathan, we do have a motion before the board in the upcoming board meeting.

I think after that motion is presented and if it is passed by the board, I can probably make a few comments in response to your question at that time.

JONATHAN ZUCK:

Should I expect a letter?

BRUCE TONKIN:

Right away I guess is my answer.

JONATHAN ZUCK:

Okay, thank you.

STEVE CROCKER: Thanks.

ZAHID JAMIL: Zahid Jamil. I'm from Domain Name Dispute Resolution Center in Pakistan, member of the BC but I'm speaking in my personal capacity. I want to make that clear.

We and local dispute resolution providers and local CCs have tried desperately to maintain open access and openness of the CC space. And at times, we have to contend with governments who tend to not just apply law but just walk in and say, We want to take this away, this away, take all these words away because we want to block them.

A friend of mine from China said the same thing. That list is even secret. In our country, blocking DNS tends to be secret. So, indirectly, I will be unfortunately – sorry, Steve – be mentioning something that may have impact on us which you are about to decide on one way or the other related to the GAC advice.

So when we look at the GAC advice from where we come from, we see a right. Mostly it's been about IGOs and NGOs and that's fine because it was rooted in law. It was about RPMs, again rooted in law. It was about law enforcement so it was connected to some sort of criminal law and other things, international transport access and treaties and NLATs. That makes perfect sense.

But when we look at this, it becomes difficult because when we have governments who come to us and say, Well, if ICANN is able to block X, Y and Z, why can't you in the CCs block these things also?

And our response usually is, Well, show us a law or legislate this or something. But now it seems like we may be creating a precedent or a norm of some sort that may then not only apply to the CCs, depending what we do, but maybe to the second level.

So the fight we're fighting on the ground may be impacted. So I would just like to sort of bring that to your attention.

In addition, I would also like to say that there is a reverse to the availability of domain names. Somebody talked about free expression. By not making, say, for instance, dot amazon available, guess what? Maybe one region in the world is being impacted but the rest of the world may not be able to access dot amazon. So what about their rights and emphasis as well? I want to leave it there.

[Timer sounds]

Thank you very much. It is a local thing. I'm sorry about violating maybe the rule on new gTLDs.

Thank you, Steve.

[Applause]

STEVE CROCKER:

Thank you. Hi there.

ANDREW MACK:

Hi, Steve. Andrew Mack, A.M. Global Consulting. At the risk of scaring all my friends, I'm going to try to change the frame and say something nice.

I woke up this morning and it was raining and I looked out my window and I thought, "God, it's 6:00 in the morning. It's a terrible morning to go out and do a service project." But Nelson Mandela is one of my personal heros. And I got up, got on my shorts and my tennis shoes and off I went to the bus. I was astounded to see how many members of the ICANN community were there, including Fadi. And we went off and we painted some walls in a school, and I've got to say we're not particularly great as painters.

[Laughter]

There may be other things that we can do better. But as a community, I think it was extremely important. And it was important because it put us in touch with the reason why we're really here. There are these kids, these end users, who really don't even know what the Internet can bring them. And there we are talking to them. And I walked into the room and we were sitting -- we're sitting in the classroom and these children were completely wrapped in attention. They were so interested.

And it's about their future. I'd like to compliment ICANN for what we've done so far in terms of outreach, especially to Africa. When I first started in this process, there was very little African representation. These are regions of the world that need more attention, not less. They need more budget. They need more outreach. We saw that in the JAS process that didn't have the outreach that it needed.

We need support for SOs and ACs. We are making progress. This is going right. Let's get it across the finish line. Let's continue to do more. As we've got budget that's coming in, let's make sure that that people at the end of that last mile, the kids who are the next generation, that we're reaching them, too, and by the time they grow up, they know what ICANN is. Thank you.

[Applause]

STEVE CROCKER: Hello again.

FADI CHEHADE: Steve?

STEVE CROCKER: Fadi?

FADI CHEHADE: We were so taken by that experience this morning that on the bus, on the way back we had a chat amongst the staff. And we decided that we really need to attempt to get out of our meetings at every ICANN meeting and embrace the community. There is no point in flying around the earth to cocoon ourselves and not go out and meet the community. It was extremely uplifting to be out there.

And just to give a statistic that frankly frightened me, I went into one of the classrooms to chat with the kids. There were about 30 14-year-olds. I asked: Who has heard about something called the Internet? Can you

guess how many raised their hand? 30 kids. One. One has heard about it. 14-year-olds. As someone told me, our 14-year-olds think that all there is is the Internet. It is a remarkable statistic. And we have a lot of work, all of us, as a humanity to do, not ICANN. This is not ICANN's remit. However, at a minimum, as you suggested, we should get out at the next meeting and at every meeting and be in the community and do something, some effort to do that. And thanks for getting up and putting your shorts and coming.

ANDREW MACK:

Thanks for being there. Thank you for being so awake right now. I'm very impressed.

[Applause]

STEVE CROCKER:

Hi again.

ANTONY VAN COUVERING:

Hi, Antony Van Couvering with Minds+Machines. That's an excellent segue for what I would like to say, which is to somehow remind us of why we're here. And to look at that in terms of ICANN's engagement, not just with this community but with governments, law enforcement and everything else, because this is the Internet and it is extremely powerful. And my sense is that this board and this CEO forgets that sometimes.

We're all talking about what are we going to do with governments. And John over there is being very careful in his answers and not to in any way expose the corporation to liability. That's his job.

But, Fadi, that's not your job. This needs to be a place of trust and respect. And I would love to see staff answering directly without having to go check with someone to see if that's the right answer. And I would dearly love to never hear again, "Oh, if you don't do this, we will turn you over to the ITU" and how scary that is. Frankly, I find that an empty threat from any number of perspectives.

And I do believe that if you play politics with politicians, the politicians will win. And we don't need to do that because we're the Internet and we're actually a lot stronger. And that's really why those politicians are here. So I ask the board to please keep that in mind and please remember our roots and why we're here. Thank you.

[Applause]

ERIKA MANN: Antony, can you see who said this?

ANTONY VAN COUVERING: Said what? Sorry?

ERIKA MANN: Should go to the ITU?

ANTONY VAN COUVERING: Oh, not only have I heard it from Fadi, I'm beginning to hear it from people many levels down. It seems to be an institutional response. And I think that's scary.

FADI CHEHADE: So, Antony, you know how much respect I have for you.

ANTONY VAN COUVERING: And for you also, which is why I bother to make this comment.

FADI CHEHADE: Which is the last time we both spoke.

ANTONY VAN COUVERING: Several months ago.

FADI CHEHADE: Many months ago. Since then we have grown quite a bit as an organization. Our understanding of how to deal with the ITU has grown quite a bit. I think the evidence of that was shown at the opening of this meeting where the ITU's head, who, at the last ICANN meeting, said very different things, was finally in front of us admitting to our unique role and to our different role.

Having said that, frankly, I give you the credit of being one of the very first people in a private conversation now many months ago where you have helped us see -- helped me see. I should speak for myself -- that what we've got here is extremely precious.

ANTONY VAN COUVERING: And powerful. I want to remind you of that.

FADI CHEHADE: And powerful. And you did. I remember that comment and where you gave it to me. It's now over seven months ago.

But you have to recall what I opened our meeting with this time. This is the first time I asked our community to join me in not being defensive. I haven't said that before. And you have some credit for that statement. So we will not be defensive. It doesn't mean we will fall in the arms of the ITU or run away from the ITU or use them as a scarecrow anymore. We will work. But they cannot erase us. We will not erase them. We will find the right balance. But we have to keep our head high. And what we've got is, indeed, powerful and precious.

ANTONY VAN COUVERING: I completely agree. The opposite is really the counsel of despair, and we have no reason to go there.

FADI CHEHADE: We're aligned 500%. And the credit goes to you for that. Thank you.

ANTONY VAN COUVERING: Thank you very much.

STEVE CROCKER: Thank you. We now come to the moment that I've been waiting for. I'm going to pass the baton to Olga. We just continue smoothly right on. No break.

OLGA MADRUGA-FORTI: Okay. Thank you, Steve. We'll have to live up to the call of our chairman to have a high-energy session for the rest of our session. I know we -- it's late in the day, but we will -- we're up to that challenge.

So with that --

MIKEY O'CONNOR: Oh, boy. This is Mikey O'Connor, I get to lead off the high-energy part. This is great. I want to do a call to action. This is mostly to the community, in addition to you. This is not specifically directed at the board.

And I want to start off by admitting that I am clueless on something. Really badly dangerously clueless. And that's the issue of IDNs. And, when I'm clueless about something, I often react first with fear. And that's a bad reaction to this. The better reaction is to get more knowledge.

And so I'm up here to plug Edmon's JIG report that's out there for public comment right now where they're encouraging more attention and more resources to bringing up our collective level of understanding about IDNs and try to use that to drive out fear. And, with just a few seconds left, I'm going to take that aside. And I'm going to give you a more directed question.

And that is: When is the last time, especially all of you folks, took a really solid vacation? Because I know that you guys are really tired.

[Laughter]

And so I really want to encourage base camp, which, to me, your base camp looks pretty steep. And so try and get a vacation in here. You guys are doing great, but you're looking a little crispy around the edges these days.

[Laughter]

[Applause]

FADI CHEHADE:

Steve, I think we hoped the board would not give us an extension of using funds until the budget was approved and that they would give us a month off while we all discuss the budget. But it didn't quite work.

So I'm taking my vacation next week. So starting tomorrow morning, actually, at 6:00 a.m.

STEVE CROCKER:

I have a feeling that the more vacation time that management and staff takes, the more money we save.

[Laughter]

OLGA MADRUGA-FORTI: Getting back to the first part of his comment, any comments on learning about IDNs possibly in the course of our next vacation study? No? Okay.

Very good. I believe that we have a caller or a comment online?

BRAD WHITE: Yes, Olga.

REMOTE INTERVENTION: We have a comment from Kathy Kleiman who says, "This time I really am participating remotely. I send my regards to all and send this message as a comment to the board and community. I'm very happy to see a range of new voices participating in the ICANN process. The closed generic public notice process brought in a very large number of new participants from around the world. The article 29 working party letter is welcome for its participation of the European data protection commissioners. I agree with Bertrand that we need to find good ways to engage these new voices who may or may be able to attend meetings and may or may not know our processes. I would encourage our working groups and especially the Expert Working Group to reach out to these new voices, especially the article 29WP for proactive engagement. We know they are interested. Let's reach out to them."

OLGA MADRUGA-FORTI: Thank you, Kathy. Any comments from management on proactive engagement and outreach?

FADI CHEHADE:

I think this was brought up before. And, frankly, first of all, Kathy, hello. It's good to have you online. And yes, we – I think Bertrand's comment and yours are very valid that we need to engage and bring in to the conversation the broader public's interest and knowledge about these areas so that it informs what we're doing about these things. And we've done it, as you mention, Bertrand, very well with law enforcement when we needed to. And now here we need a different constituency to be informing us, and we'll be reaching out. However, there is a limit to making sure we check all the boxes. There are just so many constituencies we need to check with. And we will work with our community and you, Kathy, to make sure we get that input into our discussion. Thanks.

OLGA MADRUGA-FORTI:

Thank you, Fadi. Our next questioner.

NIGEL ROBERTS:

My name is Nigel Roberts. This is non-new gTLD. It goes to the heart of what we do. I guess, therefore, it is going to be of some interest to new gTLD folks.

I found it interesting to hear, both in this session and in the one before that was specifically new gTLD, about the number of people who have been highlighting the relevance of international law. I mean, I know there's one specific thing on the table here, but I'm looking at it from a general perspective. Now I have a feeling of groundhog day here. I've been highlighting the relevance of this since San Francisco meeting with various degrees of response.

Now, I don't propose to rehearse my previous comments on this except to ask the board to consider one specific question of whether the corporation could potentially have legal liability in its home jurisdiction of California for any breaches of international law.

Now, my readings of the corporation's articles and the rationale of the Judge Schwebel in ICM against ICANN is (indiscernible.) Now, I also realize a proper answer to that question might be part of a privileged conversation you should have with your own advisors. And I don't expect to ask you that question today. The question I ask you today is whether you'll take opinion on that and, in line with your collective and individual duties to the corporation, take any mitigating action that might seem appropriate? Would you consider that?

OLGA MADRUGA-FORTI:

Thank you. Do we have a comment from our esteemed general counsel?

JOHN JEFFREY:

So I think there's been a number of good discussion points on international law and other points today. And I think one of the things that we should encourage is that like you when you have a view on this and it's an educated view coming from your experiences, you should really bring those to us. It's helpful to the directors. It's certainly helpful to my team and the management team to have those inputs and to be able to evaluate them and make them part of our thinking. So we encourage papers and documents and letters and anything that you could provide us which would help guide us. We spend a lot of money

for that advice. And we spend a lot of time on it. And any additional information we get from skilled people like yourself that have knowledge in this area would be useful.

NIGEL ROBERTS: I appreciate the spirit of that. And maybe with a colleague or two, I'll see what we can do.

OLGA MADRUGA-FORTI: Thank you. Next questioner.

JAMES BLADEL: I'm James Bladel. Like many, I went on that trip this morning, Fadi and J.J. I was also thinking about those students, especially on the bus ride home. And I was looking at the neighborhoods that they were coming from. And I couldn't help but notice that many of the houses did not have numbers and many of the streets did not have names. And – some people know where I'm going with this here.

The new RAA was percolating in my mind a little bit while I was thinking about this. Now, I helped develop that agreement. And I know that registrars hate it and the ICANN staff hates it and the community hates it. So I think that means we got it right. Because everybody hates this agreement. I think we – we threaded those needles as best we could. But I wanted to point out just that -- we're working hard with ICANN staff to come up with a way to validate WHOIS data that doesn't keep folks like the folks we met this morning off the Internet.

And I think this is important.

You know, I think we can find a way to do that. But it's going to be very difficult. And I think, when we met with the board on Tuesday -- and I think it was either Bertrand or perhaps Chris proposed that we go back to law enforcement and ask them to come up with some metrics to demonstrate that the implementation of the 2013 RAA has had some positive impact on the problems it was meant to solve. And I think that's a fair point and a great idea. And I would go even further and suggest that perhaps we have a parallel study from ICANN to demonstrate that we haven't closed off Africa and other developing regions with these new requirements by blocking folks like the folks we met this morning from participating in the Internet.

OLGA MADRUGA-FORTI:

Yes. Comments from the board? Mike Silber, please.

MIKE SILBER:

If I may. Firstly, I'm very gratified by the number of people who participated this morning. And thanks to my colleagues at dot za who helped arrange it. The reality is that every person who has a working mobile phone either has or at least should have provided an address. Otherwise their phone will be disconnected. Given that mobile access is the predominant form of access in South Africa, no one over there who has a mobile phone is not identified in some way through a law enforcement program under our local law intercept regulations. I work extensively in Zimbabwe, Zambia, and Congo where similar rules apply. All I can say is that people are not being prevented from accessing the Internet because they're unable to register without providing an address. They're prevented from accessing the Internet because of the

costs involved because of regulatory interventions which are taking a while to come through. The needs to provide an address -- provide an address before registering a domain name is not an obstacle whatsoever. And I think trying to push the one onto the other is an insult to what you did this morning, for which I'm truly grateful.

JAMES BLADEL:

No, no, Mike. I want to come back on that for just a moment. It's not provisioning of the address. It's about verification of the address. I think that's the challenge is making sure the address matches something in a centralized database that we can push off against. That's the key. Not the provisioning of an address.

MIKE SILBER:

In South Africa you can do that. And including those people. It may not, however, be a street address with a number. It may well be the closest school. So, yes, without support of engaging law enforcement and others to see how you identify addresses in countries where they may not be quite the same standards as some other law enforcement are expecting, but I think that can be done.

OLGA MADRUGA-FORTI:

Thank you, Mike. I can add that South Africa would not be the only part of the world where you're likely to see descriptors to establish the -- a location. And I think Fadi or who else has -- Akram has something to add. Thank you, Akram.

AKRAM ATALLAH: Thank you, Olga. So, James, as we talked during the negotiation, the idea is not to block people from getting on the Internet because we cannot verify their address. We would be working together with the registrar on a plan to see what best verification technology is around. And, if that is around for a set of countries and not the entire globe, then we would figure out how to make it work, how to have different verification for different areas. So we just have to keep concentrating on raising the bar. It doesn't have to be one extreme or nothing. We could do things in certain area and not do it in other areas because it's not valid or it's not available. We're not going to actually put the costs on developing countries where added verification is too expensive, so high that nobody can join the Internet. That's a lose/lose situation. So our aim is to do what we can where we can and keep pushing that. And, as things become available and we keep raising the bar, we'll achieve what we want to achieve.

OLGA MADRUGA-FORTI: Thanks, Akram.

JAMES BLADEL: That's exactly encouraging and what I hoped to hear. That we can do as much as we can where we can. And I think that having a study that tells us how well we're hitting the mark is a good thing.

MIKE SILBER: Certainly. And maybe just to add on to that. You certainly don't need your own name in order to access the Internet.

OLGA MADRUGA-FORTI: I think we have a comment from Fadi.

FADI CHEHADE: Yeah. On your first part, you had another point that I want to make sure we don't leave off. You said when we engage law enforcement and law enforcement puts demands on the registrars and then we put them in a contract, you're asking for measurements -- I don't know where Mr. Metrics is -- but you ask for metrics. So law enforcement, before they ask for more, we put them on notice that they need to tell us what was the impact of what we did for them already, which had costs on the implementers. So I'm happy to inform you that, since this has come up to our attention, we have officially started asking law enforcement for this. Now, we're not near the point -- and they've agreed. So they've agreed. At least the first major law enforcement agency we contacted we said, "You can't keep asking our registrars and our registries to do more without some kind of data."

And, frankly, I want to give all the credit for that to our chairman who personally went with me and pressed that point very hard. And we will be now following through on that. Thank you.

JAMES BLADEL: Thanks.

OLGA MADRUGA-FORTI: Please go ahead.

MICHELE NEYLON:

Good afternoon again. Michele Neylon speaking, as usual, on behalf of myself, my own company.

At this time I just wanted to speak very briefly a little bit about the GAC and the engagement or lack of engagement that we as an entire community have with the GAC. I'm a member of RIPE. I run a network. I offer hosting services. And within RIPE there is a cooperation working group, and several people in this room are actually involved in that. And in the last RIPE meeting in Dublin there was conversation. There was dialogue between some of the people who turn up at ICANN meetings wearing a GAC hat and people from industry. And they weren't yelling at each other. They weren't screaming at each other. And they engaged, and they shared ideas, and they spoke.

Unfortunately, within ICANN what seems to be happening is you're looking at this really big picture stuff and Fadi going off and talking to governments and talking about ITU and all these things. But here in the room, there are people representing governments. There are people representing industry. Yet they don't come together except in a terribly formal, totally unnatural setting where the – we go in, say, as the GNSO to a room. And everybody's wearing suits, and everybody is terribly formal. And everybody has been tied -- probably stuck in a windowless room for hours. And there's no kind of interaction at a human level.

And I look around this room, and I know a lot of people here. And there's interactions that are personal. GAC members are people, too. I'm not going to start challenging Heather. But it's both ways. I mean, registrars are people. Registries are people. There's plenty of other

interests. It's just why on earth can't we actually have something a little bit more social, a bit more relaxed? So that, when we're having dialogue with the GAC and others, that we're actually talking and conversing like normal human beings instead of throwing stuff over the wall at each other and running away and hiding. Thank you.

OLGA MADRUGA-FORTI: Very good. Cross-community communication. And I think Ray has something to share.

RAY PLZAK: I would like to echo what you just said. Because the phenomenon that you're describing at the RIPE meeting also occurs at all the other regional registry meetings in that governments participate not as "the" government but as part of the government. And they bring in, in an informal way, if you will, perspectives. They answer questions about the way things are. And they actually are very informative in the policy development process in the regional registries. Different registries do things in different ways. They all, basically, have a participation from the governments, which is not an official participation. And so I go a long way in supporting everything you just said.

MICHELE NEYLON: Thank you.

OLGA MADRUGA-FORTI: Erika Mann.

ERIKA MANN:

I raised this point in a GAC meeting. I think we should really have more open discussions and cross-functional discussions, in particular, when discussions – when a decision needs to be taken. Let me put it differently. Not decision needs to be taken, but decision needs to be prepared. And I would think we would move much faster and quicker if we would have a clearer understanding and if we would, as a community, would understand each other's points in a direct confrontation. It changes the dynamic. It probably can't be done, you know, in all environments. But in certain decisions -- a certain decision must be prepared, I think it's definitely a venue we should look into.

MICHELE NEYLON:

If you don't mind me coming back just very, very briefly.

Erika, as now, I'm Irish and we have certain kinds of stereotypes associated with us which as an Irish person with an Irish passport I'm more than happy to exploit.

What I was talking about is something much more informal. I mean, simply the opportunity to actually socially engage outside the rooms, not having a kind of more informal discussion. I'm talking about social engagement, which probably in my case would probably involve some libations, possibly a beer. That's what I was talking about.

OLGA MADRUGA-FORTI: There's a comment from Fadi, but if I may for one second, I would simply like to agree with you entirely and invite other board members to agree as well.

This is an excellent suggestion and it's a key aspect of the multistakeholder process.

When I see colleagues from other international organizations come to ICANN meetings and begin to change in the way that they interact here, as opposed to more formal institutions around the world, it's really welcoming.

So I couldn't agree more.

And Fadi?

FADI CHEHADE: You may regret this.

Did you go to the ccNSO 10th anniversary party? They invited GAC members and GAC members were there, and if you were there, you would have seen GAC members dancing African dances.

[Laughter]

So -- but if you're up to this, you -- I think the GNSO should have a party in Buenos Aires and invite the GAC members. There's lots of great music there and I'm sure --

MICHELE NEYLON: Well, I can't speak for the GNSO, Fadi. I'm not the chair --

FADI CHEHADE: No. But Irish people can invite the GAC, but certainly I don't think the GAC members are cloistered and if we invited them, some may go, some may not go, but I don't think ICANN can be involved in what people do informally, which is, I think, what you're asking or requesting to discuss.

MICHELE NEYLON: Not necessarily. I'm just – it's more of a kind of a general suggestion.

FADI CHEHADE: Yeah.

OLGA MADRUGA-FORTI: Okay. Thank you. I think we have another question online.

REMOTE INTERVENTION: Yes. Another question from George Kirikos, Toronto, Canada.

Will ICANN follow its procurement guidelines meant to ensure that vendors and service providers are selected fairly and objectively with the highest ethical standards and appropriate levels of disclosure by issuing competitive RSPs for any past contracts that slipped through the cracks?

I brought this up – I brought up this issue on the ICANN GA mailing list on June 29 with copies to ICANN's CEO, CFO, and chairman, but did not receive a response.

This happens all too often to ICANN stakeholders. What mechanism, outside of asking questions three times a year at ICANN public forums, does ICANN have in place for getting answers to important questions of concern to the public the other 362 days of the year?

OLGA MADRUGA-FORTI:

Thank you.

And to management, two aspects, no?

Communications and RFPs.

FADI CHEHADE:

Yeah. Certainly.

If you recall, George, at the last public forum I promised that every question that was posed will be answered, and every question that was posed was answered. We followed up exactly as we said within two weeks.

We're not perfect and there will continue -- there are more questions. The community is growing. So I agree with you.

Now, you've sent me a letter on the 29th. I did receive it, indeed. But I was already, like many of us, heading down here so I hope you're patient a little bit. I'll try to get to you in Canada as soon as I can with an answer on that.

But I think also Akram answered you quite clearly today on the letter contents, but we'll be happy to also follow up as needed.

Thank you, George.

OLGA MADRUGA-FORTI: Thank you, Fadi.

And our next question from the audience.

YOUNG EUM LEE: Yes. Young Eum Lee, ccNSO council, but speaking on my own behalf.

And I actually have raised this issue to the board and to the community a couple of times during this meeting, but I believe that this needed to be stated and emphasized again, and my statement is very much related to my previous comment here on the role of governments.

The issue of Internet governance is a topic that is being discussed in non-ICANN fora such as the ITU, as was mentioned previously, and I would first like to commend the sincere and effective efforts by Fadi in improving communication with these international organizations, as well as other governments.

But the fact that the ITU has been discussing topics related to Internet governance is something that we should still be very much aware of.

During the WTPF that was held this May, there was agreement on all six opinions that had been proposed, which included the importance of multistakeholderism, but it was also very clear that many governments are emphasizing the fact that the current governance situation does not allow for adequate governmental participation.

Thus, a seventh opinion had been proposed which focused on operationalizing the role of governments, and it is most likely that this will be a high-priority topic during the ITU's plenipotentiary in 2014.

And although I completely agreed with Fadi when he stressed, during his speech and today, that ICANN is the organization that does multistakeholderism best and gives voice to governments by incorporating the opinions of governments through the GAC recommendations, many governmental regulators consider -- it seems to me that they consider the ITU as a more important fora, and some examples --

[Timer sound]

-- in the case of Korea is that higher officials go to ITU.

And so just mingling with GAC is not enough, and I would like to suggest that ICANN consider additional measures to deal with this issue.

Thank you.

OLGA MADRUGA-FORTI:

Thank you.

Any comments on additional and current efforts that I know are rather extensive?

Nigel Hickson.

NIGEL HICKSON:

A microphone. Yes, Nigel Hickson, European vice president.

Yes, we've – as Fadi Chehade has mentioned several times, we've been engaging with the ITU and we were represented at the WTPF, both at the opening ceremony but also in the expert working group that prepared these opinions that you're -- that you mentioned.

The opinion that wasn't agreed that Brazil put forward is going to be discussed and has been discussed already in other fora. It's going to be discussed at the Internet Governance Forum in Bali and it's going to be discussed, no doubt, at the plenipotentiary as well. It's a very interesting opinion. It looks at the role of governments in the whole of the Internet governance ecosystem, and clearly we're engaging with that as we already do.

We do take part in ITU, OECD, WSIS, and other events where Internet governance issues are discussed that relate to the DNS system and the other responsibilities of ICANN, and I can assure you that we're -- we're fully engaged and we try and play the appropriate role.

YOUNG EUM LEE:

Thank you.

OLGA MADRUGA-FORTI:

Thank you, Nigel.

And we do have 30 minutes left in our session, so the queue is closing, I would say, in the 30 seconds that it would take anyone to reach it.

Okay. Next question.

MARC PERKEL:

Hello. My name is Marc Perkel and I'm speaking on behalf of my role as first-time attendee at an ICANN meeting, and I have to say that I am extremely impressed with what's going on here in the multistakeholder model.

I see people being respectful and cooperative in a way that you rarely see in any type of forum this size.

And maybe it's because this multistakeholder model is so confusing that people have figured out that the only way they can get anything done is to be respectful and cooperative with each other, but I just want to say that the culture that has been created by this model of inclusion seems to work and it seems to understand the importance of the Internet in the future of humanity, and that I think that this is one international bright spot in a world that seems sometimes as if everything has gone mad.

So I just wanted to say thank you, and do not apologize for the multistakeholder model. What's going on here is phenomenal.

[Applause]

OLGA MADRUGA-FORTI:

Well, thank you, and welcome. Welcome to the community.

Any other comment?

FADI CHEHADE:

I'll just get you the tickets to the ball game later. Thank you.

[Laughter]

OLGA MADRUGA-FORTI: Okay.

HANS PETTER HOLEN: Hi. I'm Hans Petter Holen from the Address Supporting Organization, been on the council there since ICANN was formed.

I'm not going to talk about names. I'm not going to talk about law. I'm going to talk about the future of the Internet.

There was a very interesting workshop yesterday on IP Version 6 chaired by my colleague, Fiona, from the AfriNIC region, and there were some very encouraging presentations there about, on the local level, implementing IPv6.

So I would like to challenge everybody in this room. Please go home, please ask your organization, "What are you doing to implement IP Version 6," and if you don't get an answer, push for it and come back to the next ICANN meeting or to a RIR meeting and share with us how we can pull off this transition to the next generation of Internet technology. Thank you.

[Applause]

OLGA MADRUGA-FORTI: Thank you. And we're all duly challenged. Very good.

Next question.

VICTOR NDONNANG: Thank you very much. My name is Victor Ndonnang. I would, first of all, like to thank the board members for the opportunity. My time is short, two minutes, and I'm going to be -- go straight to my point, but I have to express some recognition before addressing my point.

First things, our host, ZADNA. And also, I would like to thank the board members, especially Ray Pizak, George Sadowsky, and of course the ICANN CEO and president, Fadi Chehade, for their support to the establishment of the African strategy and the beginning of its implementation.

During some of the sessions this week, especially the session about Internet governance, someone talked about multistakeholderism and was saying that it's not just about having everybody in the room, it's also about listening to them and trying to take into account their concerns when policies are made or decisions are taken.

All right. I would -- this is my -- MyICANN 47 T-shirt. My size, "L." And I think that most of the participants here, they get their T-shirt in their respective size. Everybody didn't take the same size. Others take small, "M," and other large and extra large. So my concern is, in ICANN, one size cannot fit all.

This is true --

[Timer sound]

VICTOR NDONNANG: -- for the WHOIS. This is also true for ICANN, for the registry agreement. It's true for the ICANN accreditation agreement. This is my concern.

I made a presentation in the presence of ICANN 47. It was the African DNS forum, and my concern in the RAA was about the financial requirement because one dollar in the U.S. is not one dollar in Cameroon, my country, and one IP address in the U.S. is the same IP address in Cameroon (indiscernible).

So in Addis Ababa, when we start implementing the African strategy, the ICANN CEO made a pledge, so (indiscernible) if we can have an African or a developing country RAA, not about technical specification but about financial requirements.

And my question is: We are in Durban, South Africa, now and there is no draft of such document. I would like to ask to the board members and to the ICANN staff if this is possible or not. And if it is possible, we are available to help, to connect you with experts in Africa in the insurance domain and business domain to start working on coming up with a draft of a RAA that will fix our economic environment.

Thank you very much.

[Applause]

OLGA MADRUGA-FORTI:

Thank you.

Any comments on a one-size-fits-all RAA or not?

FADI CHEHADE:

Yeah. Victor, thank you very much for your comment. I appreciate it.

And, yes, one size doesn't fit all and we acknowledged that in Addis together.

The RAA, however, at the time was still being baked, and we just got it out, as you know, Monday finally. We have an agreement that can go out.

Now, we had agreed that we would look at the RAA without lowering the standard, because that's not the intent, and we agreed we don't want to create kind of two classes of RAA. That wouldn't be right. Neither for Africa nor for the rest of the world.

But what we did discuss is as soon as the RAA is done, we'll look at its provisions with the African community -- and Pierre has that on his plate -- and then we'll decide what particular things we can do to help you be in compliance with the full RAA.

And that's an action on our plate and we will do it. We already, by the way, started discussions with the African Development Bank, and in fact, even in our budget we have some discussion about that, to see how we can engage them and engage others to support the African community here in having the right size, you know, having all the gaps to fit that size.

So we -- that commitment is here, and we need -- Pierre, if you're in the room and you can hear me, I don't see you but your boss is sitting next to me so I'll make sure this actually does happen, now that we have a finished RAA.

And thank you for reminding me. That's exactly what you should be doing, and I appreciate it.

VICTOR NDONNANG: Thank you very much.

OLGA MADRUGA-FORTI: Thank you, Fadi.

I think we have an additional comment from Ray Plzak.

RAY PLZAK: Thank you. The timer is going to ring in three seconds.

Victor, you pointed out something very, very important --

[Timer sound]

-- but it's not just the RAA where one size does not fit all. There are many things that -- where one size does not fit all, and so as we move forward with the African strategy, we have to continue to identify those things and continue to bring those things forward so that we can deal with them. And we must deal with them if the Internet is going to succeed in Africa.

VICTOR NDONNANG: Thank you very much.

OLGA MADRUGA-FORTI: Thank you. Next questioner.

AYESHA HASSAN:

Thank you. Ayesha Hassan, on behalf of the International Chamber of Commerce, specifically the Commission on the Digital Economy.

I am a BC member but I am speaking here on behalf of ICC, and also just want to clarify that part of ICC has nothing to do with the dispute resolution service, part of ICC that has been commented on earlier today.

So that said, I'd like to build on some comments that have been made regarding the GAC.

My membership greatly appreciates the hard work and efforts of the Governmental Advisory Committee members and we greatly appreciate the challenging situations that they have to work through and want to acknowledge that.

That said, we also have seen over the years that part of the challenge has been perhaps that we all don't get enough opportunities to understand GAC perspectives, and likewise, GAC members perhaps don't have enough opportunities to understand the range of other stakeholders' perspectives.

And so building on what others have said, I also wanted to bring up an idea that I put forward during the very interesting and interactive meetings working group meeting this morning, which was perhaps to encourage the GAC to take a look at their schedule and see what could be done to adjust the opportunities for them to work on certain things at certain moments that would then allow and free GAC members to participate in more cross-community things, and which would also

perhaps free them to be more socially interactive in the free moments for networking, et cetera.

Thank you.

OLGA MADRUGA-FORTI: Thank you. Another good comment on cross-communication.

Heather, any comment?

HEATHER DRYDEN: Okay. You're going to put me on the spot? I have been listening to all the comments throughout the public forum. And there's clearly a running theme here about ways to find the best opportunities possible for engaging in a way that's meaningful and that allows us to advance our work. And – and the GAC does think about these things as well, quite a bit in fact. And so I think it's really heartening to hear that there is such a trust in finding ways to make things work better. And I'm confident that this will be well-received by our colleagues in the Governmental Advisory Committee. And looking at some of the less formal ways or, you know, alternative options, I think, is certainly something worth putting some thought to. We're going to be creating a group – a working group on working methods in the GAC. And they are related, I think, to some of the suggestions we've heard today. So that may be one way to look more closely at this issue. And, as well, the accountability and transparency review team process is under way is one that's very important to governments. And I think we've been really clear about that in our communique from these meetings. But, in particular, some issues were raised that relate as well to these points

being made. So all this to say that this is all really welcome. And I look forward to working with others in the community along with my colleagues in the GAC to improve these things. Yeah.

OLGA MADRUGA-FORTI: Thank you. I just want to remind everyone we have just about 18 minutes left. And, reminder, the queue is closed -- (speaking foreign language).

TIJANI BEN JEMAA: Thank you. I'm Tijani Ben Jemaa, and I'd like to speak French for the purpose of diversity.

I'd like to commend the initiative of ICANN to set up the regional strategy for the less advantaged regions. I think this initiative should be thanked for particularly before the people who took the initiative. And I would also like to name Mr. Fadi Chehade and his team here. But I would also like to mention Ray here who accompanied here in Africa for the implementation and the creation of such strategy. I think this will allow for greater diversity for greater inclusion and more participation. Thank you.

OLGA MADRUGA-FORTI: Merci. Thank you. Mr. Fadi -- Olga Madruga-Forti says on what you say about everyone's participation.

FADI CHEHADE: Tijani, it's up to us to thank you because it's actually the community who made us advance together. So thank you very much, and we're here to go on working on the implementation of the strategy. Because it's not only about creating a strategy but about setting it up. Thank you.

OLGA MADRUGA-FORTI: An online question and then onward.

REMOTE INTERVENTION: This is another message from Kathy Kleiman. As to the MarkMonitor comment, I was shocked to see the Expert Working Group reintroducing the concept of use of a domain name and setting up a requirement of the commercial versus non-commercial use of a domain name. Not only is it a bad idea, not only is it an impossible task since many of us use our domain names for evolving and changing purposes, but it takes us far beyond the technical coordination role of ICANN. I see many pressures on ICANN to enter into content evaluation of how domain names are used in evaluating what we place on our Web site, our listservs, and our e-mails. I would urge the board and the ICANN community to push back on these comments and these pressures. We are not the global regulators of the Internet. And our job is not content. And I second Mikey's notion for a vacation. Thank you.

[Laughter]

[Applause]

OLGA MADRUGA-FORTI: Thank you, Kathy. And next question. Comment from Steve.

STEVE CROCKER: Yeah. Thank you, Kathy. In keeping with the comments, other comments on the Expert Working Group, I think that's a very relevant comment. And I hope it won't get lost by being said only here. We have a very vigorous process involving the output from the Expert Working Group. And please make sure that those comments are directed right in to the middle of that fray.

OLGA MADRUGA-FORTI: Thank you.

JONATHAN ZUCK: Never fear, metrics man is here.

[Laughter]

Of course it feels significantly less heroic when it takes a half an hour to get here. And so, thankfully, the question about measuring the success of the new RAA wasn't life threatening.

But I did double-check, and the metrics that the GNSO submitted to the board in its advice included 12 specifically to the performance of registrars and who all signed the new RAA. So there should be some positive indicators associated with that new agreement.

And seems like a perfect segue to say that we never know the success of something until we actually define our goals for that something. It's

very easy after the fact to say that something was successful. And it's much harder to set goals and then see if we reached them.

And one of the areas that I think is worthy of some additional consideration before it gets too far is ICANN labs, actually. Because ICANN labs is about a very important part of ICANN, which is public participation, which I think, as the blog mentioned, as you've mentioned, Fadi, is a very serious issue for ICANN and something that needs to be addressed seriously.

And I believe that a goal set or a requirements analysis is probably called for prior to a lot of technological innovation in that space, commitments about how comments will be absorbed, how feedback will be given to comments so that there's actually confidence that those comments play a significant role in policy creation at ICANN. I think those are actually policy commitments, management policy commitments that aren't even really things that require a PDP and that with, absent those things, it will, in fact, be difficult to define what the requirements should be for a technological solution.

[Applause]

OLGA MADRUGA-FORTI: Yes. Go ahead. Thank you.

CHRIS GIFT: If I may, this is Chris Gift, vice president of online community services. That's a very good point. We have been doing – we've been collecting all the previous analysis on public comments. We have requested some

other -- we have gone out to other consultants to see what other public comment and public consultation technologies are available.

I absolutely agree, when we're doing some experimentation, we are not -- and we don't want to change the process. That is not what any of this is about. It's about trying to -- there's been a lot of requests and issues about the process -- not about the process, but about the tools themselves. Can we elicit more comments? Can we elicit -- can we make them more publicly visible? So the experimentation that you're going to see is around that type. It is not around the public comment process itself. So I just wanted to be clear about that.

And --

JONATHAN ZUCK:

I guess I'd like to be clear that it should be. Fadi made a statement that I think is legitimate that this is 1980s technology or something used for public comments. But I would suggest that, if comments serve no purpose to the formation of public policy in this organization, it does not matter how outdated the system is with which they are received.

[Applause]

OLGA MADRUGA-FORTI:

Okay. Thank you. We have a comment from Sebastien.

SEBASTIEN BACHOLLET:

Can I speak French? This is Sebastien Bachollet. Thank you.

Okay. This is an important question. We have a recommendation from ATRT1 on this subject. And it is true that in the framework on the works of the public participation committee, which is now called public stakeholder engagement which is a committee of the board, we have a clear issue with technology. And the current technology cannot provide what was asked for in ATRT1 and which was also a request from the community. So this is a 2-sided way. The policies will define the tools. But the tools will also help define the means to implement those policies. So we're working on it. I think Chris Gift's joining ICANN's team will help us very much. It will go a long way in the tools that are proposed and the tests carried out on ICANN labs are going to allow us to elaborate on it together and to find the best solution possible to address these needs.

Now, the first question you asked was whether it's useful to make comments. It's independent from the tools we use, if we don't use the tools. I think currently we do use them. The staff uses those comments in order to make reports on comments. And, when we need to take decisions or suggest a decision, we use the entirety of the comments that we are provided by participants. Thank you.

OLGA MADRUGA-FORTI:

Merci, Sebastien. I see comments from Fadi and then David Olive. No? Thank you. Thank you very much.

JONATHAN ZUCK:

Okay. I'd love to follow up more, but I know there's other people. But, again, I think making decisions about what the policies will be around

those comments will help guide the technical requirements to software best able to serve those policies. And, absent those policies, we're designing software in the dark.

OLGA MADRUGA-FORTI: And our last question of the day, with energy.

MARILYN CADE: Thank you. My name is Marilyn Cade. I'm going to touch on three topics. The first I'd just like to say that I noted with great interest the announcement of the strategy panels. And I want to just reinforce the importance of understanding that we have now a 5-year strategy plan under way. The strategy panels are part of that. But I think it's important for us, the community, to understand that we have to do the rest of the work on the strategy. And there's going to be a lot of work for us to do besides the strategy panels and then they're providing other comments. So that's something that perhaps some may have misinterpreted. I just wanted to reinforce the commitment of all of us to contribute heavily to the development of the strategy.

My second point is by way of thanking the staff, Fadi and the staff and others, about something that is happening that I'm very happy about. And I was in Lagos, Nigeria, a couple weeks ago to help to support the launch of the ICT summit of AfICTA, the African ICT Alliance. And I encouraged business users and leaders to come to ICANN, and some did. I look around this room, and I see that so many other people from the African continent have come to join us. And I think they're going to be with us. The welcome they've received from the staff and from the

board has been phenomenal. And I hope all of us as community contributors are going to be just as welcoming to newcomers from all regions. And I wanted to say to the newcomers, I hope we're treating you well. And I hope you're going to stay with us, and do count on our support.

My final point is about Internet governance. It is one of our important assets to -- for ICANN to work actively in this space.

Not just as the board and the staff but as the community. And I hope that you, the board and the staff, will understand that we, the community, includes the GAC members. But also many of us. And that together we have to keep working very, very hard in this additional space. Thank you.

OLGA MADRUGA-FORTI:

Thank you, Marilyn Cade. Any comments from my colleagues on the board? No? Mike Silber.

MIKE SILBER:

It was a pleasure seeing you in Lagos, Marilyn.

MARILYN CADE:

I have to sneak in two seconds to say we were well supported by Mike who came and was a speaker and participant as well as by the CSO's office.

OLGA MADRUGA-FORTI: Thank you. It looks like we're just about finishing right on time. We had a lot of really interesting topics come up, very varied. But we talked about cross communication, metrics, the role of government, the evolution of ICANN, and the role of intellectual property law and international law. And I think we really managed to have a real dialogue in this session.

So I thank you all very much. I congratulate you, and I turn it back over to our chairman for any remarks.

STEVE CROCKER: Thank you, Olga. Thank you, everybody.

This brings the public forum to a close. We're going to move rather quickly into a formal board session.

Let me tell you that, as part of wrapping this up, you've now experienced the somewhat adjusted format that we've used this time. We're looking for feedback. We'll continue to search for the combination that works best. That also means keeping the things that worked. So, if you liked it, we'd be happy to hear that. And, if there's things that you'd like to see changed, we, of course, want to hear that as well.

We have often used the forum as a place to thank departing members of the community. We will do that as the beginning of the board meeting as we pass resolutions in association with that.

Also, I want to offer a little bit of an apology. I, apparently, was scheduled to make some remarks last night at the gala. There was a

little bit of overload in scheduling, and I wasn't there. I apologize to everyone who was there and to our hosts. I'll send a separate note. But we've been treated very well this entire week. And it's been a real pleasure to be here.

[Applause]

Thank you. I don't see any reason why we can't slide instantly -- you want a short break. Never mind. Stretch and reassemble.

STEVE CROCKER:

Regarding comments on this session, you can send them to forum@icann.org.

[END OF TRANSCRIPT]

EXHIBIT C-043

GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV of the [GAC Durban Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses to the GAC Durban Communiqué must be received no later than 23:59:59 UTC on 23-August-2013.

Respondent:

Applicant Name	Amazon EU S.à r.l.
Application ID	.AMAZON (1-1315-58086) .アマゾン [AMAZON] (1-1318-83995) .亚马逊 [AMAZON] (1-1318-5591)
Applied for TLD (string)	As displayed above

Response:

August 23, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. Cherine Chalaby, Chair of the New gTLD Committee
Members of the New gTLD Program Committee
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: **Amazon’s Response to the ICANN Board of Directors on the GAC Durban Communiqué**

Dear Dr. Crocker, Messrs. Chehadé and Chalaby, and Members of the ICANN Board of Directors New gTLD Program Committee,

Thank you for the opportunity to respond to the Governmental Advisory Committee’s (“GAC”) Advice set forth in the Durban Communiqué (the “GAC Advice”). Amazon respects the vital role of the GAC and its contribution to the multi-stakeholder model of governance. Under the Applicant Guidebook (“AGB”), GAC advice creates a rebuttable presumption for the ICANN Board of Directors New gTLD Program Committee (“NGPC”) that the application

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should not proceed. Not only is that presumption plainly rebutted here, but following that advice would violate national and international law and upend the settled international consensus embodied in ICANN's Bylaws, Articles of Incorporation, and Affirmation of Commitments (the "Governing Documents").

Advice provided by the GAC to the NGPC is just that: advice. Of course, ICANN must act in accordance with its Governing Documents and international and national laws. The GAC Advice as it relates to the .AMAZON, .アマゾン and .亚马逊 applications (collectively the "AMAZON Applications") ignores both of these key limitations on ICANN's power to do precisely what the advice advocates – selectively rejecting an application for a new gTLD.¹ Instead, contrary to those limitations, the GAC has injected into the ICANN process political issues already addressed and rejected by international consensus in the ICANN rulemaking process in contravention of the objecting governments' own national laws and international laws to which they themselves are signatories.

In short, the GAC Advice as it relates to the AMAZON Applications should be rejected because it (1) is inconsistent with international law;² (2) would have discriminatory impacts that conflict directly with ICANN's Governing Documents; and (3) contravenes policy recommendations implemented within the AGB achieved by international consensus over many years. Failure to reject the GAC Advice will fundamentally undermine the multi-stakeholder model and place at risk, and destroy trust in the fairness of, the gTLD process for both current and future applicants.³

I. Background

Amazon and the Amazonia region of South America have coexisted amicably, both regionally and globally, with no interference on regional matters or consumer confusion or harm for more than seventeen years. We have been and continue to be pleased to serve countless customers in the region throughout much of that period. Amazon is not the recognized term for the region in most of South America, which use Amazonas or Amazonia.

¹ See, generally, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, Judge Stephen M. Schwebel, Presiding. (Feb. 19, 2010).

² For the convenience of the NGPC, the Board of Directors, and ICANN legal team as a whole, Amazon has attached as Appendix A Chapters 5-9 of Heather Ann Forrest's recently published book Protection of Geographic Names in International Law and Domain Name System Policy by Heather Ann Forrest (Wolters Kluwer Law International 2013). Professor Forrest's research clearly supports the Amazon position that there are no legal rights by a country in a sub-regional or geographic feature name, or any geographical name per se.

³ See, e.g., Lisa Schuchman, "Amazon's Domain Name Trouble Threatens ICANN Program", CORPORATE COUNSEL (Aug. 7, 2013), available at: <http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202614276487&slreturn=20130719190909>.

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Although geographic denominations may be registered with the local trademark offices, the term AMAZON is not registered as a geographical denomination by either the Brazilian or the Peruvian trademark offices (or any other government trademark offices in the Amazonia region).⁴

AMAZON, along with AMAZON-formative marks such as AMAZON.COM and AMAZON and Design (collectively the “AMAZON Marks”) is a trademark registered by Amazon more than 1300 times in over 149 countries world-wide – including registrations in the trademark offices and in the ccTLDs of the very regions that now claim Amazon should not be allowed to use its global mark as a gTLD.⁵ Amazon has never used its mark as a geographic term. Nor have the governments of South America ever themselves used the names of their geographic regions – “Amazonia,” “Amazonas,” or “Amazon”⁶ – or any variation of these terms, as trademarks for Internet services or any other goods and/or services.

The AGB, which was “the result of years of careful implementation of GNSO policy recommendations and thoughtful review and feedback from the ICANN stakeholder community,”⁷ does not prohibit or require government approval of the terms .AMAZON, .アマゾン and .亚马逊. Amazon submitted the AMAZON Applications in January 2012 after careful review of, and fully consistent with, those rules.⁸

Despite our long-standing presence throughout the region, the Governments of Brazil and Peru opposed the AMAZON Applications (first through an Early Warning against only the .AMAZON application, and later seeking GAC consensus advice against .アマゾン and .亚马逊 as well). In response, Amazon actively engaged with the governments of the Amazonia region and the Organización del Tratado de Cooperación Amazónica (“OTCA”), the treaty

⁴ See discussion infra starting at p. 4.

⁵ See the list of Amazon Trademarks and domain names issued in countries of the Amazonia region, attached as Appendix B.

⁶ Guyana is the only country in the Amazonia region to use the term “Amazon” in reference to the region.

⁷ “About the Program”, ICANN. <http://newgtlds.icann.org/en/about/program> (visited Aug. 12, 2013).

⁸ .AMAZON, .アマゾン and .亚马逊 are not country or territory names, and thus are not prohibited as gTLD strings under Section 2.2.1.4.1 of the AGB, nor are they geographic names that require documentation of support or non-objection from any government or public authority pursuant to Section 2.2.1.4.2 of the AGB. Five specific categories of strings are considered “geographic names” requiring such government or public authority support, including “any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.” AGB §2.2.1.4.2. Despite the Peruvian GAC representative’s statement to the contrary during the Durban Meeting, .AMAZON, .アマゾン and .亚马逊 do not fall within any of the five categories, including the ISO 3166-2 list. The Geographic Names Panel has never contacted Amazon regarding its AMAZON Applications, and has not taken the position that the applied-for strings are “geographic names”. In addition, the AMAZON Applications have all passed Initial Evaluation with perfect scores of 100%, putting them in the top 5% of all applications passing evaluation.

organization that represents the Amazonia region, through letters, video-teleconference, and an in-person meeting in Brasilia leading up to the ICANN meeting in Beijing. Despite a number of proposals presented by Amazon, including support of a future gTLD to represent the region using the geographic terms actually used by the Brazilian and Peruvian regions, such as .AMAZONIA or .AMAZONAS, the GAC representatives for Brazil and Peru insisted that Amazon withdraw its application or change the strings to “.AMAZONINCORPORATED”, “.AMAZONINC” or “.AMAZONCOMPANY.”

Despite knowing the Community Objection process is the appropriate avenue designated by ICANN for governments wanting to contest geographic terms not included in the AGB, no representative from Brazil or Peru (or any of the other Amazonia region countries or the OTCA) filed a Community Objection. Instead, a third party – the “Independent Objector” (a person known to represent the Government of Peru) – filed a Community Objection on behalf of the region.⁹

At the Beijing meeting, GAC representatives from Brazil and Peru sought GAC consensus advice against the AMAZON Applications. After failing to achieve consensus through that process to block the applications outright, Brazil and Peru instead requested (via the GAC) that the AMAZON Applications – instead of being allowed to proceed as the AGB requires – be delayed so the GAC could “further consider” the strings at the Durban meeting. This Board agreed to the delay.

At the ICANN Durban Meeting the Brazilian and Peruvian GAC representatives asked the GAC to revisit its objection to the AMAZON Applications. Both the Brazilian and Peruvian GAC representatives made public statements emphasizing the attention the Applications had drawn by their own governments and governmental organizations.¹⁰ In its second consideration of the AMAZON Applications, from our understanding following political and economic discussions by several of the objecting countries to persuade others to not block

⁹ As noted in our response to the Beijing GAC Advice and for completeness, the “Independent Objector” (“IO”) represents the Government of Peru in an ongoing case at the International Court of Justice, arguing on its behalf as recently as December 2012. We have separately raised serious concerns over the potential issue of conflicts with ICANN’s legal department – by telephone, in three separate letters, and in two in-person meetings (both before and after the IO filed his objection) – but have yet to receive a response from ICANN.

¹⁰ Indeed, in mid-June a Brazilian Senator held widely-publicized hearings on the issue and created an online petition to gather signatures against the AMAZON Applications. The petition was supposed to be delivered to the ICANN Community at the Durban meeting, purportedly evidencing large scale community support against the AMAZON Applications. The Brazilian GAC representative referenced the petition when requesting the renewed objection be upheld – “we had a huge reaction from the civil society which is organizing a document signed by thousands of people to be sent to the ... ICANN Board” – but the petition itself was never delivered.

their objection, the GAC agreed on consensus advice to reject the AMAZON Applications that are before this Board.

II. The GAC Advice is Inconsistent with International Law

ICANN is required 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*”.¹¹ While the GAC has an appropriate role to play in providing advice to the ICANN Board on matters related to government policy and international and national laws, the GAC Advice here substantially oversteps those bounds. ICANN’s failure to reject that advice would plainly violate relevant principles of international law and applicable conventions and local law, and therefore violate ICANN’s Governing Documents.

Governments do not have a per se national or global exclusive right to terms that are also used to represent a geographic area – be it a country, city, town, mountain, river, tributary, volcano, or other. Any rights in geographic terms are granted by law and, generally, cannot prohibit other uses of the term in a non-geographic manner. Indeed, the international legal system has well-established mechanisms for protecting terms, including use of geographical names. These mechanisms fall into one of four major categories: (1) Intellectual Property; (2) Regulatory Recognition; (3) National Sovereignty; and (4) Indigenous Rights. None of these mechanisms has ever been used by the objecting countries to protect the geographic term “Amazon” or any other translation or variation (as opposed to Amazon’s non-geographic use of the separate trademark AMAZON for Internet and e-commerce services).

1. Intellectual Property: Trademark Rights

The Paris Convention of 1883 (“Paris Convention”) is the basic building block for modern international intellectual property law. Importantly, the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) incorporates by reference Paris Convention Articles 1-12 and 19, and mandates that all World Trade Organization members enforce these provisions whether they are members of the Paris Convention or not. Under TRIPS and the Paris Convention, several forms of intellectual property protections and rights are recognized.

First, trademark protection is provided to terms that may act separately as geographic references, but are for trademark purposes distinctive of particular goods or services and

¹¹ Articles of Incorporation of ICANN, § 4.

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indicate a particular source of these goods or services.¹² The AMAZON Marks use the term AMAZON not as a geographic reference, which locally would be AMAZONIA and/or AMAZONAS, but as a fanciful term unrelated to the region. In fact, on July 26, 2013, the Peruvian trademark office, in considering the registrability of a third party's trademark applications for AMAZONAS, AMAZONASPERU and AMAZONAS.PE, and related oppositions, noted no similarities between these marks and AMAZON *"since the denomination AMAZONAS makes reference to one of the regions located north of Peru, while the denomination AMAZON will be perceived by the average consumer as a fanciful sign."*¹³

Here, Amazon holds trademark rights in and to the mark AMAZON as it relates to Internet and e-commerce services, among others. Amazon does not use the AMAZON Marks in any way that references or relates to the Amazonia region (in other words, the AMAZON Marks are not geographic terms; they are trademarks). The AMAZON Marks have been registered more than 1300 times in over 149 countries world-wide, *including in Brazil and Peru*. The very governments that now object to Amazon's use of the AMAZON Marks globally in connection with Internet and e-commerce services are now trying to ignore and erase not only the fact that Amazon has existed on the Internet for more than 17 years, but the fact that *these and other governments outside of their region have already expressly granted Amazon the right to use its marks for these services*.

Article 16(1) of TRIPS gives the owner of a registered trademark certain exclusive rights in that mark. Such rights can legally prevent other parties from using the same mark, including objecting countries or other parties, in the course of trade. The objecting governments have no superior legally recognized trademark rights in the term AMAZON for Internet-related services.

Second, Article 8 of the Paris Convention also gives international rights to protect trade names of commercial entities. To the best of Amazon's knowledge, none of the objecting countries owns legally recognized trade name rights in the term AMAZON.

Third, Article 6-ter of the Paris Convention protects various official names, insignia, flags, emblems, or hallmarks which indicate warranty and control. Brazil and Peru have sought to protect several of their insignia in this manner, but not the term AMAZON. For example, a design mark for CAFÉ DO BRASIL and the Official Seal of Peru, owned by Peru, were filed by Brazil and Peru respectively in the US Patent and Trademark Office under 6-ter. No such action was taken for the term AMAZON.

¹² Examples are LONDON FOG for raincoats (the capital city of the United Kingdom), TSINGTAO for beer (a city in China), and HAWAIIANAS for flip flops (Hawaiian in Portuguese).

¹³ *Maribel Portella Fonseca v. Amazon Technologies, Inc.*, Resolución N. 2154-2013/CSD-INDECOPI.

Fourth, Articles 10 and 10 *bis* of the Paris Convention mandate that Member States undertake to protect against all acts of unfair competition and to give infringed parties remedies to protect their rights. Unfair competition protects against acts which deceive the public and are used by competitors in bad faith to undermine each other's businesses. Unfair competition protection could theoretically be available for geographical names if such names were used in a commercial activity. Because they have no commercial use of the term AMAZON, the objecting governments have no legally recognized unfair competition rights in the term AMAZON.

Fifth, another way that a geographical term may receive intellectual property protection is as an "appellation of origin" or "geographical indication" (hereinafter, collectively, "geographical denomination"). The principal methods for protecting geographical denominations arise under national law, bilateral treaties and global treaties. The most well-known geographic denomination is CHAMPAGNE for a sparkling wine from a particular region of France produced under strict protocols. In the international context, the principal global treaties that include references to geographical denominations are the Paris Convention of 1883, the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of 1891, the Lisbon Agreement on the Protection of Appellations of Origin, and the WTO TRIPS Agreement of 1994. The objecting governments have not protected and have not sought to protect the term AMAZON as a geographical denomination under the framework provided by any of these treaties.¹⁴

The principal treaty recognizing geographical denominations (which it terms "geographical indications") is the TRIPS Agreement,¹⁵ which provides relative protection against false geographical indications that are misleading (including misleading use of a previously recognized geographical indication as a trademark). Even if the objecting governments were now to establish geographical indication rights in the term AMAZON (which, as noted above, they presently do not hold), these rights would be limited to a particular set of goods or services that these governments had shown to "originate" in the Amazonia region or for which "a given quality, reputation or other characteristic...[were] essentially attributable to" the Amazonia Region.¹⁶ Internet-related services would certainly not qualify.

As a result, none of the objecting governments can claim intellectual property rights in and to the term AMAZON, nor take advantage of geographical denominations protections under

¹⁴Some of the objecting governments have protected geographic indications for other terms. Peru, for example, has protected over 700 geographic indications under the Lisbon Agreement, but none is for AMAZON.

¹⁵ All members of the WTO are members of the TRIPS Agreement. As of the date of this letter, 159 countries are members of the WTO.

http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

¹⁶ TRIPS Agreement, Article 22(1).

national and international laws. Even under the narrowest interpretation of Amazon's trademark rights, Amazon's right to use the term AMAZON for Internet-related services would prevail under existing national and international laws. Respect of well-established national and international intellectual property laws alone requires rejection of the GAC Advice.

2. Regulatory Recognition

In many legal systems, certain commodities have specific naming protocols to avoid confusion in the international marketplace. For example, the term NAPA is protected for wines from the Napa Valley in California, USA, under the U.S. system of "American Viticultural Areas." This type of governmental protection is a helpful system for protection of geographical names that do not fall within the various intellectual property rights granted nationally and internationally. In addition, geographical names are protected under international, national, and municipal laws as they relate to consumer protection, such as regulations designed to prevent consumer confusion and harm.

The objecting countries have no legally recognized regulatory rights in the term AMAZON.

3. National Sovereignty

Under international law, sovereign states have certain rights to control their national boundaries and be represented in international organizations and related interests. These rights, however, do not extend to preventing use of terms in a non-geographic manner (i.e., as a trademark or for use in connection with services that bear no relation to a physical, geographic region), particularly when their own national laws allow such use. The very countries objecting to Amazon's use of AMAZON for Internet services – as well as numerous other sovereign countries – granted registrations in the AMAZON Marks under their own laws on this very basis. Indeed, there is no international consensus as to whether sovereign rights over boundaries extend to country names, let alone any sub-region or physical feature such as a river, nor are there any current global mechanisms for recognizing such rights, but there is consensus on the protection of a trademark owner's rights through the treaty provisions found in the TRIPS Agreement.

The objecting countries have no legally recognized independent sovereignty rights in any sub-regional names for the term AMAZON.

4. Indigenous Rights

Certain human rights are protected under international law (and even under ICANN policy where the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are mentioned). In addition, consideration is given to the UNESCO cultural indicia, human rights in property ownership, self-determination, and free expression, and other inherent political rights. However, the objecting countries have no legally recognized rights in the term AMAZON.

To the contrary, corporate ownership of trademarks is clearly protected under human rights. In the European Union case *Anheuser-Busch, Inc. v. Portugal*, Application No. 73049/01 (1/11/2007), the Grand Chamber of the European Court of Human Rights upheld trademarks as valid possessions ruled by human rights law. It is important to note as well that human and indigenous rights under these doctrines belong to the individual, not the state, and these rights protect individuals from state action to take away their rights and property. In this matter, not only do the objecting governments not have any human or indigenous rights in the word AMAZON, but international law forbids them from globally limiting and devaluing this well-known trademark.

Despite all the methods listed above to provide protection for geographical names, the objecting countries have pursued none of them in connection with the term AMAZON. Amazon does not dispute this region's importance to its inhabitants and their governments. This importance, however, does not grant the region – or national governments – per se rights to prevent use of an otherwise unprotected geographic term, nor does it give the GAC or ICANN the right to create extraterritorial, sui generis, per se rights in geographic terms. Indeed, to the extent that this is a “matter of principle,”¹⁷ the principle at stake is the obligation of WTO Member states and the ICANN Board to follow international law as set out in the applicable treaties, including most pertinently the TRIPS Agreement administered by the WTO. As noted above and further discussed below, such treaties carefully balance the competing interests in protecting geographic denominations and trademarks. It is to these international treaties that the ICANN Board must look for guidance, not the vague and unsubstantiated concerns upon which the GAC Advice is grounded.

¹⁷ The Peruvian GAC representative in Durban stated, “dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.” Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

Both the TRIPs Agreement and the Lisbon Agreement contain provisions relating to the resolution of conflicts between trademarks and geographical denominations. International discussions and negotiations on ways to interpret, reshape, or amend these treaty provisions remain ongoing. Many third-party organizations and NGOs active in the protection of trademarks or geographical denominations have also weighed in with their opinions on ways to address situations where one party's trademark rights appear to conflict with another party's interest in protecting a geographical denomination. *Not once in the history of debate and discussion of this issue has a nation or organization with an interest in this topic advanced the extreme position now taken by the governments of Brazil and Peru with respect to the term AMAZON: that a local region's newly-expressed interest in a particular geographical term **per se** – which is not used or commonly recognized as a source identifier for any product or service – be privileged over a third-party's longstanding, established trademark rights that the countries of this very local region have themselves recognized, registered and protected for over a decade.*

To the contrary, where a trademark has been protected in a particular jurisdiction before the date on which the TRIPs Agreement becomes effective in that jurisdiction, or before the protection of a conflicting geographical indication in its country of origin, Article 24(5) of the TRIPs Agreement further specifies that the implementation of the provisions of the section on Geographic Indications “shall not prejudice eligibility for or the validity of the registration of [such] trademark, or the right to use [such] trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.”¹⁸

A 2005 WTO Panel addressed whether the exception provided for in Article 24(5) of the TRIPs Agreement amounts to a “first in time, first in right” rule or mandates coexistence of the relevant trademark and geographical indication. In that case, Australia and the United States challenged a 1992 European Union regulation for protecting geographical denominations for agricultural products and foodstuffs.¹⁹ The WTO Panel concluded that in

¹⁸ TRIPs Agreement, Article 24(5). The full text of this section reads: “Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either: (a) before the date of application of these provisions in that Member as defined in Part VI; or (b) before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.”

¹⁹ *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs*, WT/DS290/R (15 March 2005) (hereinafter “WTO Decision 290”). Full information on this case, including a copy of the Report of the WTO Panel, is available at: http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds290_e.htm. See also Council Regulation (EEC) No. 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter “E.U. Foodstuffs Regulation”), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R2081:EN:HTML>. This E.U. Regulation was subsequently amended to comply with the WTO panel's decision in the case

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accordance with Article 17, the TRIPs Agreement allows for a limited exception to a trademark owner's rights – namely, that the trademark owner may be compelled to accept coexistence when trademark and geographical indication rights conflict.²⁰ Notably, this decision does not suggest that geographical indication rights should be allowed to trump trademark rights.

Peru, Brazil and the other South American countries of the Amazonia region that support the objection to the AMAZON Applications are WTO members and therefore legally bound to implement the terms of the TRIPS Agreement and to follow the rulings of the WTO on its interpretation of the TRIPS Agreement. *Under the rule of international law established by the WTO's decision discussed above, it is clear that even if Brazil and Peru were to now recognize the term AMAZON as a protected geographical denomination, such protection would not permit them to prohibit or limit the use of the previously recognized trademark AMAZON.* In other words, neither Brazil nor Peru, and likely no other governments, could bar the AMAZON Applications in their own countries under their own laws, and to do so would violate international laws.

Ironically, the Brazilian government filed third-party arguments in the WTO case discussed above that were far more sympathetic to trademark-owner concerns than the position it is now taking regarding the AMAZON Applications. Brazil's arguments stressed the importance of maintaining the value of trademarks and referred dismissively to "a theoretical hypothesis of coexistence between a trademark and a geographical indication."²¹ As Brazil candidly and correctly concluded at that time:

Brazil believes that without disregarding the peculiar features surrounding the use of a geographical indication and the need to protect it, one must not do so at the expense of both the trademark owners and the consumers. Otherwise, the commercial value of a trademark may be undermined, which runs contrary to the 'exclusive rights' of a trademark owner provided for in Article 16.1 of the TRIPS Agreement.²²

The Brazilian government further elaborated that in its view, resolution of conflicts between trademarks and geographical denominations should:

discussed here; the replacement regulation is Council Regulation (EC) No. 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter "E.U. Amended Foodstuffs Regulation"), available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:093:0012:01:EN:HTML>.

²⁰ *Id.* at 143-50.

²¹ WTO Decision 290, Annex C, C-7.

²² *Id.* at C-7 - C-8.

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[T]ake due account of the fact that (a) geographical indications do not *a priori* prevail over registered trademarks[.]²³

Thus, under Brazil's *own* interpretation of the TRIPs Agreement, one thing is clear: any rights that Brazil or any of its neighboring countries may have accrued in the geographical term AMAZON should not *a priori* prevail over Amazon's registered trademark rights in the term AMAZON, which have long been recognized in the region. A government cannot selectively use ICANN to override the protections found in TRIPs and other international laws.

The ICANN Board had it right when it approved the policy recommendations resulting in the AGB. It was – and is – essential that the new gTLD application process be transparent, predictable, and non-discriminatory. *The ICANN Board recognized that allowing governments to retroactively determine names that are of concern because of geographic connotations would lead to discriminatory and chaotic consequences.*²⁴ To provide the GAC with an effective veto power over individual strings injects unpredictability²⁵ and politics²⁶ into the gTLD application process. It allows governments to use the ICANN Board to take actions the governments could not take – and have not taken – under their own laws, creating a new form of *sui generis* rights along the way.

At minimum, Amazon requests that, pursuant to the authority reserved to itself in AGB Section 3.1, the NGPC obtain, before it considers the GAC Advice against the AMAZON Applications, independent expert advice on the protection of geographic names in international law generally and the violations of relevant principles of international law and applicable conventions and local law represented by the GAC Advice. Amazon believes that the legal treatise cited in notes 1-2 above and the discussion in Section II above provide

²³ *Id.* at C-9.

²⁴ See the attached highlighted communications between the ICANN Board and the GAC from the period 2009 to 2011 on the issue of geographic names, attached as Appendix D.

²⁵ From the Ugandan GAC representative in Durban: "We're going through a process of generating similar strings which may be of concern to us. So I'm wondering should we always have to come here and make statements like this or there's going to be a general way of protecting those strings that we think are sensitive to us."

From the Brazilian GAC representative in Durban: "Now we have dot amazon. But in the future, maybe you can have dot sahara, dot sahel, dot nile, dot danube. I don't know if the names are there. I don't have the list by heart. But maybe the names are not there. But it doesn't mean they're not important for national culture and traditional concerns in your countries."

Quotes taken from the live scribe feed as provided by ICANN:

<http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

²⁶ From the Sri Lankan GAC representative in Durban: "This issue of dot amazon has reached our foreign ministry and has gone to the highest level of attention between discussions with the Brazilian government on a lot of bilateral trade related issues." Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C.

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material information to the NGPC that demonstrate why the NGPC should not accept GAC Advice against the AMAZON Applications, and why it should allow the AMAZON Applications to proceed.

NGPC acceptance of the GAC Advice would destroy hard fought international consensus and well-settled expectations on geographic names. It would impermissibly place ICANN above accepted international and national laws at the behest of individual governments in ways that will not hold up on review in other forums.

III. ICANN Must Act in a Predictable, Transparent, and Non-Discriminatory Manner

In addition to violating various international laws, accepting the GAC Advice would violate ICANN's Governing Documents. The right to provide advice on individual applications based on sensitivities, as granted by the Community, could not have intended such consequences. If so, the entire process itself may be in violation of ICANN's guiding principles.

A. GAC Advice Throws Out the Transparency and Predictability Carefully Balanced in the Development of the AGB

ICANN's Governing Documents require ICANN to operate in an "open and transparent" manner.²⁷ At the outset, the GNSO Council New gTLD Policy Recommendations emphasized the need to support these requirements and to provide new gTLD applicants with a transparent and predictable process.²⁸ Both the GAC²⁹ and the ICANN Board³⁰ itself adopted and endorsed the importance of providing new gTLD applicants with a transparent and predictable process.

²⁷ Articles of Incorporation of ICANN, § 4. ICANN Bylaws, Article II, §2(7). Affirmation of Commitments, §9.1.

²⁸ "The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." ICANN GNSO Final Report, Policy Recommendation 1, Aug. 8, 2007.

²⁹ "The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." Annex B, "GAC Principles Regarding New gTLDs", §2.5, GAC Communique – Lisbon, Mar. 28, 2007.

³⁰ "Resolved (2008.06.26.02), based on both the support of the community for New gTLDs and the advice of staff that the introduction of new gTLDs is capable of implementation, the Board adopts the GNSO policy recommendations for the introduction of new gTLDs." Adopted Board Resolutions – Paris, June 26, 2008.

The ICANN Community and Board underscored the importance of predictability for applicants during discussions about blocking terms that governments determined caused “sensitivities” to a region.³¹ The GAC repeatedly requested that the Board and ICANN Community afford the same protections to names that do not appear in the AGB-referenced ISO lists as to names that do appear. To ensure predictability and fairness to applicants – and prevent precisely the sort of ad hoc undermining of ICANN’s rules now playing out here – the Board expressly rejected these requests.³² To address government concerns over strings that raise “national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes”, the AGB was revised to include section 2.2.1.4.2 of the AGB and the ability by individual governments to file both Community and Limited Public Interest Objections.³³

In order to ensure transparency and predictability, the ICANN Board specifically precluded the GAC and/or governments from having broad post-application discretion to block applications based on non-geographic use of specific terms. Advice must be based on more than a “principle” of dislike.

The GAC would now have the Board sweep away years of multi-stakeholder input and policy developments, retroactively implementing the proposed but never adopted GAC’s 2007 Principles in connection with geographic names, and reject applications in violation of ICANN’s Governing Documents. If the Board accepts the GAC Advice on the AMAZON Applications, no applicant can ever be sure that its application – and the significant resources needed to support it – meets the requisite standards for filing. Applicants instead become pawns in politics unrelated to the DNS or Internet, subject to negotiations with governments over business models and branding that they would not otherwise be required to undertake under national laws.

B. GAC Advice Has A Discriminatory Effect on Amazon

Pursuant to ICANN’s Governing Documents, ICANN must act in a non-discriminatory, neutral

³¹ “The Board’s intent is, to the extent possible, to provide a bright line rule for applicants. . . . It is felt that the sovereign rights of governments continue to be adequately protected as the definition [of geographic names] is based on a list developed and maintained by an international organization.” Letter from ICANN (Dengate-Thrush) to GAC (Karklins), Sept. 22, 2009.

³² “The Board has sought to ensure [...] that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. *The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook as considered to best meet the Board’s objectives* and are also considered to address to the extent possible the GAC principles.” ICANN Board – GAC Consultation: Geographic Names, Feb. 21, 2011 (emphasis added).

³³ ICANN Board – GAC Consultation: Objections, Feb. 21, 2011. See also ICANN Board – GAC Consultation: Geographic Names, Feb. 21, 2011.

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and fair manner.³⁴ Indeed, one of the core values guiding ICANN’s decisions and actions is “[m]aking decisions by applying documented policies neutrally and objectively, with integrity and fairness.”³⁵ The GAC now asks this Board to ignore these requirements.

In his July 16, 2013 public statement to request GAC Consensus Advice against the AMAZON Applications, the Brazilian GAC representative stated that the AMAZON Applications are of “deep concern” to the Brazilian Society and create a “risk to have the registration of a very important cultural, traditional, regional and geographical name related to the Brazilian culture.” The Brazilian GAC representative contended that there is concern over “the registration of this very important name to the Brazilian Society.” He claimed that representatives from Brazil and other countries met with Amazon in good faith – that Amazon is willing to “make a good job” – but “*for a matter of principle*, [Brazil] cannot accept this registration” and asked the GAC to “reinforce the Brazilian demand to the GAC members to approve a rejection on the registration of dot amazon by a private company in name of the public interest.”³⁶

Notably, neither the objecting countries nor the GAC objected to another gTLD application with a nearly identical fact pattern. Ipiranga Produtos de Petroleo S.A. (“Ipiranga”), the applicant for .IPIRANGA, Appl. No. 1-1047-90306, is a Brazilian private, joint stock company. Ipiranga is “one of the largest oil distribution companies in Brazil and is the largest private player in the Brazilian fuel distribution market.”³⁷ Ipiranga “holds various trademarks in Brazil to protect its brand. . . . [as well as] various trademarks in South America” and various domain names to protect its brand, such as ipiranga.com.br and ipiranga.net.br. “Ipiranga’s operations also include a successful, promotion-based e-commerce website ipirangashop.com.” Ipiranga states it has invested heavily in brand awareness and has received extensive recognition, including “Second Most Remembered and Preferred Trademark” in the field of oil distribution in Brazil, and “Most Well-Known and Preferred Brand in the field of fuels.”

According to the .IPIRANGA Application, Ipiranga applied for a gTLD to, (1) “secure and protect the Applicant’s key brand” (“IPIRANGA”) as a gTLD; (2) “reflect the IPIRANGA brand

³⁴ ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition. ICANN Bylaws, Article II, §3.

³⁵ ICANN Bylaws, Article I, §2(8).

³⁶ Quotes taken from the live scribe feed as provided by ICANN: <http://icann.adobeconnect.com/p2y1517vnt2/>. Transcripts attached as Appendix C (emphasis added).

³⁷ New gTLD Application Submitted to ICANN by: Ipiranga Produtos de Petroleo S.A. Taken from the public portion of the application as found at <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1509> (hereinafter “.IPIRANGA Application”), Response to Question 18(a).

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at the top level of the DNS' hierarchy"; (3) provide "stakeholders of the Applicant with a recognizable and trusted identifier on the Internet"; (4) provide "stakeholders with a secure and safe Internet environment, under the control of the Applicant;" and (5) "use social communities to increase brand awareness and consumer trust." Ipiranga stated that its .IPIRANGA Application was not a geographic name.

Ipiranga is a district of São Paulo.³⁸ The Ipiranga Brook is a river in the São Paulo state in southeastern Brazil where Dom Pedro I declared independence in 1822, ending 322 years of colonial rule by Portugal over Brazil.³⁹ Indeed, the Ipiranga is so important to Brazilian culture and heritage that it is included in the first stanza of the national anthem.⁴⁰

Nowhere in the .IPIRANGA Application does Ipiranga state that it obtained approval (or non-objection) from the Brazilian government for its application.⁴¹ Nowhere in the application does Ipiranga state that it will act in any interest but the protection of its rights as a private company. The Brazilian GAC representatives did not issue an Early Warning against the .IPIRANGA Application nor did Ipiranga submit a Public Interest Commitment.⁴²

Notwithstanding the obvious importance of the term "Ipiranga" to Brazil's heritage, the GAC did not object to the .IPIRANGA Application nor, to Amazon's knowledge, did the GAC even discuss the .IPIRANGA Application during the GAC sessions in Beijing⁴³ or Durban.

Amazon does not believe the .IPIRANGA Application should be rejected; quite to the contrary. Just like Ipiranga, the oil company, Amazon is a company that has a globally established reputation separate and distinct from a geographic term.⁴⁴ Amazon does not believe that the Brazilian government is purposefully acting in a discriminatory way towards non-Brazilian companies, but the facts - intentional or not - highlight the discriminatory effect of allowing governments to retroactively decide "winners" and "losers".

³⁸ See Ipiranga, Wikipedia <<http://en.wikipedia.org/wiki/Ipiranga>>. Attached as Appendix E.

³⁹ See Ipiranga Brook, Wikipedia <http://en.wikipedia.org/wiki/Ipiranga_Brook>. Attached as Appendix E.

⁴⁰ English translation: "The placid shores of Ipiranga heard; the resounding cry of a heroic people; and in shining rays, the sun of liberty; shone in our homeland's skies at this very moment." See Brazilian National Anthem, Wikipedia <http://en.wikipedia.org/wiki/Brazilian_National_Anthem>. Attached as Appendix E.

⁴¹ Even if the oil company has received permission, it would again show a potential bias toward local companies over foreign companies in approving applications.

⁴² See New gTLD Current Application Status <<https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>>. Attached as Appendix F.

⁴³ The majority of the GAC sessions held in Beijing were closed to the community.

⁴⁴ And unlike in the .IPIRANGA Application, the AMAZON Applications are not matches of the geographic term at issue with the Government of Brazil.

Other gTLD applicants have applied for strings that also could be considered “geographic” strings or may cause cultural sensitivities, but have not been the subject of GAC Advice.⁴⁵ Indeed some of these applicants not only provided no documentation of governmental or regional support or non-objection, and received no GAC advice, but have even successfully sought trademark registrations in the region.⁴⁶ Again, Amazon does not suggest that the NGPC should reject these and all other applications that may fit one country’s definition of “geographic” or “sensitive.” But the Board has a legal and institutional duty to ensure that the rules set forth in the AGB are applied in a consistent, non-discriminatory way. It was for these very reasons the ICANN Community insisted on a definition of geographic names and a clearly defined process for considering any objections.

Instead of applying the clear definitions on geographic names set forth in the AGB, the GAC is attempting to apply the 2007 GAC Principles retroactively and selectively – principles never approved or adopted by ICANN and that have no effect as policy – and ask the NGPC, in violation of the Bylaws, to uphold its decision. The intent behind GAC advice on individual applications was not to allow the GAC to override the rules set forth regarding geographic names in the AGB; to override years of multi-stakeholder created policy; and to apply a discriminatory veto against certain applications in direct violation of the ICANN Bylaws.⁴⁷ ICANN should not permit GAC Advice to be used to achieve any individual government’s political goals – be it *de facto* protections a government is unable to get under ongoing intergovernmental treaty negotiations or under its own national laws or as part of a wider discussion on Internet governance. The Board should reject the GAC Advice against the AMAZON Applications.

IV. GAC Advice Contravenes Policy Recommendations as Implemented in the AGB

Years of policy development led to the creation of the AGB. Despite retroactive characterizations by various GAC representatives, the 2007 Principles proposed by the GAC were never approved or adopted by the multi-stakeholder ICANN Community or Board. Instead, they were recommendations that were taken into account by the Generic Names Supporting Organization (“GNSO”) and Board and considered as part of the multi-stakeholder process that developed the AGB, which was adopted by the Board. Attempts to reinstate the 2007 Principles as ICANN policy contravene the Policy Development Process (“PDP”) set forth in ICANN’s Bylaws and undermine the entire multi-stakeholder process. If

⁴⁵ For example, applications were submitted for LATINO, LAT, CHESAPEAKE, JAVA, LINCOLN, DODGE, EARTH, and others.

⁴⁶ For example, a Chilean trademark registration, Registration Number 1.008.605, issued on May 6, 2013 to a gTLD applicant for the mark LATINO in connection with domain name registration services in class 45.

⁴⁷ See, generally, *ICM Registry, LLC v. ICANN*, ICDR Case No. 50 117 T 00224 08, Judge Stephen M. Schwebel, Presiding. (Feb. 19, 2010).

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the ICANN Board accepts this advice, it will unravel years of policy development in violation of the ICANN Bylaws and have far reaching effects on the whole program.

Under the ICANN Bylaws, “there shall be a policy-development body known as the [GNSO], which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.”⁴⁸ ICANN relies on the GNSO to create gTLD policy, and its advisory committees, including the GAC, to provide *advice* on policy recommendations before the Board.

The GNSO spent several years developing the policy recommendations for the introduction of new gTLDs, including limitations to potential entrants. The PDP involved numerous debates, changes, and variations, which included stakeholders from the entire ICANN Community (including the “Principles” proposed by the GAC in 2007), and resulted in the final new gTLD policy recommendations. These recommendations were accepted by a supermajority of both the GNSO and the ICANN Board of Directors. The AGB represents the implementation of these policy recommendations.⁴⁹

Among many of the topics that were considered as part of the PDP was the question of “geographic terms” and governments’ rights to object to strings representing geographic terms. In 2007 the GAC issued a set of “public policy” principles that the GAC advised should be implemented in the new gTLD process, including the avoidance of “country, territory or place names, and country, territory or regional language or people descriptions” and that new gTLDs should “respect” “sensitivities regarding terms with national, cultural, geographic and religious significance.”⁵⁰ These principles, however, are not policy and neither the ICANN Board nor the ICANN Community wholesale adopted them.

Instead, the ICANN Board took the principles as advice – as per the role of the GAC – and individually adopted or modified them over the course of several years. The Board and the ICANN Community identified the GAC principles on geographic names, in particular, as problematic. No list of geographic terms (beyond the AGB definition) could be agreed upon – *including by the GAC itself* – to provide applicants with the relevant transparency and predictability that all parties agreed Applicants needed, and which ICANN’s Governing Documents require.

⁴⁸ ICANN Bylaws, Article X, §1.

⁴⁹ Amazon is not making separate comments on the policy versus implementation debate. It is clear, however, that GNSO policy recommendations, accepted by the ICANN Board, must be the subject of a PDP before they can be modified.

⁵⁰ Annex B, “GAC Principles Regarding New gTLDs”, §2.1-2.2, GAC Communique – Lisbon, Mar. 28, 2007.

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As late as February 23, 2011, the GAC requested a mechanism to protect governmental interests and define names considered geographic. The GAC requested clarification that “ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.”⁵¹ The ICANN Board responded:

The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. . . . *ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government.*⁵²

Section 3.1 of the AGB states that “GAC Advice on new gTLDs is intended to address applications that are identified by governments to be problematic e.g., that potentially violate national law or raise sensitivities.” Section 3.1 of the AGB was not intended to give government broad retroactive discretion to block any term in any language/script based solely on a government’s general “principle” or dislike, nor for a non-geographic, fanciful use for a term not included in the lists of banned terms found in the AGB.⁵³ Otherwise the GAC would have “an automatic veto” over the outcome of a PDP that was adopted by two super majorities on a string-by-string basis (as “sensitivities” could include any potential issue to a government). Indeed, communications between the GAC and the Board make it clear the opposite is true. “While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs.”⁵⁴

Amazon followed the rules set forth in the AGB and submitted its AMAZON Applications in full compliance with and reliance on the policies developed and agreed upon by the ICANN Community and reflected in the AGB. The GAC Advice now asks that the ICANN Board ignore this multi-year, multi-stakeholder process. Providing the GAC with the veto power that this GAC Advice represents, and adoption of such Advice, puts in to play violations of ICANN’s own founding principles and Governing Documents not only for this round of applications, but future rounds as well. Rejection of the GAC Advice on the Amazon Applications by the NGPC is the correct course of action.

⁵¹ Letter from ICANN (Dengate-Thrush) to GAC (Dryden), March 5, 2011.

⁵² *Id.* (emphasis added).

⁵³ And it certainly was not intended to create new rights in a government in opposition with international law. See discussion above starting at p. 4.

⁵⁴ Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.

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V. Summary

Amazon has no doubt that individual country representatives believe they are representing the best interests of their regions. These same countries had the option to file for a new gTLD or file a Community Objection to the AMAZON Applications. They did neither. Instead, they now seek to use the GAC Advice process as a means to (1) override years of Community policy development; (2) violate ICANN's Governing Documents; and (3) violate both international and national law.

Individual governments have an important role in the multi-stakeholder model. But they plainly cannot exercise veto power over multi-stakeholder policy and ICANN's Governing Documents or use ICANN to override the very laws under which the same governments operate.⁵⁵ The NGPC should not allow any government to accomplish through the GAC what they have not – and cannot – accomplish through their national legislatures.

ICANN has already independently “reaffirmed its commitment to be accountable to the community for operating in a manner that is consistent with ICANN's Bylaws, including ICANN's Core Values such as ‘Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.’”⁵⁶ Amazon respectfully requests that the NGPC stand by that commitment, abide by relevant international and national law, and reject the GAC Advice on the AMAZON Applications.

We thank the NGPC for its time and consideration of our comments. We request an opportunity to meet with the New gTLD Program Committee and the ICANN General Counsel to discuss this submission in more detail.

With best regards,

Stacey King
Sr. Corporate Counsel, Amazon

⁵⁵ This is one of the reasons preserving a multi-stakeholder model, where no one entity – including government – can use the process for political means and/or inject external issues into the process, is so important.

⁵⁶ Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.

APPENDIX A

Chapter 5

Intellectual Property Rights in Geographic Names

Domain names are not intellectual property rights.⁵⁴⁸

5.1 GEOGRAPHIC NAMES AS 'INTELLECTUAL PROPERTY'

Governments at national and sub-national levels have used the phrase 'legitimate interests'⁵⁴⁹ when asserting exclusive rights in geographic names, but it has yet to be determined what rights international law actually recognizes in respect of geographic names, let alone their exclusivity. Intellectual property rights are an obvious potential basis of recognition of rights in geographic names due to the strong similarities between geographic names and other intellectual property subject matter, as well as the fact that names have long been protected through intellectual property law as trademarks. The fundamental aim of this study is, however, to dispel reliance on assumptions regarding geographic names. A thorough analysis is therefore undertaken to determine conclusively whether geographic names fall

548. Smith, *Internet Law and Regulation* 89, 3-042.

549. See for example, *St Moritz v. StMoritz.com*, WIPO Case No. D2000-0617; *Sydney Airport v. Crilly*, WIPO Case No. D2005-0989; *Her Majesty the Queen, in right of her Government in New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754. The use of this particular phrase is owed at least in part to the possession of 'rights or legitimate interests' in the name in question being a ground of contention under the UDRP (clause 4(a)(ii)). The exclusivity of State interests in geographic names is explored in-depth in Part III, Chapter 6.

within the general subject matter of intellectual property law as recognized in international law, or within the specific subject matter protected by trademark law.

It is a mistake to assume from the outset that all intangibles that derive value from their contribution to human culture, information or entertainment fall within the scope of what is broadly termed 'intellectual property'. Intellectual property is not a refuge for all creative or potentially profit-generating expression or innovation. While rights in certain types of names have long been recognized as 'intellectual property', this does not mean that all names are or should be characterized as such. Rather than be assumed, the obviousness or common-sense nature of an intellectual property right in geographic names should be questioned. In the context of similar assumptions about a right of publicity it has been said: 'What appears to be "common sense" may be nothing but the particular view of a matter that most strongly supports and expresses the interests of powerful social groups, or that fits most snugly with other deeply rooted and unexamined beliefs.'⁵⁵⁰ So may it be for geographic names as intellectual property.

The first part of this chapter examines the scope and definitions of intellectual property. It is shown that geographic names are not expressly provided for as intellectual property subject matter save in a strictly limited context. Their inclusion as a general category of names falling within the general notion of intellectual property subject matter hinges upon States' taking the initiative to do so. The second part of this chapter explores geographic names' imperfect fit within trademark law. Even if '[m]arks indicating the geographic origin of goods were the earliest type of trademark',⁵⁵¹ trademark law (as distinguished from rights in geographical indications, which are separately recognized in international law and therefore addressed as a separate chapter of this book) has to date largely prevented geographic names from receiving protection.⁵⁵² It is curious, therefore, that contemporary concerns about the use of geographic names in the DNS should be primarily characterized in terms of trademark law. Conclusions as to the recognition within international law of intellectual property rights generally and trademark rights particularly in geographic names are summarized at the end of this chapter.

550. Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 Cal. L. Rev. 127, 136 (1993).

551. Bernard O'Connor, *The law of geographical indications* 21 (Cameron May 2004), citing F. I. Schechter, *The Historical Foundation of the Law Relating to Trade-Marks* (1925). See also S.A. Diamond, *The Historical Development of Trademarks*, 73 Trademark Rep. 22 (1983); M.G. Coerper, *The Protection of Geographical Indications in the United States of America, with Particular Reference to Certification Marks*, Industrial Property July/August 1990, 232.

552. See Albrecht Conrad, *The Protection of Geographical Indications in the TRIPS Agreement*, 86 Trademark Rep. 11, 40 (1996).

Chapter 5: Intellectual Property Rights in Geographic Names

5.1.1 CHARACTERISTICS OF INTELLECTUAL PROPERTY AND GEOGRAPHIC NAMES

It is true that geographic names possess certain common characteristics attributed to intellectual property subject matter generally. Names, like other intellectual property subject matter, are intangible in the sense that they are merely human expression and not something that has physical embodiment, such as a house, a car, or a chair. Names are ideas that have as their raw material the human mind rather than such physical, tangible raw materials as wood, steel or clay. This is the case for all names, geographic or otherwise. Like intellectual property generally, all names are non-perishable; they will not rot or spoil if left unused and they can be used over and over again without physical depletion, damage or depreciation.

Names are also non-rivalrous resources: the use of a name by one person, like the use of language⁵⁵³ or ideas but unlike the use of a car, plot of land or machine, does not prevent others from using it simultaneously.⁵⁵⁴ While the physical materials in or onto which names are expressed are constrained by exclusivity of use (in other words, the can onto which the brand name of a soft drink is printed or a book on whose pages ideas are expressed can be exploited by only one individual at a time), the ideas themselves are not.

That said, perhaps the DNS, with its technical requirement of absolute name uniqueness, forces re-thinking this long-held belief about the nature of names as non-rivalrous resources. When they are components of a domain name, names are in fact constrained by a certain degree of exclusivity because there can only be one registrant of the name *www.myname.com*. There is no technological impediment to another party's registering the name 'myname' in another top-level domain (e.g., *www.myname.org*), but absolute name uniqueness demands simply that there cannot be more than one *www.myname.com*. In this example, the name 'myname' is not subject to exclusivity, but the complete domain name *www.myname.com* can be registered by only one registrant. In the context of the DNS, names do not entirely lose their characteristic of non-exclusivity, but they do sacrifice some of it.

Another divergence of names from the broad conceptual characteristics of intellectual property is that in order to receive protection, they need not be the product of creative genius or original thought. This is an interesting characteristic that the law has traditionally been willing to overlook in the

553. See Lawrence Lessig, *The future of ideas: the fate of the commons in a connected world* 21 n. 6 (Random House 2001).

554. On the rivalrous nature of intellectual property, see Christine Greenhalgh & Padraig Dixon, *The Economics of Intellectual Property: A review to identify themes for future research*, University of Oxford Department of Economics Discussion Paper Series No. 135, December 2002, 4-5 (available at <http://www.economics.ox.ac.uk/Research/wp/pdf/paper135.pdf>).

case of trademarks but require in respect of other intellectual property subject matter.⁵⁵⁵ Geographic names have nevertheless not historically been considered registrable as trademarks, as will be explained in detail in the next section of this chapter.

5.1.2 INTELLECTUAL PROPERTY SUBJECT MATTER

With the exception of geographical indications, which are a specifically defined category of origin-connoting geographic names (these are discussed in detail in Chapter 7), geographic names are not expressly stated to fall within the scope of the TRIPS Agreement's definition of 'intellectual property' in Article 1(2) as: 'all categories of intellectual property that are the subject of sections 1 through 7 of Part II.' This definition has been characterized as 'pragmatic', but it 'excludes from general TRIPS obligations forms of intellectual property (or of protection that some would consider as being a part of intellectual property) not covered by TRIPS. Certain *sui generis* or new forms of protection may be concerned.'⁵⁵⁶ Geographic names generally, not simply the narrow sub-set in geographical indications, may be one such exclusion. It is also relevant to note as a tangential matter that in terms of the ownership of rights recognized under the TRIPS Agreement, governments' claims as rights holders under that agreement are not contemplated in the wording of Article 1(3) or 42.⁵⁵⁷

The interpretation of the definition of 'intellectual property' in Article 1(2) was directly at issue in the WTO dispute *United States – Section 211 Omnibus Appropriations Act of 1998*.⁵⁵⁸ The Panel in that case concluded that trade names did not fall within the list of categories articulated in Article 1(2), but the Appellate Body disagreed, interpreting 'intellectual property' to

555. See Rosemary J. Coombe, *The cultural life of intellectual properties: authorship, appropriation, and the law* 61 (Duke University Press 1998). Coombe explains: 'Although trademarks are not conventionally understood to have "authors" because they require no necessary genius, originality, or creativity, the legal recognition that trademark "owners" have a proprietary interest in marketing signs increasingly relies upon a reenactment of the author-function as described by Foucault. This is evident in judicial acceptance of the belief that through investment, labor, and strategic dissemination, the holder of a trademark creates a set of unique meanings in the minds of consumers and that this value is produced solely by the owner's efforts' (internal citations omitted).

556. Daniel Gervais, *The TRIPS Agreement: Drafting history and analysis* 166 (3d ed. revised, Sweet & Maxwell 2008).

557. Art. 1(3) of the TRIPS Agreement identifies beneficiary rights holders as 'the nationals of other Members.' Note 1 to Art. 1 indicates that 'nationals' means 'persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.' Note 11 to Art. 42 of the TRIPS Agreement clarifies that 'federations and associations having legal standing to assert' rights are considered rights holders for the purposes of enforcement.

558. *United States – Section 211 Omnibus Appropriations Act of 1998*, 41 I.L.M. 654 (W.T.O. D.S.B. App. Body 2 Jan. 2002).

Chapter 5: Intellectual Property Rights in Geographic Names

include not only the categories indicated in each title of each Section of Part II of the TRIPS Agreement but also categories of intellectual property subject to each Section of Part II. Applying this reasoning, trade names can be distinguished because geographic names (other than geographical indications) are not even mentioned in the TRIPS Agreement. Furthermore, as the Appellate Body pointed out, trade names are expressly recognized in Article 8 of the Paris Convention for the Protection of Industrial Property, which is incorporated into the TRIPS Agreement by reference.

Geographic names, by contrast, are not expressly provided for in the Paris Convention, the definition of 'industrial property'⁵⁵⁹ in which is considered:

a traditional but not entirely exact denomination for certain exclusive rights, resembling property rights, regarding creative ideas or distinguishing signs or designations in the industrial or commercial field, supplemented by certain rules against unfair behavior in the same field. The term is inexact because 'industrial property' presents no more than an analogy with normal property; further, because it covers more than industrial subjects only; and, finally, because the rules against unfair behavior are not necessarily related to property at all.⁵⁶⁰

This interpretation allows for the recognition of rights in non-commercial names by the Paris Convention, but beyond their possible recognition as trademarks, geographic names fall within that agreement's covered subject matter only insofar as they constitute indications of source or appellations of origin, or give rise to an unfair competition claim. Their ability to do this is explored in detail in Chapter 8 of this book, but at this stage it can be concluded that geographic names are not provided for as such within the protected subject matter of the Paris Convention.

559. **Paris Convention Art. 1**

...

(2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour.

...

560. Bodenhausen, 20. See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8 (26 Nov. 2009) para. 317 (comments of South Africa) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_8.pdf).

Nor do geographic names as such fall expressly within the scope of the broader definition of 'intellectual property' set out at Article 2 of the Convention Establishing the World Intellectual Property Organization.⁵⁶¹

- (viii) 'intellectual property' shall include the rights relating to:
- literary, artistic and scientific works,
 - performances of performing artists, phonograms, and broadcasts,
 - inventions in all fields of human endeavor,
 - scientific discoveries,
 - industrial designs,
 - trademarks, service marks, and commercial names and designations,
 - protection against unfair competition,
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Their primarily non-commercial use separates geographic names from classification as 'industrial' alongside trade and service marks, while the fact that their creation requires no particularly creative or inventive thought isolates them from the other catch-all 'intellectual' fields.

There is therefore scant express support for a claim to rights in the nature of intellectual property in geographic names at the international level. This does not stop WTO Member States from treating geographic names as protectable intellectual property, yet for this to be considered a general principle of international law it must be relatively consistent and widespread. The most obvious means by which States might do so is through registrability as a trademark.

5.2 GEOGRAPHIC NAMES AS TRADEMARKS

The recognition of rights in names under international law has historically focused primarily on the intellectual property subject matter of trademarks and trade names; these have been expressly protected since 1883 by the Paris Convention on the Protection of Industrial Property (the 'Paris Convention'). In addition to the minimum standards framework laid down in the Paris Convention, trademarks' protection at the international level was helpfully clarified⁵⁶² and harmonized by the TRIPS Agreement, while administrative measures pertaining to the international recognition of rights in trademarks are provided for by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of

561. Convention Establishing the World Intellectual Property Organization (14 Jul. 1967, entered into force 26 Apr. 1970), 828 U.N.T.S. 3.

562. See Thomas Cottier, *The Prospects for Intellectual Property in GATT*, 28 Common Mkt. L. Rev. 383, 403-404 (1991).

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Marks,⁵⁶³ the Madrid Agreement concerning the International Registration of Marks,⁵⁶⁴ the Protocol relating to the Madrid Agreement concerning the International Registration of Marks,⁵⁶⁵ and the Trademark Law Treaty.⁵⁶⁶

Geographic names have long struggled to satisfy trademark registration criteria, which today are harmonized by Article 15(1) of the TRIPS Agreement:

Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

From this provision can be distilled the three fundamental requirements of trademark registrability: first, the subject matter of protection must be a sign; second, that sign must be distinctive; third, it must be used on or in connection with commercial goods or services. It is clear from the second sentence of Article 15(1) that word names fall within the meaning of the term 'sign'; this criterion has never proved an obstacle to geographic names being protected as trademarks. The remaining two criteria of trademark registrability have, however, historically been and continue to be obstacles. The reasons for this are explored in the sub-sections that follow.

5.2.1 THE REQUIREMENT OF DISTINCTIVENESS

The heart of a trademark's registrability lies in its capacity to distinguish the goods or services of one trader from those of another, termed 'distinctiveness'.⁵⁶⁷ Article 15(1) of the TRIPS Agreement provides that protectable signs may either be 'inherently capable of distinguishing the relevant goods or services' or acquire distinctiveness through use. Inherent distinctiveness refers to whether a mark on its face indicates that the goods or services to

563. Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 Jun. 1957, as revised at Stockholm on 14 Jul. 1967 (entered into force 12 Nov. 1969), 828 U.N.T.S. 191.

564. Madrid Agreement Concerning the International Registration of Marks (14 Apr. 1891, entered into force 23 Oct. 1983) 828 U.N.T.S. 389.

565. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (28 Jun. 1989, entered into force 1 Dec. 1995), 82 Trademark Rep. 58.

566. Trademark Law Treaty (27 Oct. 1994, entered into force 1 Aug. 1996) 2037 U.N.T.S. 35.

567. See generally, Charles Martin, *The Meaning of Distinctiveness in Trade-mark Law*, 45(5) Ill. L. Rev. 535 (1950-1951).

which it is applied refer to those of the applicant and no one else. Acquired distinctiveness offers signs with multiple meanings an opportunity to crystallize in the mind of the consuming public the identity of the applicant in connection with the goods or services to which the sign is applied. Yet it has not always been the case that applicants have had this opportunity to demonstrate acquired distinctiveness, and this proved fatal for many applications for geographic trademarks.

Geographic names lack inherent distinctiveness because – irrespective of any other connotations a commercial enterprise might wish for them – they bring to mind a particular geographic location. Names of actual or even likely places of production, manufacture or origin of goods are unavoidably inherently descriptive of the goods they represent rather than indicative of the trader responsible for putting them on the market. This historically rendered geographic marks unregistrable.⁵⁶⁸ Distinctiveness can only come about, if at all, because the consuming public learns over time to associate the geographic name in question with something other than a geographic location: specifically, a link must be made in the consumer's mind between a geographic name and a particular trader and its particular offering of goods and/or services.

Following revisions to the Paris Convention in 1967 at Stockholm, Article 6 *quinquies* (B)(2) provided for the invalidation or refusal of registrations of marks 'when they are devoid of any distinctive character'. This was qualified by sub-section (C)(1), which provided: 'In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.' This required the consideration of circumstances in which 'a trademark which originally was not distinctive has, in the long run, through use, acquired a "secondary meaning" which makes it distinctive.'⁵⁶⁹

Today, the opportunity provided by Article 15(1) of the TRIPS Agreement to demonstrate acquired distinctiveness makes it possible (although by no means simple) for geographic names to be registered as trademarks. A geographic name always calls to mind a geographic location and therefore leads the consumer to question whether a connotation of origin or some other connection to the geographic location is the primary message being conveyed. Still, it is open to the trader through extensive commercial use of the name in connection with particular goods or services to try to override that inherent connotation of geography and put in its place a branding-type message that brings to mind the trader and its offering. There is no guarantee that these efforts will be successful, and this helps to explain why trademarks constituted only of geographic names are not particularly

568. See Heather A. Forrest, *The new frontier: Country brands and their legal status under Australian trade mark law*, 20(3) *Austl. Intell. Prop. J.* 127, 138-140 (2009).

569. Bodenhausen, 118.

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common.⁵⁷⁰ If the recent changes to Swiss trademark law⁵⁷¹ to create a new geographic type of trademark are indicative of a future general domestic law trend, then in time this will change. The practical benefits arising out of such changes to the owners of geographic marks, which include their being actionable under the UDRP and other priority rights accorded trademark holders in DNS policy, should not be underestimated.

5.2.2 THE REQUIREMENT OF USE IN CONNECTION WITH GOODS OR SERVICES

Another obstacle to geographic names' registrability as trademarks is the requirement that a sign be used on or in connection with particular goods or services. The protection of names at the level of international law has always been based upon use in a commercial context. This can be deduced from the negotiating history of the Paris Convention for the Protection of Industrial Property, which records the Chair of the convention as opening the drafting conference with reference to the scope of their work: 'Messieurs, vos études et vos recherches auront un vaste champ: brevets d'invention, dessins et modèles industriels, marques de fabrique, noms et raisons de commerce, tells seront les sujets principaux de vos entretiens.'⁵⁷² Indeed, the name of the resulting convention is suggestive of, even if not definitive on,⁵⁷³ the sorts of subject matter that the convention's drafters set out to protect.

The requirement that signs be used on or in connection with particular goods or services is a logical extension of the requirement of distinctiveness, which demands recognition by the consumer of a triangular relationship between a mark, a particular trader and its particular goods or services. Registered marks receive protection only in respect of the goods or services specified in their registration, and it is principally only in connection with those goods or services that the mark's use is protected.⁵⁷⁴ While geographic and cultural names can be used to identify commercial goods or services, more often they are used to identify a place or cultural concept. The

570. For specific data on the presence of geographic marks on the Australian trademarks register, for example, see Forrest, *The new frontier*.

571. Loi fédérale sur la protection des marques et des indications de provenance, nouveau Art. 27a. See detailed discussion below at Part III, Chapter 5, section 5.4.

572. Ministère des Affaires Étrangères de la France, *Conférence Internationale pour la Protection de la Propriété Industrielle* 13 (Imprimerie Nationale 1880).

573. See n. 560 above and accompanying discussion.

574. Defensive registrations and the protection of well-known marks are notable exceptions to this general rule that marks are only protected against competing use in relation to the same or similar goods and services. Arguments for treating well-known marks specially in the DNS are explored in Part II Chapter 3, section 3.2.1.3 above. The protection offered to well-known marks under international law against dilution is discussed in detail in Part III Chapter 8, section 8.2.1 below.

commercial uses of geographic names must logically outweigh their non-commercial uses, and this is rare; most commonly, they serve an informational purpose on maps and globes, on road signs and in official documents. The infrequency with which they come to signify in the consumer's mind a link between a particular trader and its particular goods or services prevents such names not only from meeting the requirement of distinctiveness but also the requirement of use in connection with goods or services.

In the specific context of the DNS it was asked early on whether the simple act of registering a domain name constitutes commercial use. When domain name disputes began to arise, it became clear to the trademark community that the emerging activity of 'cybersquatting', the act of registering a domain name comprised or constituted of a registered mark by someone other than the mark's owner,⁵⁷⁵ had to be fit into the existing rubric of trademark infringement, which requires proof of use of the allegedly infringing mark as a trademark. This then necessitates proving commercial use. In many cases, domain names comprising registered trademarks were being registered without mark owners' authorization, but the websites operated under those domain names (if any website was operated at all) were not being used to engage in commercial activity. The names were not, in other words, being used on or in connection with goods or services.

What allowed courts to find trademark infringement was where the domain name registrant offered to sell the domain name, in most cases to the trademark owner. In one of the earliest 'cybersquatting' decisions in United States courts, it was said of the defendant, Dennis Toeppen: 'At no time did Toeppen use intermatic.com in connection with the sale of any available goods or services. At no time has Toeppen advertised the intermatic.com domain name in association with any goods or services.'⁵⁷⁶ It was nevertheless found that 'Toeppen's intention to arbitrage the "intermatic.com" domain name constitutes a commercial use.'⁵⁷⁷ The same result could also be achieved by simply treating everything having to do with the internet as commercial in nature. This was suggested in a 1996 manual of trademark law and practice which was quoted by the court in its decision against Toeppen: 'Because Internet communications transmit instantaneously on a worldwide

575. In one of the early United States court decisions on 'cybersquatting' facts, *Avery Dennison Corp. v. Sumpton*, 999 F. Supp. 1337, 1338 (C.D. Cal. 1998) the court described the practice in question as follows: 'Like all "cybersquatters," defendants merely "squat" on their registered domain names until someone else comes along who wishes to use them. Like all "cybersquatters," defendants usurp *all* of the accepted meanings of their domain names, so as to prevent others from using the same domain names in *any* of their accepted meanings. And like all "cybersquatters," defendants seek to make a financial return by exacting a price before consenting to allow others to use the domain names on which they have chosen to "squat."' See discussion in Heather A. Forrest, *Drawing a Line in the Constitutional Sand Between Congress and the Foreign Citizen 'Cybersquatter'*, 9(2) Wm. & Mary Bill Rts J. 461, 470-472 (2001).

576. *Intermatic Inc. v. Toeppen*, 947 F. Supp. 1227, 1233 (N.D. Ill. 1996).

577. *Intermatic Inc. v. Toeppen*, 947 F. Supp., at 1239.

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basis there is little question that the “in commerce” requirement would be met in a typical Internet message, be it trademark infringement or false advertising.⁵⁷⁸

In the years since, the United States has devised specific legislative solutions such as the Anticybersquatting Consumer Protection Act to address the problem of cybersquatting and other activities characterized as DNS name-hijacking so that it is no longer necessary to fit such round peg problems into the square hole of trademark infringement. In that country and others, understanding of the internet has developed, as evidenced by the fact that not all registrations of trademarks as second-level domain names by someone other than the trademark owner are falling afoul of the UDRP, to which the majority of second-level domain registrants are bound.⁵⁷⁹ It must be clarified, however, that commercial use is not a factor directly required under the UDRP as it is in trademark infringement. Offending domain name registrations under the UDRP are those that are, *inter alia*, used in bad faith pursuant to Clause 4(a)(iii). Three of the four non-exclusive examples of evidence of bad faith provided by Clause 4(b) are, however, based on commercial activity:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

578. *Ibid.*, quoting Jerome Gilson, *Trademark Protection and Practice* vol. 1, § 5.11[2], 5-234 (1996).

579. See for example, *St Moritz v. StMoritz.com*, WIPO Case No. D2000-0617; *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

The notion that all internet activity and therefore all uses of domain names are inherently commercial seems to have predominated.⁵⁸⁰ Instances in which registration of domain names used on non-commercial, information-providing websites is deemed to constitute bad faith are not uncommon.⁵⁸¹ This is perhaps part of a broader trend in the field of intellectual property law attributable to the TRIPS Agreement and its origins in the WTO towards viewing all intellectual property subject matter as inherently commercial. In a seminal analysis of the TRIPS Agreement, only moral rights are offered as a clear example of ‘the aspects of intellectual property that are not, in one form or another “trade-related”’ and thus potentially not falling within the scope of the TRIPS Agreement.⁵⁸²

The international intellectual property treaty framework has historically drawn a line with respect to the recognition of rights in names between commercial and non-commercial use, those falling within the latter category being left available for public use and not subject to private property claims.⁵⁸³ In taking the view that names in the DNS are inherently used commercially, the door is opened to proprietary claims even where names are not used on or in connection with goods or services, where they are used only in connection with the provision of information, commentary or opinion, as geographic names often are. Perhaps this is one reason to treat domain names as being a new type of property distinct from intellectual property, focusing only on the commercial interest of the subject matter in question.⁵⁸⁴

The far-reaching effects of the commercial characterization of otherwise non-commercial names are highlighted by the primarily commercial bases of rights relevant to geographic names. These are explored in particular in Chapter 8 below, but at this stage it suffices to highlight the fact that it is easier for otherwise non-commercial names such as geographic names to receive protection as trademarks where the context in which they are used is considered inherently commercial. On the other hand, if the use of geographic names is not considered inherently commercial, the protection available to them under existing intellectual property and related frameworks is automatically rendered quite limited.

580. Commonly adopted definitions of the term ‘domain name’ underscore this. See *for example*, Io Montes, Doctoral Dissertation in Law, Zürich, *Legal framework for domain names* 112 (2005) (defining the term ‘domain name’ as ‘the virtual presence of a business in the on-line world that gives access to the cyber-market-place’).

581. In the context of celebrity names, for example, see Chik, 46 (observing that ‘[e]ven when [use in commerce] was “weak”, UDRP panels have largely been willing and able to find a protectable right’).

582. Gervais, 12 n. 40.

583. This concept, called the ‘public domain’, is discussed in detail in Part III, Chapter 9, section 9.2.5.2.2 below.

584. See Chik, 44.

The traditional obstacles to registering geographic trademarks discussed above apply to what are termed ‘standard’ trademarks. The Paris Convention recognizes in Article 7*bis* another form of mark, called a ‘collective mark’. The sole condition articulated in Article 7*bis* is that collective marks must belong to an association, but sub-paragraph (1) makes clear that associations need not ‘possess an industrial or commercial establishment.’ This has been interpreted to exclude States and other public bodies, whose marks are nevertheless likely to ‘be protected by virtue of the rule of “national treatment” embodied in Article 2 of the Convention, and ... if these marks are at the same time official State signs or hallmarks indicating control and warranty – also by Article 6*ter*.’⁵⁸⁵

The criteria of collective marks’ registrability are not harmonized by either the Paris Convention or the TRIPS Agreement to the same degree that standard trademark registration criteria are, but rather have been left to be determined by domestic legislation. Still, collective marks are a form of trademark, and as such they are required to be distinctive. This means that they must be capable of distinguishing goods or services – in this case, those of the members of an association from those of other associations. Conceptually similar to collective marks are certification marks, which connect a mark not with a particular association but with goods meeting particular, specified standards (which may, but need not, relate to geography).⁵⁸⁶

Registration of a collective or certification mark offers geographic names that communicate geographic characteristics (particularly geographic origin) distinct advantages.⁵⁸⁷ Foremost, registration serves as proof of ownership just as it does for standard marks, despite the fact that ownership is an incongruous concept in this context: the association owns the mark and members of the association are authorized to use it. As such, some domestic laws prohibit or limit the transfer of collective marks.⁵⁸⁸ It has also been suggested that registration may prevent a geographical indication from becoming generic.⁵⁸⁹ Because they are forms of trademark, in the DNS

585. Bodenhausen, 130 (internal citations omitted).

586. See for example, Lanham Act, 15 U.S.C. §1054 (US); Trade Marks Act 1995 (Austl.) s. 169; Trade Marks Act No. 194 of 1993 (S. Africa) s. 42. On the protection of geographical indications as certification marks under US law, see Lynne Beresford, *Geographical Indications: The Current Landscape*, 17 *Fordham Intell. Prop. Media & Ent. L.J.* 979, 983-984 (2006-2007).

587. See Conrad, 21 (advocating the use of certification marks on an international level).

588. See for example, Trade Marks Act 1995 (Austl.) s. 166. On restrictions under US law, see David Snyder, *Enhanced Protections for Geographical Indications Under TRIPS: Potential Conflicts under the U.S. Constitutional and Statutory Regimes*, 18 *Fordham Intell. Prop. Media & Ent. L.J.* 1297, 1308 (2008).

589. See O’Connor, *The law of geographical indications*, 73 (citing by way of example the United States Lanham Act §1127, pursuant to which registered marks cannot be deemed generic provided the name remains geographically descriptive).

context, collective or certification mark registration gives rise to standing to bring a claim under ICANN's Uniform Domain Name Dispute Resolution Policy (UDRP) and the new Uniform Rapid Suspension (URS) procedure, and it would also give standing to object to a new gTLD application on the basis of existing legal rights. Registration as a collective or certification mark thus has the practical effect of transforming some geographic names from a situation of no recognition in the DNS to a situation of priority recognition.

5.4 GEOGRAPHIC TRADEMARKS: THE SWISS MODEL

The Swiss legislative project approved in late 2011⁵⁹⁰ proposing amendments to the federal trademark law, RS 232.11 *Loi fédérale sur la protection des marques et des indications de provenance*, provides a model approach to protecting geographic names. In the new Chapter 2a, headed *Marque géographique*, nationally registered indications of source and geographical indications, protected cantonal wine designations and geographical indications regulated in a Federal Council ordinance are deemed registrable.⁵⁹¹ The geographic mark is intended to apply beyond the scope of food and beverages to manufactured goods and services. Rather than confer exclusive rights, the mark would function similar to a collective mark.

It is likely significantly easier (although by no means a non-issue) to achieve the consensus needed to amend domestic law than international law to expressly protect geographic names as trademarks. The domestic law solution removes the need for international consensus, but of course the rights created are limited to the territory in which they are recognized. This is nevertheless likely in the context of the DNS to be satisfactory as an immediate solution to the problem of unauthorized use of geographic names as domain names, since local concerns can be addressed in local law without loss of sovereignty.

This approach, if adopted by other Member States, will result in a less-harmonized global trademark law landscape. The TRIPS Agreement permits this given its nature as a minimum standards agreement that allows members to provide for higher levels of protection. The minimum standard of Article 15(1) requires that signs 'capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.' Enabling other signs that may not be

590. L'Assemblée Fédérale, 'Loi sur la protection des marques et loi sur la protection des armoiries: Vers une réglementation différenciée', 11 Nov. 2011, <http://www.parlament.ch/f/mm/2011/pages/mm-rk-n-2011-11-11.aspx> (accessed 15 Oct. 2012).

591. RS 232.11 *Loi fédérale sur la protection des marques et des indications de provenance*, Art. 27a (nouveau), Feuille fédérale No 50, 15 Dec. 2009, at http://www.admin.ch/ch/f/ff/2009/index0_50.html.

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able to meet this minimum standard to be capable of constituting a trademark provides a higher level of protection for such other signs. Further, recognition in domestic law of a specific category of geographic trademark effectively enables the recognition of geographic names beyond a country's borders through ICANN contract-based policies such as the UDRP and the new URS. Both procedures are actionable only in respect of trademarks and neither makes a distinction between types or forms of trademark.

5.5 CONCLUSIONS ON INTELLECTUAL PROPERTY RIGHTS IN GEOGRAPHIC NAMES

As the analysis of existing rights protection mechanisms undertaken in Chapter 3 reveals, there is a significant advantage to be gained in the online environment by having offline rights recognized, in particular as trademarks, given that existing rights protection mechanisms are almost exclusively based on trademark rights. Consistent with this, in ICANN's New gTLD Program, applicants of new gTLDs consisting of geographic names that are already protected in domestic trademark law are far better placed to have these rights transposed to the top-level of the DNS and resist their use by others. Achieving such protection has, however, traditionally been a difficult exercise.

While it is conceptually not implausible to associate geographic names with intellectual property generally and trademarks specifically, it should nevertheless not be assumed that geographic names fall within either of these characterizations. Geographic names share many of the traditional characteristics of intellectual property subject matter, but they are not expressly mentioned within authoritative definitions of 'intellectual property' save for the special category of geographical indications. This does not stop States from protecting geographic names within domestic intellectual property law, but neither does it require them to do so.

Geographic names are also not expressly included within the scope of registrable trademarks as harmonized by the TRIPS Agreement. Standard trademark registration criteria, in particular the requirements of distinctiveness and use in connection with goods and services, clash with the primary function of geographic names as identifying a geographic location rather than a trader and its goods or services. Distinctiveness is less problematic in relation to collective and certification marks, which require instead a link in consumers' minds between a mark, particular goods and services, and a particular association or set of characteristics rather than a particular trader. In this way, rights can be recognized in geographic names but only in the limited context of origin connotations, which may otherwise receive (as is discussed in Chapter 7) *sui generis* protection as geographical indications. Before narrowing the focus to examine the sub-set of geographic names that is geographical indications, the next chapter considers whether international law recognizes rights more broadly, in geographic names as such.

Chapter 6

Rights in Geographic Names as Such

This is my country
Land of my choice
This is my country
Hear my proud voice. – ‘This is My Country’, American folksong, lyrics
by Don Raye

6.1 THE CHANGING USE AND REGULATION OF GEOGRAPHIC NAMES

Regulation of the use of geographic names is difficult to characterize as a purely domestic matter in the face of increasing use of geographic names as internet domain names. Prior to the introduction of the DNS, outside of the diplomatic context geographic names had a relatively limited, territory-bound scope of use that could effectively be controlled through domestic law: they appeared principally in maps, road signs and official documents, in published works such as encyclopaedias, newspaper articles, scholarly works, academic texts, and less often in advertising, trademarks and trade names. When they began to be used online, geographic names came unmoored from the territory, and thus the legal jurisdiction, that they identify. Now they are potentially registrable as domain names by anyone, anywhere. As active domain names they are potentially accessible by everyone, everywhere. Domestic legislation is ill-equipped to manage this situation.

International trademark law has also proven ill-equipped to regulate the use of geographic names, whether online or offline. As discussed in the previous chapter, geographic names have not traditionally been afforded

trademark status due to their ordinarily non-commercial nature and, even where they are used in a commercial context, their lack of an inherent capability to link in consumers' minds the particular goods or services of one trader from those of another. It is further acknowledged by even the most ardent supporters of rights at the international level that domestic trademark legislation evidences anything but a consistent approach to recognizing trademark rights in geographic names. A recent survey shows a significant number of WIPO Member States have in place laws preventing the registration of country names as trademarks.⁵⁹² This speaks against the existence of a general principle of international law recognizing protection of geographic names as trademarks. Looking at these results another way, the fact that many States do allow registration of country name trademarks also weighs against the existence of a general principle of international law recognizing an exclusive right of governments to geographic names.

If international law recognizes rights in geographic names as such, it seems that it must do so outside of trademark law. Nevertheless, most efforts to date regarding the recognition of rights, at least in respect of country names, have been directed at interpretations of or amendments to Article 6ter of the Paris Convention for the Protection of Industrial Property. That Article 'concerns *trademarks*, but its purpose is not to regulate their *protection as subjects of industrial property* but rather to *exclude them from becoming such subjects* in certain circumstances.'⁵⁹³ From its proscription against 'use, without authorization by the competent authorities' is derived the position that their unavailability for registration by the public as trademarks equates to country names belonging exclusively to the State they identify. Yet WIPO has interpreted Article 6ter as not pertaining to country names, leading to the conclusion that their use in the DNS cannot be prevented under that Article.⁵⁹⁴

592. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Summary of the Replies to the Questionnaire Concerning the Protection of Names of States against Registration and Use as Trademarks*, WIPO Doc. SCT/24/6 (14 Feb. 2011) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_24/sct_24_6.pdf). For an example at the supra-national level, see First Directive 89/104/EEC of the Council, of 21 Dec. 1988, to approximate the laws of the Member States relating to Trade Marks, OJ/L 40 of 11 Feb. 1989, p.1., which provides at Art. 3(2)(b) and (c) for refusal on grounds of 'high symbolic value' or inclusion of 'badges, emblems and escutcheons other than those covered by Art. 6ter of the Paris Convention and which are of Public interest, unless the consent of the appropriate authorities to its registration has been given in conformity with the legislation of the Member State'. Another example is the Protocol on Harmonization of Norms on Intellectual Property in Mercosur in matters of Trademarks, Indications of Source and Appellations of Origin (5 Aug. 1995, entered into force 6 Aug. 2000), 2145 U.N.T.S. 40. Art. 9(2) of the Protocol requires that Member States prohibit the registration of signs that, *inter alia*, 'are formed with national symbols or symbols of any country; signs that are susceptible of falsely suggestion a relation with ... national symbols of any country, or that offend their value or respectability.'

593. Bodenhausen, 95 (emphasis in original).

594. See WIPO, *WIPO II Report*, para. 284.

Chapter 6: Rights in Geographic Names as Such

Others have lent support to this conclusion,⁵⁹⁵ but practice in notification of Article 6*ter* emblems in the time since the WIPO II Report warrants reconsideration of this issue. Because Article 6*ter* has featured so strongly in the discussion as the most likely source of rights in country names as such, it features first in this chapter.

Looking beyond international intellectual property law as a basis of rights in geographic names as such, this chapter also addresses the situation of States' claims to exclusionary rights in country names being articulated on the basis of sovereignty, as if possession of a State's name is linked to the status of statehood. Indeed, the rights conferred by Article 6*ter* of the Paris Convention are said to be directed at 'emblems constituting the symbol of the sovereignty of a State.'⁵⁹⁶ Section 6.3 of this chapter considers the possible link between country names, sovereignty and statehood to determine whether claims to rights on this basis are supported by international law. Two separate questions are asked: first, whether having a name is a condition of statehood and second, whether having a name is a right of statehood. The limits of sovereignty are explored to delineate the authority of a State to select and use a name and interfere with others' selection and use of a name. Conclusions as to the existence under international law of rights in geographic names as such are summarized at the end of this chapter.

6.2 PARIS CONVENTION ARTICLE 6*TER* AND COUNTRY NAMES

6.2.1 ARTICLE 6*TER* (1)

6.2.1.1 Interpretation

The protection of country names under Article 6*ter* of the Paris Convention hinges upon the difference in wording between sub-sections (1)(a) and (1)(b)⁵⁹⁷ of that Article. Article 6*ter* (1)(a) requires that Paris Union members

595. See for example, Froomkin, *When We Say USTM, We Mean It!*; Mueller, *Governments and Country Names*.

596. See WIPO, *General information on Article 6*ter**, http://www.wipo.int/article6ter/en/general_info.htm (accessed 15 Oct. 2012).

597. **Paris Convention Art. 6*ter***

(1)(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other state emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental

prohibit registration as a trademark of emblems of national significance such as armorial bearings and national flags. Article 6ter (1)(b) contains a similar proscription in relation to IGOs except that it also expressly excludes the names of such organizations from trademark registration. This serves to highlight the absence of States' names in the wording of sub-section (1)(a).⁵⁹⁸ Relying on the principle of *expressio unius exclusio alterius*, WIPO has interpreted this subtle yet significant difference as not requiring that Member States exclude country names from registration as trademarks.⁵⁹⁹ This interpretation is consistent with:

the duty of a treaty interpreter to examine the words of the treaty to determine the intentions of the parties. This should be done in accordance with the principles of treaty interpretation set out in Article 31 of the Vienna Convention. But these principles of interpretation neither require nor condone the imputation into a treaty of words that are not there or the importation into a treaty of concepts that were not intended.⁶⁰⁰

Interpretations of the terms 'armorial bearings', 'other State emblems', 'official signs and hallmarks indicating control and warranty', and 'heraldic symbols' as including country names have been rejected. South Africa was an enthusiastic proponent of this interpretation, but the remark that this 'view has not been universally and definitely accepted'⁶⁰¹ suggests rather more support than may actually exist and conflicts with the acknowledgement made elsewhere that:

other members of the Paris Union had made very laudable efforts at ensuring protection against the use of official State names as elements of

organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection. (emphasis added)

598. See WIPO, *WIPO II Report*, paras 278-285. See also Bodenhausen, 94-99.

599. WIPO, *WIPO II Report*, para. 281.

600. *India – Patent Protection for Pharmaceuticals and Agricultural Chemical Products*, WT/DS50/AB/R (W.T.O. App. Body Report 19 Dec. 1997). See also Susy Frankel, *WTO Application of 'the Customary Rules of Interpretation of Public International Law' to Intellectual Property*, 46 Va. J. Int'l L. 365, 388-389 (2005-2006). An alternative interpretation of Art. 6ter (1) is defended by Matthew Rimmer in *Virtual Countries: Internet Domain Names and Geographical Terms*, February 2003 Media Int'l Austl. Incorp. Culture & Pol'y 124, 132 (2003). Rimmer posits that an alternate interpretation of Art. 6ter 'is justified, on the one hand, in light of its spirit and underlying objectives, and, on the other hand, in view of recent technological evolutions, in particular the emergence of the Internet as a commercial medium and the importance of domain names as valuable signposts in this context.'

601. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *The Protection of Country Names in the Domain Name System: Comments Submitted by the Government of the Republic of South Africa*, WIPO Doc. SCT/S2/6 (17 May 2002) (available at www.wipo.int/edocs/mdocs/sct/en/sct_s2/sct_s2_6.doc).

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trademarks, where such use constituted grounds for refusal of requests for trademark protection. However, the continued prevalence of such use in other countries provided clear evidence of the inconsistency of the efforts to provide protection to official State names.⁶⁰²

The ‘prevalence of such use’ offers support for WIPO’s interpretation of Article 6ter (1)(a), as do attempts prior and subsequent to the WIPO II Report to revise this article to expressly include country names.

6.2.1.2 Proposed Revisions

A proposal⁶⁰³ to revise Article 6ter (1)(a) to include country names as part of the 1980 Diplomatic Conference for the Review of the Paris Convention, though adopted,⁶⁰⁴ did not ultimately result in amendments. This signifies an understanding amongst WIPO States that, at that time, country names were not included in the scope of Article 6ter. At the same time, this evidences a desire to achieve such an outcome by creating new law. The question thus arises as to the current legal significance of that previous state of affairs; despite the failure to achieve codification then, has new law since been created? Renewals of the effort to amend Article 6ter (1)(a) by the Jamaican delegation to WIPO’s Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (the ‘WIPO Standing Committee’) offer insight. The Jamaican delegation’s proposal notably goes beyond the earlier attempt at revising Article 6ter, in that it seeks to impose a government consent requirement upon all applications for trademarks of official country names and homonymous representations of official names.⁶⁰⁵

It is clear from the Jamaican delegation’s remarks that it is believed as a starting point that new law is needed to protect country names.⁶⁰⁶ From this

602. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 309.

603. See WIPO, *WIPO II Report*, paras 281-283 (discussing WIPO, *Basic Proposals (Supplement to Document PR/DC/3)*, *Memorandum by the Director-General*). See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Submission by the Russian Federation*, WIPO Doc. SCT/21/5 Annex 1, para. 1 (2 Mar. 2009) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_5.pdf).

604. See WIPO, *Diplomatic Conference on the Revision of the Paris Convention*, WIPO Doc. PR/SM/9, discussed in WIPO, *WIPO II Report*, para. 282.

605. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Proposal by Jamaica*, WIPO Doc. SCT/21/6 (30 Mar. 2009) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_6.pdf).

606. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 309 (reporting the Jamaican delegation as speaking to ‘the clear absence of provisions specifically prohibiting the use of official State names’ and the proposed amendment to Art. 6ter being ‘not only warranted, but timely’). A finding of *opinio juris*

can be extrapolated the view that protection is not already extant. With the exceptions of the delegations of Brazil and Austria, who expressed the view that Article 6ter offers sufficient protection to country names,⁶⁰⁷ other members of the WIPO Standing Committee voiced no specific opposition to Jamaica's assessment. This can be interpreted as evidence of a general belief among members of the WIPO Standing Committee that international law on this issue does not yet exist, though it bears noting that not all members commented, nor was a vote on this specific point taken, nor was this issue debated in the General Assembly.

On the specifics of Jamaican delegation's proposed amendments to Article 6ter, members were more divided. The delegations of Iran (paragraph 312), Cuba (paragraph 314), Spain (paragraph 316), Greece (paragraph 325), Serbia (paragraph 328), Kenya (paragraph 329) and India (paragraph 332) expressed support.⁶⁰⁸ The delegations of Colombia (paragraph 313), Australia (paragraph 315), South Africa (paragraph 317) and Germany (paragraph 318) expressed non-support.⁶⁰⁹ In light of this it was decided⁶¹⁰ that the next step would be information-gathering through the drafting and circulation of a questionnaire⁶¹¹ of members' domestic laws restricting the registration and use of country names (specified to include official State names, short-form names, common use names, translations, transliterations and adjectival use) as trademarks.

Responses to this questionnaire evidence a lack of consistency in the exclusion of country names from registration and use as a trademark, with a near 60/40 split.⁶¹² That so many Member States responded in the negative to having in place limitations on country names – through trademark law,

as to existing customary law cannot be based upon such forward-looking assertions: Michael Akehurst, *Custom as a source of international law*, 47 British Y.B. Int'l Law 1, 37 (1974-1975).

607. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 320 (comments of Brazil that it 'believed that the existing legal framework established under the Paris Convention and the TRIPS Agreement already provided enough grounds for the protection of State names') and para. 323 (comments of Austria that it saw 'no need to amend Article 6ter, the existing legal framework being sufficient to protect State names').

608. *Ibid.*, para. 309.

609. *Ibid.*, paras 308-343 (comments by Austria, Australia, Brazil, Colombia, Denmark, Germany, and the Republic of Korea).

610. *Ibid.*, para. 343.

611. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Draft Questionnaire Concerning the Protection of Names of States Against Registration and Use as Trademarks*, WIPO Doc. SCT/23/4 (15 Feb. 2010) (available at http://www.wipo.int/edocs/mdocs/stlt/en/sct_23/sct_23_4.pdf).

612. The results broadly found that 61% of survey respondents exclude country names from registration and 42% from use as trademarks for goods. In addition, 64% of survey respondents exclude country names from registration and 41% from use as trademarks for services.

unfair competition law, general tort law or otherwise – supports the non-existence at this time of protection though Article 6ter (1)(a) for country names. This also weighs against the existence a general principle of international law of exclusive State control or ownership of country names. The revised proposal submitted by Jamaica, which takes into consideration the survey responses, acknowledges this lack of consistency. Jamaica (joined by Barbados) proposes that ‘there could be convergence among Members on an agreed approach to the protection of country names in the trademark/IP system having regard to differences that now exist in the protection afforded to country names across Member States.’⁶¹³

As to those States that have opted to exclude country names from trademark registration, this is not prohibited under the Paris Convention, but also not something they are obliged by that instrument or otherwise to do. The case studies submitted to the Standing Committee by Jamaica, Lithuania, Mexico, Poland, Republic of Moldova, Turkey, Uganda and the United States⁶¹⁴ evidence the varied ways in which countries which have opted to protect country names do so. A WIPO-developed ‘nation branding tool’ intended to guide Member States in developing a nation branding strategy and inform them of the role of country names within that strategy is projected to be published in late 2012.⁶¹⁵

It is interesting to note the resemblance between Jamaica’s proposal to restrict country names from registration as a trademark without government consent and the recommendation of the Governmental Advisory Committee (GAC) to ICANN to restrict creation of geographic new gTLDs without government consent. As to why the consent mechanism has come to be included in the *gTLD Applicant Guidebook* (and in less time) but not yet the Paris Convention, certain distinctions can be made. First, as new gTLD policy was being drafted, there was only one geographic gTLD already in existence: .asia. The *gTLD Applicant Guidebook*’s imposition of a policy of exclusion of country and territory name new gTLDs and consent to geographic new gTLDs does not threaten the viability of vast numbers of existing registrations in the way that existing trademarks would be threatened

613. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Proposal by the Delegations of Barbados and Jamaica*, WIPO Doc. SCT/27/6 para. 8 (18 Jun. 2012) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_27/sct_27_6.pdf).

614. Case studies are accessible through the Standing Committee’s electronic forum. See WIPO, *Browse Comments: 2012 Country Names*, <http://www.wipo.int/sct/en/comments/> (accessed 15 Oct. 2012). See also WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Information on Cases and Case Studies Relevant to the Protection of Names of States and on Nation Branding Schemes*, WIPO Doc. SCT/27/5, (18 Jul. 2012) (available at http://www.wipo.int/edocs/mdocs/sct/en/sct_27/sct_27_5.pdf) (hereinafter ‘*Information on Cases and Case Studies*’).

615. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Information on Cases and Case Studies*.

by such a change.⁶¹⁶ It is worth noting, however, that had the *gTLD Applicant Guidebook* restrictions on geographic strings applied at the time that the .asia gTLD was created, the application would have been rejected as an application for the name of a macro-geographical (continental) region unless it secured authorization from the relevant governments throughout that region.⁶¹⁷

Context is a second major difference: the GAC is an advisory body within ICANN of representatives who provide advice to a private corporation's Board of Directors. The WIPO Standing Committee, by contrast, is an advisory body within a United Nations specialist agency. There is the obvious difference (discussed in Chapter 4, above, in the context of non-State actors in the DNS norm-setting environment) in terms of the law-making capacity of WIPO and ICANN; the potential for actions of the former to create binding legal obligations may serve as a disincentive to taking decisive action, while no such obligations are created by GAC advice. Different membership, voting procedures, expertise of participants, and the relative ability of what may be perceived as stronger or weaker members to influence or drive the recommendation-making process may also contribute to different outcomes.⁶¹⁸

A further distinction can potentially be made as to the intended consequence of restrictions on geographic names from registration as trademarks or gTLDs. The Jamaican delegation has curiously stated that 'the intention of [its] proposal was not to create proprietary rights for States but rather to prevent unauthorized use of its name by individuals and companies.'⁶¹⁹ It is not clear how giving States the exclusive authority to prevent others' registration and use as a trademark of country names by means of a consent requirement underpinned by Article 6*ter* does not, by conventional understanding, equate to a property-type right in the name as such. WIPO's own articulation of the purpose of Article 6*ter* as being 'to

616. See Mueller, *Governments and Country Names*, 10 (positing that 'WIPO's caution was prodded in part by business trademark holders concerned about the potential confusion, and possible erosion of their rights, that might be caused by proliferating claims to names by governments, regions, and administrative entities').

617. See ICANN, *gTLD Applicant Guidebook*, section 2.2.4.1.2 (4) (referring to the UN's 'Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings' list, at <http://unstats.un.org/unsd/methods/m49/m49regin.htm>).

618. It has been suggested that both ICANN and WIPO suffer from sporadic attendance at meetings, particularly as regards developing country members, and this may have an impact on voting outcomes for both. On WIPO, see Coenraad Visser, *International intellectual property norm setting: Democratizing the World Intellectual Property Organization?*, 32 S. Afr. Y.B. Int'l L. 222, 223-224 (2007). On the GAC, see Froomkin, *When We Say US™, We Mean It!*, 865-866.

619. WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8, para. 311.

protect⁶²⁰ emblems falling within its scope is indicative of a proprietary-type right in the name as such rather than a non-proprietary limitation on the behaviour of others through, for example, consumer protection or unfair competition laws. Other provisions of the Paris Convention than *6ter* are directed at behavioural limitations;⁶²¹ if the intention were to restrict use that is likely to confuse, amendment to Article *6ter* should not be necessary. By contrast, no such denial has been expressed in the context of ICANN's exclusion/authorization mechanism for geographic new gTLDs. One gets the sense from GAC members' comments that the exclusion/authorization mechanism is driven by a desire to exert control of a proprietary nature over geographic names at the very least in order to prevent the creation of property or other rights belonging to others.

In summary, the prevailing view is that Article *6ter* does not require States to prevent the registration of country names as trademarks. Yet neither does that Article or other provisions of the Paris Convention prevent States from excluding country names from trademark registration on their own initiative. A survey of WIPO members' domestic law reveals a mixed practice in this regard, lending current support to WIPO's interpretation of Article *6ter* (1)(a) as not encompassing a right to protect country names. It further lends support to the non-existence of a general principle of international law of excluding country names from trademark registration and by corollary, to the non-existence of a general principle of international law of recognizing exclusivity of States' rights in country names.

6.2.2 ARTICLE 6TER (3): INTERPRETATION

In order to facilitate the exclusion of national emblems from national trademark registers, Paris Convention Article *6ter* (3) establishes a notice system whereby WIPO Member States communicate their national emblems to other members of the Union.⁶²² Communications pursuant to this provision are made by completing a 'Draft Request for Communication Under Article *6ter* 3(a) of the Paris Convention for the Protection of

620. WIPO, *Article 6ter of the Paris Convention: Protection of State Emblems, and Names, Abbreviations and Emblems of International Intergovernmental Organizations*, <http://www.wipo.int/article6ter/en/> (accessed 15 Oct. 2012).

621. Unfair competition and related laws limiting commercial behaviour are the focus of Chapter 8.

622. **Paris Convention Art. 6ter**

(3)(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

Industrial Property by a State'.⁶²³ Consistent with the prevailing interpretation of Article 6ter (1)(a) just discussed, the request form does not invite notification of country names.⁶²⁴ Notable, therefore, are the notifications made in 2008 by Iceland of its name in the English, Spanish/Castilian, French, Chinese, Arabic and Russian languages as State emblems.⁶²⁵ The legal significance of Iceland's actions is ripe for consideration in light of the conclusions reached above as to the non-support of Article 6ter for encompassing country names.

Iceland's actions could only be supported by a restrictive interpretation of Article 6ter 3(a) (and thus Article 6ter (1)(a)) giving 'extreme deference to the sovereignty of states'.⁶²⁶ The actual use of the restrictive approach by the PCIJ and ICJ is, however, limited and on this and other bases its use has been cautioned against.⁶²⁷ Furthermore, the United States is recorded as having objected to Iceland's notifications.⁶²⁸ Given that it is the only State to have done so, it could be questioned whether this signals tacit acceptance by other States. This is unlikely given that other States have not availed themselves of the notification process to notify State name-only emblems, although notifications have been made in which a country name is the prominent feature with the addition of a small emblem or sign.⁶²⁹ These have essentially the same effect as name-only notifications because notified emblems 'are protected ... against registration and use of trademarks which are identical to them or incorporate them as elements thereof'⁶³⁰ (emphasis added). They function as stylized marks, however, and do not unambiguously

623. WIPO, *Procedure to be Followed by States Wishing to Avail Themselves of Article 6ter of the Paris Convention for the Protection of Industrial Property*, <http://www.wipo.int/article6ter/en/states.htm> (accessed 15 Oct. 2012).

624. The notification provides: 'On behalf of the Government of [official name of the country], I would like to request the communication, under Article 6ter(3)(a) of the Paris Convention for the Protection of Industrial Property (Paris Convention), to the States party to the Paris Convention and to the Members of the World Trade Organization (WTO) not party to the said Convention, of the [armorial bearings], [flag], [State emblem] and/or [official sign or hallmark indicating control and warranty] adopted by [official name of the country].'

625. Art. 6ter Numbers IS8, IS9, IS10, IS11, IS12 and IS13, Notified as State Emblems in Circular Number 7596, 02 Apr. 2008, available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

626. Richard K. Gardiner, *Treaty Interpretation* 53 (Oxford University Press 2008).

627. See Hersch Lauterpacht, *Restrictive Interpretation and the Principle of Effectiveness in the Interpretation of Treaties*, XXVI British Y.B. Int'l L. 48, 62-67 (1949), discussed in Gardiner, *Treaty Interpretation*, 60-62.

628. Objections by the United States are recorded as having been made on 30 Mar. 2009 for each of Art. 6ter notification Numbers IS8, IS9, IS10, IS11, IS12 and IS13. Available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

629. An example is Canada's notification of State emblem CA16, available at WIPO, *Article 6ter Structured Search*, <http://www.wipo.int/ipdl/en/6ter/> (accessed 15 Oct. 2012).

630. Bodenhausen, 97.

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evidence an intention to reserve a country name as the notification of an unstylized name only.

Looking beyond treaty obligations to the formation of custom, although practice by the entire international community of States is generally not seen as required, and although it may even in certain situations be considered sufficient that only a minority of States have acted in a particular way,⁶³¹ it is surely the case that the action of one State is insufficient evidence of a general or even specific custom of recognizing rights in country names through Article 6ter (3). Only if other States were doing so and these notifications consistently went unchallenged, and further if these actions were the product a sense of legal obligation and not simply diplomatic courtesy, could this be a basis for customary law recognizing States' rights in country names.

At this time, Iceland's appears the only example of notification under Article 6ter (3) of a State emblem featuring only a country name. One reason for the isolation of this practice may be that States believe it too obvious to bother with an administrative process of notifying a desire to protect a name that they view as indisputably their own. Could it be that country names are so well-known that communication of an intention to assert exclusivity in them would be considered unnecessary because it is so obvious? Such a position is not so illogical when one considers that national flags have been exempt from the process of Article 6ter notification since the 1958 Lisbon Conference of the Paris Union for precisely this reason.⁶³² It would likewise not be unreasonable to suggest that in the modern world order, countries' names are just as, if not even more well-known than their flags. Perhaps the very obviousness of the ownership of both belies not merely a desire to preserve friendly relations but the observance of a legal obligation. Then again, the opposite may be true, where 'the absence of legal obligation *in such a context* is regarded as self-evident, just as, in municipal law, questions of good manners are treated as self-evidently not a matter for legal regulation.'⁶³³

Article 6ter (3)(a) of the Paris Convention expressly accommodates the fact that a flag so obviously belongs to the State that adopts it that the adopting State need not tell other States that it wishes to prevent its use or registration as a trademark.⁶³⁴ This reasoning depends on an understanding

631. See Vladimir Duro Degan, *Sources of International Law* 182, Martinus Nijhoff 1997.

632. See Gervais, 503 n. 819, citing Bodenhausen, *Guide to the Application of the Paris Convention*, 100.

633. International Law Association, *Statement of Principles Applicable to the Formation of General Customary International Law: Final Report of the Committee on Formation of Customary (General) International Law*, section 17(i) Commentary.

634. **Art. 6ter (3)(a)**: For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under

that a flag, once adopted, is assumed to be easily and immediately identifiable as a particular State's own, not only by other heads of State and the diplomatic community but by people all over the world near or far from the State in question who would otherwise have contact with the flag if used as a trademark. Exclusion of flags from registration as a trademark is justified because their 'registration or use would violate the right of the State to control the use of symbols of its sovereignty'.⁶³⁵ Yet are not country names symbols of sovereignty just as much as, if not more so than, flags? If so, is there a custom or general principle of international law recognizing States' rights in country names, even if the Paris Convention does not explicitly require this? To answer this question, this study now turns to a fundamental principle of international law that is the cornerstone of the international legal order itself: sovereignty.

6.3 SOVEREIGNTY AND COUNTRY NAMES

Both the proposal made by the Jamaican delegation to the WIPO Standing Committee to expand the scope of Paris Convention Article 6ter (1) and the recommendation made by ICANN's GAC to limit applications for new geographic gTLDs rely on sovereignty to justify restricting others' use of country names.⁶³⁶ Sovereignty has also been asserted as a basis for national control of country code top-level domains.⁶³⁷ Acknowledging the imprecision with which the term 'sovereignty' is used, as will be discussed further below, the impression one gets is that these are assertions of an inherent right of States to possess and control the use of their representative symbols, including their name. The seemingly inherent nature of the right suggests that it is derived from principles of natural law and the very conceptual and philosophical underpinnings of the international legal order. This is at least

the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make available to the public the lists so communicated. *Nevertheless such communication is not obligatory in respect of flags of States.* (emphasis added)

635. Bodenhausen, 96.

636. See comments of the Delegation of Jamaica 'that its proposal was intended to protect the integrity and sovereignty of a State' in WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, WIPO Doc. SCT/21/8 (26 Nov. 2009) para. 311. The GAC's view is expressed in the context of Internationalized Domain Names (IDNs) that 'ICANN should consult with the Government or relevant public authority of the territory concerned to determine whether there may be any potential infringement of their sovereign rights regarding their country or territory name'. GAC, *GAC Communiqué: New Delhi, 2*, <https://gacweb.icann.org/display/gacweb/GAC+31+Meeting+New+Delhi+%2C+India+9-14+February+2008> (February 2008, accessed 15 Oct. 2012).

637. See Von Arx & Hagen, 68.

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how the protection of State emblems by means of Article 6ter of the Paris Convention has been explained.⁶³⁸

Even if the protection of State emblems has as its origin the principle of sovereignty, one need look no further than the Paris Convention in order to identify international law expressly recognizing States' rights. It has been determined in the preceding section of this chapter that country names do not fall within this ambit; they are not specifically recognized in the Paris Convention or indeed any other international convention of universal scope as symbols of sovereignty meriting protection as such by means of an exclusion from trademark registration or other form of proprietary rights. States' names are nevertheless just as powerful and likely more universally recognizable identifiers than flags or other national symbols. The question therefore arises as to whether possession and protection of States' rights in their names can alternatively be based on the status of statehood, either as a condition of statehood or a consequence of it.

Various sources identify a link between national flags as expressions or 'emblems' of sovereignty and national identity,⁶³⁹ but less clearly articulated is a link between country names and sovereignty. If it were clear that sovereignty encompasses a right to possess and prevent others' use of a name, the issue of States' rights in country names would not be the open question that it is today. An answer can only be reached by piecing together historical and contemporary understandings of statehood in order to demarcate the legal connection, if any, between sovereignty, statehood and country name. This section of this chapter considers first whether having a name is a condition of statehood, and second, whether having a name is a right of statehood.

638. See Bodenhausen, 96.

639. See for example, Am. Jur. 2d *Flag* §1 ('A national or state flag is an emblem of that nation or state's sovereignty and authority.');

Michael Billig, *Banal Nationalism* 40-41 (Sage Publications 1995) (discussing the powerful impact of even unwaved flags as symbols of nationality and nationhood); Arundhati Virmani, *National Symbols Under Colonial Domination: The nationalization of the Indian flag, March-August 1923*, 164 *Past & Present* 169 (1999); Yael Navaro-Yashin, *Confinement and the Imagination: Sovereignty and Subjectivity in a Quasi-State*, in *Sovereign bodies: citizens, migrants and states in the postcolonial world* 103-104 (Thomas Blom Hansen & Finn Stepputat eds., Princeton University Press 2005) (discussing the importance of the flag of the Turkish Republic of Northern Cyprus to its sovereignty); *Sovereignty flag should fly, says Maori Party*, [nzherald.co.nz](http://www.nzherald.co.nz) (31 Jan. 2007) (available at http://www.nzherald.co.nz/waitangi-day/news/article.cfm?c_id=1500878&objectid=10421769).

6.3.1 NAME AS A CONDITION OF STATEHOOD

6.3.1.1 Statehood and Possession of a Name

Foundational historical works on sovereignty and statehood offer little support for the position that statehood is conditioned on having a name. For example, Emerich de Vattel, whose seminal work *Le Droit des gens; ou, Principes de la loi naturelle appliqués à la conduit et aux affaires des nations et des souverains* is considered one of the foundations of modern nation-State theory, saw only self-government as necessary.⁶⁴⁰ Yet where specific territories are identified as having achieved the status of sovereign statehood, they are commonly referred to by name. For example, Franciscus de Vittoria, another influential early contributor to international legal theory, described a ‘perfect State’ as ‘one which is complete in itself, that is, which is not a part of another community, but has its own laws and its own council and its own magistrates, such as is the Kingdom of Castille and Aragon and the Republic of Venice and the like’.⁶⁴¹ Little can be drawn from this, however, because the examples to which Vittoria points are States in possession of a name rather than States lacking names. The latter situation is not contemplated.

Contemporary scholars have experienced difficulty in articulating a definition or identifying attributes of statehood. This is at least partly due to the traditionally complex question of the need for recognition; that issue⁶⁴² must be set aside as separate from a possible link between statehood and country name.⁶⁴³ The definition of ‘State’ provided by Article 3 of the Montevideo Convention on Rights and Duties of States⁶⁴⁴ (hereinafter the ‘Montevideo Convention’) is viewed as setting the standard despite that convention being a regional agreement only.⁶⁴⁵ From it can be extrapolated

640. Emerich de Vattel, *Le Droit des Gens, ou Principes de la loi Naturelle, Appliqués à la conduite aux affaires des Nations et des Souverains*, vol. 1 Introduction, Bk I, ch I, §4 (1758).

641. Franciscus de Vittoria, *De Indis et de Iure Belli Relectiones*, in *Relectiones Theologicae XII* (Ernest Nys ed.), reprinted in *The Classics of International Law* 169 para. 7 §§425-426 (James Brown ed., 1917).

642. On recognition, see James Crawford, *The creation of states in international law* 38, 89-95 (2d ed., Clarendon Press 2007).

643. See Matthew C. R. Craven, *What's in a Name? The Former Yugoslav Republic of Macedonia and Issues of Statehood*, 16 *Austl. Y.B. Int'l L.* 199, 238 (1995) (arguing that a link between name choice and recognition ‘offends the notion of sovereignty itself’). See also Louis Henkin et al., *International Law: Cases and Materials* 253 (3d ed., West 1993).

644. Convention on Rights and Duties of States adopted by the Seventh International Conference of American States (26 Dec. 1933, entered into force 26 Dec. 1934), 165 L.N.T.S. 19.

645. The definition of ‘State’ in the Restatement (Third) of Foreign Relations Law of the United States almost precisely mirrors that of the Montevideo Convention, and in comments to the Restatement it is said that this definition ‘is well-established in international law’. See *Restatement (Third) of the Foreign Relations Law of the United*

four principal criteria: a permanent population; a defined territory; government; and capacity to enter into relations with other States.⁶⁴⁶ Clearly, possession of a name is not one of these four criteria. Nor is it one of the other criteria that have been suggested over time, including permanence, willingness and ability to observe international law, civilization, and legal order.⁶⁴⁷ The requirements of membership in the United Nations are based first and foremost on having achieved statehood, but even these do not expressly require that aspiring members have a name.⁶⁴⁸

It is only plausible to take the position that possession of a name is a condition of statehood if it can be said that having a name, while not an express criterion of statehood, is a necessary or inherent aspect of a criterion of statehood. Considering in turn the four criteria identified by the Montevideo Convention as just noted, it could only be possible to interpret possession of a name as a necessary aspect of having the capacity to enter into relations with other States; the crux of this argument is that having a name is a necessary aspect of legal personality.⁶⁴⁹ This will now be considered.

6.3.1.2 Name as a Necessary Aspect of Legal Personality

Having legal personality means being treated by the law as possessing the capacity to enter into formal relations with other legal persons and be held

States § 201 Comment a (1987). As to the effectiveness of the definition, see John Dugard, *Recognition and the United Nations* 123 (Cambridge University Press 1987) ('Although Rhodesia, Transkei, Boputhatswana, Venda, Ciskei and, possibly, the Turkish Republic of Northern Cyprus met or meet the traditional requirements of statehood expounded in the Montevideo Convention of 1933, it is absurd to contend that any of these entities [...] acquired the status of "State".')

646. Even those who deem it inappropriate to view determinations of statehood as a checklist-based activity nevertheless tend to accept that certain fundamental characteristics 'constitute in legal terms the core of the concept of statehood'. Crawford, 42. Crawford qualifies this by arguing that the strictness of the elucidation of these characteristics in individual cases depends upon context and 'that the exclusive attributes of States do not prescribe specific rights, powers or capacities that all States must, to be States, possess: they are presumptions as to the existence of such rights, powers or capacities, rules that these exist unless otherwise stipulated. This must be so, since the actual powers, rights and obligations of particular States vary considerably. The legal consequences of statehood are thus seen to be—paradoxically—matters of evidence or rather of presumption.'

647. *Ibid.*, 89-95.

648. Art. 4(1) of the Charter of the United Nations requires that applicants: (1) be a state; (2) be peace-loving; (3) accept the obligations of the UN Charter; (4) be able and willing to carry out these obligations.

649. See Igor Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 93 Am. J. Int'l L. 155, 160 (1999).

accountable for one's actions, as are natural, living persons.⁶⁵⁰ States are 'the principal examples of international persons.'⁶⁵¹

Without a name, it has been argued, it is not possible to be identified and therefore not possible to engage and transact with others:

From the point of view of legal theory, the inherent right of a state to have a name can be derived from the *necessity* for a juridical personality to have a *legal identity*. In the absence of such an identity, the juridical person (such as a state) could – to a considerable degree (or even completely) – lose its capacity to conclude agreements and independently enter into and conduct its relations with other juridical persons. Therefore, the name of a state appears to be an *essential element of its juridical personality* and its statehood.⁶⁵² (emphasis in original)

This use of the term 'legal identity' helps to highlight that beyond their undeniably symbolic function, names primarily play a practical function in serving to identify things and distinguish them from others. Having some means by which to be identified and differentiated is certainly facilitative of engaging in relations with others, and contract law seeks as a general matter that parties be identifiable. A name is one means of distinguishing a party from another, but it is certainly not the only means; reference to geographical location, numbers and symbols could all be used, even if not as easily and memorably as names.⁶⁵³ Each State could, for example, be assigned a number according to its order of accession to the United Nations, or it could be identified by its longitudinal and latitudinal coordinates or an image of its national flag. It could also be assigned a completely random and meaningless number. An analogy can be drawn with transactions between persons, in which context it is not strictly necessary that a party be referred to by name as opposed to another identifier or that the identifiers used have semantic value or be unique as against all others. It is simply necessary to provide sufficient information to distinguish one from others.⁶⁵⁴

650. See *Restatement (Third) of the Foreign Relations Law of the United States* § 206 comment c.

651. Henkin et al., 241. See also Vattel, 1 §2 ('[L'Etat] deviant une personne morale, qui a son étendue et sa volonté propre, et qui est capable d'obligations et de droits').

652. Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160; Igor Janev, *Some Remarks of the Legal Status of Macedonia in the United Nations Organization*, 53 Rev. Int'l Aff. 1108 (2002).

653. Reference can be made here to domain names and the early decision to assign a name in addition to a number to identify hosts in the network. This is discussed in detail in Part I, Chapter 2, section 2.1.3 above.

654. See Janev, *Some Remarks on Legal Status*, 2 ('In the absence of such an identity, the juridical person, such as a state, could to a large extent (or even completely) lose [sic] its capacity to interact with other such juridical persons (e.g., conclude agreements, etc.) and independently enter into and conduct its external relations. The name of a state is, thus, an essential element of its juridical personality and, consequently, of its statehood.').

Nor is a name required of a legal person in order to express consent to be bound, bearing in mind that the voluntary expression of State consent is the cornerstone of positive international law. Just as illiterate persons can indicate their willingness to be bound to a legal instrument by stamping their fingerprint upon it or inscribing the letter 'X', so too could States communicate consent to be bound in a variety of visible ways. It is the expression of consent that is of consequence, not the form that expression takes or the possibility that others' expression of consent takes a similar form.

Another key aspect of relations between legal persons is participation in dispute resolution. In the international context one can look to the Statute as well as the Rules of the ICJ (hereinafter, the 'ICJ Rules'),⁶⁵⁵ the latter of which specify the manner in which proceedings are to be initiated and conducted. Article 38(1) of the ICJ Rules requires in relevant part that an application to commence proceedings before the Court must 'indicate the party making it, the State against which the claim is brought, and the subject of the dispute'. Considering subject matter first, the *Island of Palmas Case (or Miangas)*⁶⁵⁶ demonstrates that territorial disputes are resolvable even where the territory the subject of the dispute is referred to by multiple names.

Turning to the naming of State parties, while Article 38(1) of the ICJ Rules does not expressly require that State parties have a name, names are typically used for this purpose. Article 38(1) does not preclude commencing proceedings before the Court against, for example, 'the State whose application for membership in the United Nations was made' on a particular date or in a particular numbered document or 'the fiftieth State to join the United Nations', but these are not things that ordinarily occur in practice. One need look no further than the ICJ's docket for evidence of the practice and consistency of the use of States' names in proceedings.⁶⁵⁷ It must be noted, however, that not all States have come before the ICJ and its predecessor, the Permanent Court of International Justice,⁶⁵⁸ with a name of their own choosing. An example of this is the ongoing case brought by the

655. Rules of Court (14 Apr. 1978, entered into force 1 Jul. 1978, as amended 14 Apr. 2005), I.C.J. Acts & Docs 4.

656. *Island of Palmas Case (or Miangas)*, Hague Court Reports 2d. 83 (1932), (Perm. Ct. Arb. 1928), 2 U.N. Rep. Intl. Arb. Awards 829.

657. On the significance of practice in treaty interpretation, see Vienna Convention on the Law of Treaties, Art. 31(3)(b). The ICJ docket is available at ICJ, *List of Cases referred to the Court since 1946 by date of introduction: List of contentious cases and advisory proceedings*, <http://www.icj-cij.org/docket/index.php?p1=3&p2=2> (accessed 15 Oct. 2012).

658. Publications of the Permanent Court of International Justice are available at ICJ, *Permanent Court of International Justice: Publications of the Permanent Court of International Justice (1922-1946)*, <http://www.icj-cij.org/pci/index.php?p1=9> (accessed 15 Oct. 2012).

'former Yugoslav Republic of Macedonia' against Greece,⁶⁵⁹ a dispute which is comprehensively discussed in the next section of this chapter. The applicant's name in that case is a provisional one recommended by the UN Security Council, and not the name under which that country sought membership in the United Nations. The relevant question at this point in the enquiry is whether, without the provisional name, this country would have been prevented from raising its claim against Greece. In other words, was possession of a name (provisional or permanent) procedurally necessary to commencing the case?

Article 38(1) of the ICJ Rules requires identification of 'the party making' the application. It does not demand a particular format that identification must take. Identification of a party other than by its name would not run counter to ordinary meaning or defeat the object and purpose of the treaty as prescribed by Article 31(1) of the Vienna Convention, but the existence of a consistent subsequent practice 'in the application of'⁶⁶⁰ Article 38(1) of the ICJ Rules supports an interpretation of this as calling for use of a State party's name.⁶⁶¹ Because all parties before the Court have had names, it is difficult to envisage what might otherwise occur. Presumably, names are used unless the party in question does not have a name, in which case some other identifier must – from a purely practical standpoint – be an acceptable substitute. Unless otherwise specified in the Rules, standing could not logically be denied of the basis of non-possession of a name if possession of a name is not itself a condition of statehood.

This discussion reveals that a distinction must be made between practical necessity and legal necessity. It is undeniably the case that names facilitate the functions of the UN, and so much so that this could be characterized as necessary (as opposed to simply desirable) from a perspective of operational convenience. Yet from the ease of using names does not automatically follow a legal obligation. Neither can a general sense of legal obligation be easily inferred from existing evidence of practice in the functions of the UN. Rights in country names as such derived from States' possession of legal personality, or indeed derived from any other condition or right of statehood, cannot be based upon practicality or '(mere) comity (*courtoisie, comitas gentium*)'.⁶⁶²

Even if it is the case that State parties are required to be referred by name in ICJ proceedings, this does not equate to a strict prohibition against nameless parties' participation in proceedings, nor does it speak to exclusive

659. *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Memorial (I.C.J. 20 Jul. 2009) (available at <http://www.icj-cij.org/docket/files/142/16354.pdf>).

660. Vienna Convention on the Law of Treaties, Art. 31(3)(b).

661. See Gardiner, 225-232.

662. International Law Association, *Statement of Principles Applicable to the Formation of General Customary International Law: Final Report of the Committee on Formation of Customary (General) International Law*, Commentary to section 2(vi).

rights of States in their names. There is no clear evidence of a felt sense of legal obligation to possess a name in order to participate as a UN member, and such a legal obligation is not expressly articulated in UN instruments. From these things and from the fungible nature of identifiers in legal transactions it can be concluded that possession of legal personality does not require possession of a name, and thus that States' claims to exclusive rights in country names should not be based upon their possession of legal personality.

6.3.2 NAME AS A RIGHT OF STATEHOOD

6.3.2.1 A Right of States to Select a Name

Even if not required in order to achieve the status of statehood, possession of a name may alternatively be a right that accrues as a consequence of having achieved statehood. This reasoning makes a distinction between the capacities that must be possessed in order to achieve the status of statehood from capacities or rights that, once statehood is achieved, are imputed to the State. This bifurcated approach is reflected, for example, in the Restatement (Third) of the Foreign Relations Law of the United States⁶⁶³ (the 'Restatement'), which sets out the required elements of statehood in § 201 and then separately in § 206 the 'capacities, rights and duties of States' as:

- (a) sovereignty over its territory and general authority over its nationals;
- (b) status as a legal person, with capacity to own, acquire, and transfer property, to make contracts and enter into international agreements, to become a member of international organizations, and to pursue, and be subject to, legal remedies;

663. The Restatements are treatises prepared and published by the American Law Institute on a variety of legal topics. They have the primary aim of providing guidance to judges and lawyers by clarifying and explaining fundamental legal subjects. The Third Restatement of the Foreign Relations Law of the United States captures international law as applicable to the United States, which 'stems largely from customary international law and international agreements to which the United States is a party.' ALL, *Publications Catalog: Restatements of the Law – Foreign Relations Law of the United States*, http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=33 (accessed 15 Oct. 2012). The Restatement of the Foreign Relations Law of the United States of course offers the perspective of only the United States as to international law, but the high regard in which its reporters are held mean that it has significance beyond that one country's borders: 'It should and will be consulted by lawyers in all parts of the world. For the lawyer in the United States, it may be a kind of authoritative codification. For lawyers in other countries, it is a valuable source of information about the foreign relations power in the United States and prevailing American views on international law.' Rudolf Bernhardt et al., *Book Review*, 86(3) Am. J. Int'l L. 608, 609 (1992) (reviewing *Restatement (Third) of the Foreign Relations Law of the United States*).

- (c) capacity to join with other states to make international law, as customary law or by international agreement.

The wording of § 206 of the Restatement is illustrative of the general absence in international law and scholarship of an express attribution to States of a right to select or use a name. It is necessary, therefore, to consider whether such a right is implied because it is inherently an aspect of sovereignty, bearing in mind that sovereign rights derive from the 'simple fact' of the State's 'existence as a person under international law.'⁶⁶⁴

In determining whether possession and exclusive use of a name is a sovereign right of States, the advice offered by Justice Haynes of the High Court of Australia should be borne in mind: 'Sovereignty is a concept that legal scholars have spent much time examining. It is a word that is sometimes used to refer to very different legal concepts and for that reason alone, care must be taken to identify how it is being used.'⁶⁶⁵ Similar concern is expressed, for example, in the comments to § 206 of the Restatement, which specify that its use in this context of States' rights 'implies a state's lawful control over its territory generally to the exclusion of other states, authority to govern in that territory, and authority to apply law there.'⁶⁶⁶ The exercise of this control is a core right to inhere in all States.

As to whether there are more specifically articulated rights of States (which could include a right to a name), there are divergent views. Vattel's reliance in the eighteenth century on natural law to explain the origin of States' rights echoes in modern arguments supporting an inherent, 'inalienable right' of States to select and use a name.⁶⁶⁷ These arguments can also be linked to a right to culture and heritage, similar to what was termed by an early twentieth century diplomat the right to 'national distinctiveness'.⁶⁶⁸ Contrasting with these is the view that 'statehood does not involve any inherent substantive rights' but is 'rather a form of standing'.⁶⁶⁹ The works of historical and contemporary scholars who support the notion of States' rights offer little support for a specific right of States to select and use a name. Nevertheless, it is difficult to oppose the idea that a State may choose and use a name by virtue of the exercise of sovereignty and further that when it does so, it is free by virtue of that authority to place restrictions on others'

664. Convention on the Rights and Duties of States, Art. 4.

665. *Joose v. Australian Securities and Investment Commission*, 159 A.L.R. 260, 263-264 (High Ct. Aust'l 1998).

666. *Restatement (Third) of the Foreign Relations Law of the United States* §206 comment (b).

667. See for example, Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160.

668. F.A. Pezet, *The Future Relations of the United States with Latin America from the Latin American Viewpoint*, 7(2) Nat'l Conf. Foreign Rel. U.S. 287, 287 (1917).

669. Crawford, 44-45.

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use of its chosen name within its sovereign territory. The same can be said of national flags and domestic laws prohibiting their desecration.⁶⁷⁰

In other words, sovereignty does not require that a State select and use a name to identify itself, but rather bestows States with the inherent authority to do so if they so choose.⁶⁷¹ In practice, States do select a name. This is evidenced by the United Nations Terminology Bulletin Country Names (from which, not coincidentally, the names of ccTLDs are derived).⁶⁷² Though not expressly required under the UN Charter or the Rules of Procedure of the General Assembly to do so, applications for UN membership refer to applicants by name.⁶⁷³ indeed, compliance with Rule of Procedure 134⁶⁷⁴ would be difficult as a practical matter if this were not done. The would be UN member is then acknowledged by that name on acceptance.⁶⁷⁵

670. An interesting comparative analysis of flag desecration laws is provided by Ute Krüdwagen, *Political Symbols in Two Constitutional Orders: The Flag Desecration Decisions of the United States Supreme Court and the German Federal Constitutional Court*, 19(2) *Ariz. J. Int'l & Comp. L.* 679 (2002).

671. See Janev, *Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System*, 160 ('every state naturally has an inherent right to a name').

672. UN Terminology Bulletin No. 347/Rev. 1, *United Nations Terminology Bulletin Country Names* (available at <http://unstats.un.org/unsd/methods/m49/m49alpha.htm>). On the naming of ccTLDs, see Part I, Chapter 2, section 2.4.2 above.

673. Recent examples include the Application of the Republic of Bosnia and Herzegovina at U.N. Doc. A/46/921 S23971 Annex (19 May 1992) ('On behalf of the Presidency of the Republic of Bosnia and Herzegovina and in conformity with the United Nations Charter, I am submitting the request of the Republic of Bosnia and Herzegovina to be admitted to the United Nations Organization as a full Member State.'). Application of the Democratic Republic of East Timor at U.N. Doc. A/56/953-S/2002/558 Annex (20 May 2002) ('In connection with the application by the Democratic Republic of East Timor for membership in the United Nations, we have the honour, on behalf of the Democratic Republic of East Timor and in our capacities as the President of the Republic and the Prime Minister, to declare that the Democratic Republic of East Timor accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfil them.'). Application of the Republic of Montenegro, U.N. Doc. A/60/890-S/2006/409 Annex (16 Jun. 2006) ('In line with the results of the referendum held in the Republic of Montenegro on 21 May 2006, organized in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, in my capacity as President of the Republic of Montenegro, I have the honour to request the admission of the Republic of Montenegro to membership in the United Nations.').

674. Rule 134 of the Rules of Procedure of the General Assembly of the United Nations provides: 'Any State which desires to become a Member of the United Nations shall submit an application to the Secretary-General. Such application shall contain a declaration, made in a formal instrument, that the State in question accepts the obligations contained in the Charter.'

675. Continuing with the above examples, see the Admission of the Republic of Bosnia and Herzegovina to membership in the United Nations, U.N. Doc. A/Res/46/237 (22 May 1992); Admission of the Democratic Republic of East Timor for admission to membership in the United Nations, U.N. Doc. A/Res/57/3 (2 Oct. 2002); Admission of

Sovereignty gives the State not only the authority to choose a name, but also to limit others' use of the selected name within its territory. There are, for example, reportedly 'thousands' of laws in Canada and 'probably millions' in the United States, that 'bestow upon "public authorities"' (which are often not elected bodies but government agencies, state-owned corporations, or non profit organizations) an absolute right to control particular signifiers.⁶⁷⁶ All States have the authority to select names and regulate their domestic use in this way, and have this authority equally, as articulated in the Montevideo Convention at Article 4: 'States are juridically equal, enjoy the same rights, and have equal capacity in their exercise.' Yet equality among States raises certain challenges in this context in that it does not prevent a State from selecting another State's name as its own; indeed, equality suggests that they are each equally entitled to make a particular selection.

The question of States' rights in country names therefore does not end with name selection and use within the sovereign territory. It must further be considered whether States' authority to select a name is somehow limited by the rights of other States and relatedly, whether States have a right to be referred to by their chosen name.

6.3.2.2 A Right of States to Object to Another State's Name

It is entirely possible that one State might choose to be identified in the same or similar way as another. This duplication of identifiers could be said to have a direct impact on the States in question and those transacting with them. While on the one hand it might be said that the only limit to name choice is imagination, in practice, geographic name choices are drawn from a relatively limited field of reference that is, by its very nature, shared with neighbouring States: 'The names of the countries are usually associated with their geographical location and dimension. Geography, at any rate, political geography, as reflected in the boundary making and delimitation of frontiers, territorial, maritime and aerial or atmospheric, changes with time.'⁶⁷⁷ As borders fluctuate and time passes, so too are history, culture, language and environmental conditions shared, and it is from this pool of shared experience that geographic names are often drawn. Thus the very same reasoning behind one State's choice of name could also underpin another (particularly neighbouring) State's choice of name.

It is clear why a State would prefer that other States not choose the same name, and this bears out in practice. The relative infrequency with which naming conflicts have arisen is nevertheless surprising when one considers

the Republic of Montenegro for admission to membership in the United Nations, U.N. Doc. A/Res/60/264 (12 Jul. 2006).

676. Coombe, 135-136.

677. Sompong Sucharitkul, *The Inter-temporal Character of International and Comparative Law Regarding the Rights of the Indigenous Populations of the World*, 50 Am. J. Comp. L. 3, 10 (2002).

the frequency with which new States have been created and old ones extinguished in modern times: it has been noted that more than 125 new States have been created or reconstituted since the coming into force of the United Nations Charter in 1945, not including name changes.⁶⁷⁸ Even in this highly dynamic environment, the only major conflict is the ongoing dispute between Greece and the country provisionally referred to as the 'former Yugoslav Republic of Macedonia', or 'FRYOM'. This dispute will next be critically analysed, but first, some comments must be made about its uniqueness. One conclusion to potentially be drawn from the scarcity of name choice disputes is that there is a customary rule of avoiding selecting a conflicting State name. The existence of such a rule is undermined, however, by the number of States with shared names⁶⁷⁹ and the simple fact that in none of these cases has conflict arisen to the level of the Macedonia name dispute. What drives name choice (and, by corollary, avoidance of choosing what others have already chosen) may not be a sense of legal obligation but rather simply an overriding interest in avoiding confusion with other States – a practical preference to not be confused with others. Although (as concluded in the previous section of this chapter) possession of a name is not a necessary aspect of legal personality, it does make transacting with other legal persons more convenient. Where similar names can be differentiated, these can be used without serious issue.

What then would lead a State to select a name insufficiently distinctive from or objectionable to others? One possibility already alluded to in the previous paragraphs is that shared history and experiences could lead multiple States to select the same or similar representations and symbols of their sovereignty. Objection on this basis is defensible in principle only for neighbours or States otherwise currently or historically related. Exemplary of such a situation are neighbours Greece and the FRYOM, one of the new nations borne out of dismembered Yugoslavia.

Responding to Greece's objection to Macedonia's application⁶⁸⁰ for UN membership, the UN Security Council recommended that the country be 'provisionally referred to for all purposes within the United Nations as "the Former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the State'.⁶⁸¹ The name is but one

678. See Crawford, 715 and Appendix 1.

679. Examples of identical or materially similar country names include: (a) the Democratic Republic of the Congo and Republic of the Congo, (b) the Republic of Equatorial Guinea, the Republic of Guinea, the Republic of Guinea-Bissau, and the Independent State of Papua New Guinea, (c) the Democratic People's Republic of Korea and the Republic of Korea, and (d) Niger and Nigeria.

680. U.N. Doc. A/47/876-S/25147 (1992), discussed in detail in Michael C. Wood, *Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties*, in *Max Planck Y.B. U.N. L.* 236-241 (Armin von Bogdandy ed., Martinus Nijhoff Publishers 1997).

681. S.C. Res. 817, 7 Apr. 1993, U.N. Doc. S/INF/49 (1993), at para. 2.

aspect of this now long-running dispute; in earlier proceedings before the European Court of Justice (ECJ) Greece complained of large scale efforts to promote 'the idea of a unified Macedonia' through that country's chosen name (Republic of Macedonia), the wording of its constitution, and such activities as 'the circulation of maps, calendars and car stickers' and 'school history books' depicting the FYROM as encompassing Greek territory.⁶⁸² Also concerning to Greece was the FRYOM's adoption of the 'Sun of Vergina' on its flag, this emblem having been discovered in excavations on Greek territory.⁶⁸³ Greece demanded that the FRYOM cease use of its chosen name and symbols and related activities, all of which it interpreted as territorial claims amounting to a threat of war.⁶⁸⁴

The ECJ's decision went not to resolving the name dispute but rather to interim measures requested by the European Commission to suspend economic sanctions imposed by Greece against the FRYOM, which request was ultimately rejected by the Court.⁶⁸⁵ A subsequent Interim Accord between Greece and the FRYOM required only undertakings to continue negotiation 'with a view to reaching agreement' on this matter.⁶⁸⁶ In 2008, the FRYOM instituted proceedings before the ICJ asserting that the Interim Accord had been breached by Greece by its objection to the FRYOM's application to join the North Atlantic Treaty Organization.⁶⁸⁷ In December 2011, the Court found⁶⁸⁸ that Greece's objection violated the Interim Accord. The applicant's clear intentions to refer to itself by its constitutionally chosen name within NATO (which ultimately resolved to delay a decision on admission pending resolution of the name dispute) was considered not to render Greece's objection lawful. The Court seized the opportunity to highlight the fact that the dispute has been ongoing for sixteen years, and to remind the parties of their obligation under the Interim Accord to make good faith efforts towards its resolution.

682. *Commission of the European Communities v. Hellenic Republic*, C-120/94 R I-03037 (E.C.J. 29 Jun. 1994), at para. 8.

683. *Ibid.*, para. 9.

684. *Ibid.*, para. 31.

685. *Ibid.*, para. 48.

686. Interim Accord (with related letters and translations of the Interim Accord in the Languages of the Contracting Parties), Greece-the former Yugoslav Republic of Macedonia, signed in New York 13 Sep. 1995, 1891 U.N.T.S. 1-32193; 34 I.L.M. 1461 (13 Oct. 1995).

687. ICJ, Press Release, *The former Yugoslav Republic of Macedonia institutes proceedings against Greece for a violation of Article 11 of the Interim Accord of 13 September 1995*, No. 2008/40 (17 Nov. 2008) (available at <http://www.icj-cij.org/docket/files/142/14881.pdf>).

688. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 Dec. 2011.

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This dispute is a unique constellation⁶⁸⁹ and though it remains unresolved, an attempt can be made to draw conclusions from the legality of Greece's demand that its neighbour avoid adopting the name 'Macedonia' in order to broadly articulate limitations upon States' sovereign rights to select a name. Notably, leading scholars have avoided doing so.⁶⁹⁰ One highly regarded text characterizes the matter as one of 'political guarantees ensuring that [the FRYOM] had no territorial claims towards a neighbouring Community state'.⁶⁹¹ Another sees the dispute as illustrative of the potential problems inherent in States' sovereign authority, but makes no statement as to the legality of Greece's demands.⁶⁹² The problem, it has been said, is that this dispute:

both clarifies and obscures the status of country names in international law. On the one hand, both the UN's and the EU's reactions suggest that Greece's claim that a country's choice of name could be a form of aggression was not, as an abstract matter, per se unreasonable. Thus, it appears that international law recognizes the theoretical possibility that a country's choice of name might amount to hostile propaganda against a neighbour, such as in 'the use of a denomination which implies territorial claims.' In so doing, it suggests that the presumed norm that countries control their names has been weakened; conversely, it suggests that the idea that one country has rights regarding another country's use of names might theoretically have more merit than many had previously suspected.⁶⁹³

These comments attribute to States a right to select a name, but posit that this right is not absolute. This is consistent with the principle of sovereignty, which gives the State supreme but not absolute authority within its territory. Interference in domestic matters is permitted by Article 2(7) of the United Nations Charter, as well as by customary international law. Further, the Friendly Relations Declaration requires that 'every State shall refrain from any action aimed at the partial or total disruption of the national unity or

689. Craven, *What's in a Name?*, 238 (characterizing this as 'the first occasion in which it has ever been suggested that a State, or for that matter a people, should not be the exclusive determinants of their own cultural and political symbols').

690. See Demetrius Andreas Floudas, *Pardon? A Name for a Conflict? FRYOM's Dispute with Greece Revisited*, in *The new Balkans: disintegration and reconstruction* (George A. Kourvetaris et al. eds., East European Monographs 2002).

691. Malcolm N. Shaw QC, *International Law* 452 (6th ed., Cambridge University Press 2008).

692. Colin Warbrick, *States and Recognition in International Law*, in *International Law* 241 (Malcom D. Evans ed., Oxford University Press 2006).

693. Froomkin, *When We Say USTM, We Mean It!*, 856, quoting the European Commission's 16 Dec. 1991 Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, as reprinted in Danilo Türk, *Declaration on Yugoslavia*, 4(1) Eur. J. Int'l L. 73, 73 (1993).

territorial integrity of any other State or country.⁶⁹⁴ If the right of a State to select and use a name is based on sovereignty, then this limitation must correspondingly apply, meaning that one State's name choice cannot constitute an unlawful interference with the sovereignty of another State. Such an interpretation is supported by the general principle of abuse of rights, which serves to limit a State's choice of name to the extent that the choice had the effect of 'inflict[ing] upon another State an injury which cannot be justified by a legitimate consideration of its own advantage.'⁶⁹⁵ A link to the general principle of good faith is equally clear given that '[a] state that acts in good faith is unlikely to abuse its rights.'⁶⁹⁶ A related principle of 'good neighbourliness' was raised by Judge ad hoc Roucounas and suggested in his dissenting opinion to have been breached by the FRYOM.⁶⁹⁷

The determination of whether one State's choice of name constitutes an unlawful interference with the sovereignty of another State or a breach of the principles of good faith, abuse of rights or good neighbourliness depends entirely on the facts in question.⁶⁹⁸ As a result, it is impossible to develop universal rules around the selection of country names. In the Macedonia dispute, the European Commission Declaration on Yugoslavia required each former Yugoslav republic to declare that it had agreed, *inter alia*, 'to adopt constitutional and political guarantees "ensuring that it has no territorial claims" against a neighboring E.C. country and that it would not use a name (e.g., Macedonia) that implied such claims and would conduct "no hostile propaganda activities" against a neighbouring E.C. country.'⁶⁹⁹ This is likely as precise as rules could be articulated. This difficulty, along with the infrequency with which naming disputes have arisen,⁷⁰⁰ may help to explain

694. *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, GA/RES/2625(XXV), U.N. Doc. A/8082 (1970).

695. L. Oppenheim, *International Law: A Treatise* 345 (8th ed., H. Lauterpacht ed., Longmans, Green & Co. 1955).

696. M. Byers, *Abuse of Rights: An Old Principle, a New Age*, 47 McGill L.J. 389, 406 (2002).

697. *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 Dec. 2011 (Dissenting opinion of Judge ad hoc Roucounas).

698. See Craven, *What's in a Name?*, 234, citing *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, I.C.J. Rep. 1986 (I.C.J. 27 Jun. 1986).

699. European Community, *Declaration on Yugoslavia and on the Guidelines on the Recognition of New States (Extraordinary European Political Cooperation Ministerial Meeting, Brussels, 16 Dec. 1991)*, 31 I.L.M. 1485 (1992).

700. There is another reported instance of a naming dispute in recent history, in which proposed changes to the name of the country of Uzbekistan were rejected on the basis of their being interpreted as territorial claims. See Crawford, 68 n. 141, citing Karen Dawisha & Bruce Parrott, *Russia and the new states of Eurasia: the politics of upheaval* 85 (Cambridge University Press 1995).

the non-existence of expressly acknowledged, detailed rules of international law on name selection.

There is no denying the potential for the choice of name by a State and even the purely internal, domestic use of the name to provoke (intentionally or unintentionally) changes in the world order. That part of the population in State A might be motivated by State B's choice of name to exercise a right of self-determination is a realistic possibility. Yet self-determination in its contemporary form is a right of peoples to be involved in a meaningful way in the constitution and maintenance of the systems that govern their lives.⁷⁰¹ The possibility that, as a right of peoples, self-determination encompasses a right to self- or group-identify using geographic names is explored in Chapter 9, below, along with other potential human rights bases of rights in geographic names.

6.3.2.3 A Right of States to be Referred by Their Chosen Name

A separate but related question is whether States have a right to be referred to by their chosen name. As discussed above, there is a strong practical and diplomatic incentive for States to have a name, but this does not necessarily speak to the existence of a legal obligation to have a name either generally or for a particular purpose. It has been noted earlier in this chapter that there is a practice of using names in the functions of the UN, though there are no provisions in the UN Charter that require members to have a name. The use of names is directed in certain UN procedures, for example in General Assembly plenary voting.⁷⁰² Yet use of *a* name is one matter, while use of a State's *chosen name* is another; the issue here is specifically whether, to give one specific example, the United States of America is obliged to use the name 'Russian Federation' when referring to that country within or even beyond the UN context.

For the most part, the practice of using names in the UN is axiomatic. Names are ordinarily used – and without any special emphasis on their being used – in accordance with the wishes of the named UN member. One notable instance of special emphasis is the General Assembly's pronouncement 'that, in accordance with the desires of its people, South West Africa shall henceforth be known as "Namibia"'.⁷⁰³ Applications are ordinarily accepted using standardized language,⁷⁰⁴ and the new member is then referred to by

701. See Rupert Emerson, *Self-Determination*, 65 Am. J. Int'l L. 459, 465-466 (1971).

702. General Assembly of the United Nations, *Rules of Procedure and Comments*, Rule 87.

703. *Question of South West Africa*, G.A. Res. 2372(XXII), U.N. Doc. A/Res/2372(XXII) (12 Jun. 1968).

704. General Assembly resolutions on administration are worded as follows:

The General Assembly,

Having received the recommendation of the Security Council of [date] that [State name] should be admitted to membership in the United Nations,

other members accordingly. The case of the FRYOM is in this context again a unique constellation: the UN Security Council avoided making use of that country's chosen name when resolving on its membership application, instead recommending admission of the 'State whose application is contained in document S/25147', and then recommending the use of a provisional name.⁷⁰⁵ The General Assembly then admitted the so-called 'former Yugoslav Republic of Macedonia' using the standardized language just noted.

The Russian Federation provides an example of a different situation, that of an existing UN member changing its name. Leaving aside questions of continuation of membership⁷⁰⁶ which lie outside the scope of this study, the Russian Federation's assumption of the Union of Soviet Socialist Republics' seat at the United Nations was characterized by then-President Yeltsin as a simple name change. He simply requested 'that the name "Russian Federation" should be used in the United Nations in place of the name "the Union of Soviet Socialist Republics"'.⁷⁰⁷ There is no record of objection to this request,⁷⁰⁸ and the name 'Russian Federation' has accordingly since been used in the UN General Assembly and Security Council.⁷⁰⁹

Looking beyond these forums to the ICJ, it has been noted in the previous section of this chapter in the context of legal personality that there is uniform practice in referring to parties by name in ICJ disputes, and that this practice is supported at least to some extent by the wording of Article 38(1) of the ICJ Rules. That Article does not expressly require that an official name be used, but presumably the name of a UN member as per its admission is the name that will be used. The 'Macedonia' case is illustrative: it was docketed as '*the former Yugoslav Republic of Macedonia v. Greece*'. That case nevertheless offers no particular support to the existence of a legal obligation to refer to parties by their chosen name except insofar as it evidences a sense of felt obligation on the FRYOM's part to refer to itself by its provisional name as recommended by the UN Security Council. More assistance would have been offered were the roles of the parties in that case reversed (in other words, it would be interesting to see whether Greece would identify the respondent as something other than the 'former Yugoslav Republic of Macedonia'). Greece's counter-memorial and rejoinder did refer

*Having considered the application for membership of [State name],
Decides to admit [State name] to membership in the United Nations.*

See for example, Admission of the Republic of Montenegro to membership in the United Nations.

705. S.C. Res. 817, para. 2.

706. On continuation, see Yehuda Z. Blum, *Russia Takes Over the Soviet Union's Seat at the United Nations*, 3(2) Eur. J. Int'l L. 354 (1992).

707. U.N. Doc. 1991/RUSSIA, 1, excerpted in Blum, at 356.

708. See Crawford, 677.

709. See for example, U.N.G.A. Res. A/RES/65/281 (17 Jun. 2011).

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to the ‘former Yugoslav Republic of Macedonia’,⁷¹⁰ which is procedurally sensible, given that Greece was the respondent, but not expressly required by Article 49 of the ICJ Rules. It is also interesting to note that the respondent in the case against Greece before the ECJ was not identified as ‘Greece’ but rather as the ‘Hellenic Republic’ (the name under which it entered the Treaty Establishing the European Community).⁷¹¹

Of these instances just discussed, the language that is most strongly supportive of a right of members to be referred to by their chosen name is that of the UN Security Council in directing other members to refer to the ‘former Yugoslav Republic of Macedonia’ and do so ‘for all purposes within the United Nations’.⁷¹² This, ironically, is not a case of a State being referred to by its chosen name, but rather a provisional name to be used pending a dispute involving the name. Even if this or perhaps the Namibia case or standard practice offers a basis upon which a right of States to be referred to by their chosen name can be asserted, this is an extremely limited right which would prevent only alternative name use within and for UN purposes. This would not prevent the use of alternative names (e.g., a reference to the United Kingdom of Great Britain and Northern Ireland by the slang name ‘Old Blighty’,⁷¹³ or even a reference to that country as ‘Britain’ or ‘the UK’) by a member of the GAC in ICANN discourse, a government official from commenting to the press, or even in international relations outside of the UN context, while acknowledging the potential detriment such actions might in some instances have in terms of good international relations. Much of State conduct around naming appears to have as its basis not clearly identifiable legal rules but rather good international relations with the aim of avoidance and resolution of disputes through good faith negotiations. The United Nations Security Council has encouraged this from Greece and the FRYOM,⁷¹⁴ though as-yet those States have been unable to achieve resolution of their dispute.

710. *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Counter-Memorial by Greece (I.C.J. 19 Jan. 2010) (available at <http://www.icj-cij.org/docket/files/142/16356.pdf>); *Case Concerning the Application of Article 11, Paragraph 1, of the Interim Accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece)*, Rejoinder of Greece (I.C.J. 27 Oct. 2010) (available at <http://www.icj-cij.org/docket/files/142/16356.pdf>).

711. Treaty Establishing the European Community (Consolidated Version) (25 Mar. 1957).

712. S.C. Res. 817, para. 2.

713. Michael Quinion, *World Wide Words: Blighty*, <http://www.worldwidewords.org/qa/qabli1.htm> (accessed 15 Oct. 2012).

714. See S.C. Res. 817.

6.4 CONCLUSIONS ON RIGHTS IN GEOGRAPHIC NAMES AS SUCH

Two related bases have been explored in this chapter as potential sources of rights in geographic names under international law: Article 6*ter* of the Paris Convention for the Protection of Industrial Property and the principle of sovereignty. First, Article 6*ter* requires that States prohibit the registrability as trademarks of State flags and other emblems, as well as the emblems of IGOs. In this chapter, the interpretation of Article 6*ter* (1)(a) by WIPO has been confirmed with reference to recent survey evidence and as-yet unsuccessful attempts to amend that Article. The results of the questionnaire drafted by the WIPO Standing Committee indicate that many States are reserving country names from trademark registration even though they are not obliged under Article 6*ter* to do so. An isolated instance of the use of the notification procedure specified in Article 6*ter* (3) by Iceland has also been highlighted, but other actions in this space suggest that this is a unique interpretation of Article 6*ter* which does not constitute evidence of a custom of reserving rights in country names.

From discussions around proposed amendments to widen the scope of Article 6*ter* to include country names can be extrapolated the conclusion that there currently is no international law recognizing rights in country names as such that could be called upon to justify their exclusive use by States and the prevention of their use by others. The analysis documented in this chapter supports that view. It is only logical to reach the same conclusion as respects sub-national names. That said, Article 6*ter* does not prevent States from reserving rights in geographic names as such; it simply does not require that they do so. The protection offered by ICANN through the *gTLD Applicant Guidebook* is therefore not inconsistent with Article 6*ter*.

The second basis of rights evaluated in this chapter is the foundational international law principle of sovereignty. Governments have looked to the principle of sovereignty in order to justify what they view as an inherent right to prevent others' use of 'their' names. While there may be a growing body of examples of conflict over private parties' use of geographical names,⁷¹⁵ there are surprisingly few examples of name conflicts between States. As a result, there are very few constellations from which support of States' rights in country names can be drawn. In this chapter it has been considered that there are actually three rights potentially encompassed in a right of States to country names: a right to select a name, a right to object to another State's name, and a right to be referred to by a chosen name. In relation to none of these is there an express right contained in any international convention, though the ICJ Rules do refer to the identification of party names, while the UN General Assembly Rules refer to plenary voting according to name. At

715. For examples, see discussion of UDRP cases involving geographic names at Part II, Chapter 3, section 3.3.1.2 above.

the same time, in relation to none of these is there an express denial of a corresponding right in any international convention.

From the as-yet unresolved dispute between Greece and the FRYOM over the name 'Macedonia' can be extracted certain conclusions about States' rights to select and object to a name. This dispute is the manifestation of a rational tendency to select a name that happens to be based upon an identity or history shared with neighbouring States. The escalation of this dispute into an international legal dispute is, however, unique. From it and other instances of name similarity not escalated into international disputes it can be deduced that there is no rule of international law preventing one State from selecting the same or similar name as another State's. This dispute suggests that a State's right to select a name is not absolute, but rather is limited by obligations not to encroach upon another State's sovereignty and to act in good faith. There are no clear rules to determine when this occurs, nor is it practicable to attempt to develop rules beyond the general proscription imposed upon the FRYOM not to interfere with the territorial integrity of another State. Nor for the same reasons is it practicable to develop rules around objections to States' choice of name. These situations can only be resolved on a case-by-case basis, having due regard to the facts at issue.

As to the implications of these conclusions in the context of domain names, conflicting applications for new geographic gTLDs are inevitable: there are already in existence several constellations of similar country names which, although they have not previously been disputed in the offline context, could be the subject of a future challenge in the online context due to the technical requirement of absolute name uniqueness and the policy decision to prevent confusingly similar TLD strings. Although conflicting applications for a .macedonia new gTLD were not made in the initial round of top-level expansion under the New gTLD Program, these remain a real possibility in future expansion rounds if the prohibition on applications for country and territory names is lifted. It would be inappropriate to develop a single rule of priority on the basis of sovereignty, simply because sovereignty does not support such a rule. On this basis, as a matter of policy and to preserve the stability of the internet and its DNS, ICANN should consider refusing the creation of any geographic new gTLD for which competing applications have been submitted.

Finally, to the extent that a right to be referred to by one's chosen name can be derived from practice within the UN and before the ICJ, these are limited to those specific contexts and will not serve to prevent failures to properly identify a State in other contexts such as the DNS. Further, the recognition of a right in that limited context is not alone determinative of the exclusivity of a State's rights in a particular name in that particular context, or certainly in any other context.

Chapter 7

Rights in Geographical Indications

The protection of geographical indications is not only about the protection of names. It is about the protection of a certain quality and reputation that is attributable to a product that is made in a defined place. A mere name does not necessarily capture that concept of quality.⁷¹⁶

7.1 GEOGRAPHICAL INDICATIONS AND WHY THEY PRESENT CHALLENGES

Geographic names that are used to denote the particular geographic origin of particular comestible products have since the early days of the Paris Convention for the Protection of Industrial Property held a special legal status separate from their potential registrability as trademarks. That status is, however, nowhere near as clearly defined or harmonized as it is for trademarks. When it comes to the recognition of rights under international law in geographical indications and related origin-connoting names, the question is therefore not whether rights are recognized, but whether the extent of their recognition is sufficient to have any impact upon their unauthorized use in a particular context such as the DNS.

The TRIPS Agreement contains provisions respecting 'geographical indications', but since long before its coming into force there have been two separate international treaty frameworks directed at the recognition of rights in origin-connoting geographic names. Entirely different agreements, one thing they have in common is a low number of signatories, as a result of

716. O'Connor, *The law of geographical indications*, 18.

which they can both reasonably be characterized as failures. A different picture emerges at the regional level, where the European Union in particular has constructed a robust protection framework out of Member States' traditions of recognizing rights.⁷¹⁷ Discussions on the issue of international recognition of geographical indications suggest that efforts are driven by Europe's eagerness for other members of the international community to embrace its framework or something closely resembling it.⁷¹⁸

All members⁷¹⁹ of the WTO are required by the TRIPS Agreement to provide the means to protect geographical indications against use that would mislead the public or constitute unfair competition. It is up to members to determine how to meet this requirement. There is a vast range of approaches, including:

unfair competition and consumer protection, passing off, *sui generis* protection of geographical indications via registration, passive protection where the concept of geographical indications is defined and protection available through courts but no registration system, trademarks with geographical references, collective, guarantee and certification trademarks, and administrative schemes of protection.⁷²⁰

What the TRIPS Agreement provides is not a right in geographical indications as such but rather a limited right to prevent particular kinds of uses depending on the type of product to which the name relates. Importantly, as will be explored in detail throughout this chapter, a distinction is made between indications relating to wine and spirits and indications relating to other types of products.

This is as much as the WTO has – as-yet – managed to achieve in terms of reaching agreement among its members, and even getting to this point was difficult.⁷²¹ For those countries whose laws offer greater protection to geographical indications, including protection of indications as such, the TRIPS Agreement compromise offers little comfort because they see what is at stake as being much more than mere names, but national identity.⁷²² On the other hand, for those countries in which geographical indications have not traditionally been protected, the TRIPS compromise represents the edge of a slippery slope; members' ability to offer greater protection than that required under the Agreement (the so-called 'minimum standards framework') gives

717. *Ibid.*, 123.

718. See for example, Cottier, *The Prospects for Intellectual Property in GATT*, 404.

719. See WTO, *Understanding the WTO: The Organization, Members and Observers*.

720. O'Connor, *The law of geographical indications*, 67.

721. See Cottier, *The Prospects for Intellectual Property in GATT*, 404.

722. See Tomer Broude, *Taking 'Trade and Culture' Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. Pa. J. Int'l Econ. L. 623, 661-622 (2005).

rise to 'a clear risk of excessive protection' and of needing to make fundamental changes to existing law.⁷²³

As with geographic names generally, recent discussions about an international standard of protection for geographical indications have been motivated by the use of these names in the online environment. The World Intellectual Property Organization's WIPO II Report offered specific examples of unauthorized registrations of second-level domain names comprised of geographical indications, but as with geographic names generally, it was concluded that the TRIPS Agreement offered insufficient support for preventing this activity.⁷²⁴ A decade later, the registration of second-level domain names comprised of geographical indications remains problematic. With the expansion of the DNS through the New gTLD Program, this problem will quickly and inevitably spread to the system's top-level, as well as into the lower levels of newly created gTLDs. It is therefore imperative to examine the status of geographical indications under international law in order to anticipate, and in at least some instances preventatively address, specific issues with potential to arise during the DNS expansion process.

This chapter begins with an introduction to the legal concept of a geographical indication and the international framework of protection that remains in development after more than one hundred years. Mirroring the way in which geographical indications are separated in this framework, the analysis of legal rights that follows is divided into two parts, the first exploring rights in wine and spirit geographical indications, and the second exploring rights in geographical indications for other products.

7.1.1 GEOGRAPHICAL INDICATIONS, INDICATIONS OF SOURCE AND APPELLATIONS OF ORIGIN

The term 'geographical indication' is one of three legal terms used to describe geographic names that identify a particular product as originating from a particular geographical location. 'Geographical indication' is the term used by the TRIPS Agreement, Article 22(1) of which states: 'Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' Key to this definition are three points: first, its limitation to 'goods'; second, the required nexus of the good with a particular territory; and third, the demonstration of nexus through a 'quality, reputation or other characteristic' being 'essentially attributable' to geographical location. These three points

723. Thomas Cottier, *The Agreement on Trade-Related Aspects of Intellectual Property Rights*, in *Trade and Intellectual Property Protection in WTO Law: Collected Essays* 145 (Cameron May 2005).

724. WIPO, *WIPO II Report*, paras 223-228 and 237-245.

differentiate geographical indications from 'indications of source' and 'appellations of origin', the two other legal terms used to describe geographic names that identify a particular product as originating from a particular geographical location.

The precise characteristics of each of these types of names are identified immediately below, but as an initial matter the existence of significant points of overlap between the three terms should be emphasized: all 'appellations of origin' are considered to fall within the definition of 'geographical indication' while at the same time are also 'considered to be a *species* of the *genus* "indications of source".⁷²⁵ It is nevertheless unwise to consider 'geographical indication' an 'umbrella term'; 'not all indications of source are covered by the definition of geographical indications since not all of them would necessarily have the "quality, reputation or other characteristic of the good which is essentially attributable to its geographical origin".⁷²⁶

Of the three terms, 'indication of source' is the broadest and longest in use at the international level. What started as draft Article 6 at the 1880 Paris Conference would ultimately take shape in Article 10 of the Paris Convention for the Protection of Industrial Property as a prohibition on the use of false indications of the source of goods.⁷²⁷ This prohibition was limited to the use of false indications only to the extent that they were used in conjunction with a false, fictitious, or deceptive trade name.⁷²⁸ Such narrow drafting provoked a separate agreement in 1891, the Madrid Agreement for the Repression of False or Deceptive Indications of Source (the 'Madrid (Indications of Source) Agreement'), which made actionable any 'false or deceptive indication', whether direct or indirect, of the country or place of origin.⁷²⁹ Notably, no nexus to the territory in the form of characteristics or reputation specifically attributable to the geographical location was required under the Madrid (Indications of Source) Agreement. More than eighty years later, the World Intellectual Property Organization's Model Law for Developing Countries on Appellations of Origin and Geographical Indications maintained this position, defining 'indication of source' as 'any expression or sign used to indicate that a product or service originates in a country or region or a specific place'.⁷³⁰

Despite the liberalization of Article 10 achieved at the 1958 Paris Convention Revision Conference at Lisbon,⁷³¹ interest in yet stronger protection led to another, separate agreement, the Lisbon Agreement for the

725. Bodenhausen, 23 (internal citations omitted).

726. O'Connor, *The law of geographical indications*, 24.

727. See Conrad, 23.

728. *Ibid.*

729. Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, Art. 1(1) (14 Apr. 1891), 828 U.N.T.S. 163.

730. WIPO, *Model Law for Developing Countries on Appellations of Origin*, PJI/91/2, No. 809(E)(1975).

731. See Conrad, 23.

Protection of Appellations of Origin and their International Registration (the 'Lisbon Agreement').⁷³² Article 2(1) of the Lisbon Agreement defines the term 'appellation of origin' as 'the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors'. Unlike the Paris Convention and Madrid (Indications of Source) Agreement, the Lisbon Agreement applies only to geographic names and protects them as such; symbols and other signs are not protected. Thus it offers stronger protection than the previous agreements, but to a narrower set of indications.

Although Articles 22, 23 and 24 of the TRIPS Agreement were based on the Lisbon Agreement, its definition of 'geographical indication' marks a return to a broader scope of covered indications. The TRIPS Agreement does not require that an indication be a geographic name, but where an indication is geographic, it must relate to a single Member State only: country names qualify, but cross-border regional names like 'Caribbean' do not.⁷³³ Further, the TRIPS Agreement requires that an indication 'identify' a 'good' rather than 'designate' a 'product', though it has been concluded that this change in wording is of no legal effect.⁷³⁴ Finally, the TRIPS Agreement allows for a good's non-physical reputation to be the basis of its nexus to the geographical location, while the Lisbon Agreement requires a physical tie in the form of quality and characteristics of a product as directly resulting from its geographical location.

By reason of its inclusion in the TRIPS Agreement, to which all WTO members are bound, the term 'geographical indication' is the most authoritative of these three terms for origin-connoting names. Neither the Madrid (Indications of Source) Agreement nor the Lisbon Agreement has a critical mass of contracting parties, the former with thirty-five and the latter with twenty-seven.⁷³⁵ In terms of an up-to-date exposition of rights, 'geographical indication' is also the most appropriate term by reason of its use in the TRIPS Agreement and in the Doha trade round agenda.⁷³⁶ This chapter thus primarily focuses on 'geographical indications' as these are defined in the TRIPS Agreement, with the goal of determining their status under international law at the point of launch of ICANN's New gTLD Program. Where

732. Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (31 Oct. 1958, entered into force 25 Sep. 1966), 923 U.N.T.S. 205.

733. See O'Connor, *The law of geographical indications*, 52-53.

734. See Gervais, 294 n. 378.

735. WIPO, *Lisbon Agreement (Total Contracting Parties: 27)*, http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=10; WIPO, *Madrid Agreement (Indications of Source) (Total Contracting Parties: 35)*, http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=3 (accessed 15 Oct. 2012).

736. *Doha WTO Ministerial Declaration*, Art. 18, WTO Doc. WT/MIN(01)/DEC1 (20 Nov. 2001) (available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).

specific issues of overlap or conflict with the other two forms of rights ('appellations of origin' or 'indications of source') are present, these are identified.

7.1.2 THREE CONVENTIONS, THREE GROUPS OF GOODS

The immediately preceding section of this chapter identifies three conventions that specifically address geographic names used to identify a particular product as originating from a particular geographical location: the Madrid (Indications of Source), Lisbon and TRIPS Agreements. These three conventions are distinguishable not only by the subject matter they protect ('indication of source', 'appellation of origin' and 'geographical indication', respectively) but also by the level of protection extended to their respective subject matters.

Of the three conventions, the Lisbon Agreement offers the highest level of protection by recognizing rights in appellations of origin through a registration system comparable to the trademark system. Members are required by Article 1(2) to protect through domestic law all appellations of origin 'as such', meaning that only rights in the nature of exclusive property are recognized and recorded in the register. Mere limitations on the use of appellations through, for example, consumer protection, tort, unfair competition law or equitable principles are not sufficient. Specifically, domestic law must prohibit, pursuant to Article 3, all usurpation or imitation, including 'style' or 'type' indications. All appellations are treated equally, without regard to type of product, and appellations protected in the home country are immunized under Article 6 from 'genericization' in all signatory States. This means that protection can never be lost on the grounds that the public has come to equate the geographic name with a general type of product, unless this happens in the country of origin or for some other reason protected status is lost there. This high level of protection, and in particular the protection against genericization, helps to explain the relatively low number of signatories⁷³⁷ to this agreement of whom several, not coincidentally, are the strongest advocates of increasing geographical indication protection in the WTO Doha trade negotiations round. These efforts are discussed in detail later in this chapter.

The Madrid (Indications of Source) Agreement, by contrast, covers a broader scope of indications but offers them a lower standard of protection, preventing only false and misleading use. Use includes representations on a

737. Contracting parties comprise: Algeria, Bulgaria, Burkina Faso, Congo, Costa Rica, Cuba, Czech Republic, Democratic People's Republic of Korea, France, Gabon, Georgia, Greece (not in force), Haiti, Hungary, Iran (Islamic Republic of), Israel, Italy, Mexico, Montenegro, Morocco (not in force), Nicaragua, Peru, Portugal, Republic of Moldova, Romania (not in force), Serbia, Slovakia, Spain (not in force), the former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey (not in force). WIPO, *Lisbon Agreement (Total Contracting Parties: 27)*.

product as well as advertising and related communications – what the Agreement terms at Article 1(1) ‘direct’ and ‘indirect’. Other than its broadening of protection to not merely false but misleading indications, there are few substantive differences between the Madrid (Indications of Source) Agreement and the protection offered under the Paris Convention.⁷³⁸ On the issue of genericization, members are prevented by Article 4 from treating any indications for wine as generic terms. This protection is not extended to other products.

TRIPS Agreement members, by far the most numerous of these three conventions, are required to prevent the importation of goods that directly or indirectly use false indications under Article 10 of the Paris Convention, by virtue of that convention’s inclusion by reference. This is despite the fact that Article 10 was not initially geared toward origin statements: Article 10(1) requires no nexus to a geographical location; false indication of the ‘identity of the producer, manufacturer, or merchant’ is actionable. Given the necessarily commercial nature of this right and its broader applicability to geographic names other than geographical indications, Article 10 is discussed in the next chapter, which focuses on unfair competition and related rights arising out of the commercial use of geographic names.

Articles 22 through 24 of the TRIPS Agreement are, on the other hand, specifically focused on geographical indications and are set out in that Agreement under a separate heading of that name. Nexus to territory is required, but ‘any aspect or element of geographical origin, known or unknown, physical or human, may underpin a quality, reputation or other characteristic of a good identified as originating in a particular place.’⁷³⁹ More clearly than the Madrid (Indications of Source) Agreement but unlike the Lisbon Agreement, protected indications are divided into two groups by the type of product they identify: wines and spirits, and other products. The scope of protection afforded under the TRIPS Agreement to these two groups of products is explored next, and areas of conflict between this protection and the use of protected names in the DNS are identified.

7.2 RIGHTS IN GEOGRAPHICAL INDICATIONS UNDER THE TRIPS AGREEMENT

7.2.1 SCOPE OF PROTECTION FOR WINE AND SPIRIT GEOGRAPHICAL INDICATIONS

There has long been a practice in Europe of identifying wines by the name of the region from which they originate. Chianti has been identified as

738. See O’Connor, *The law of geographical indications*, 31.

739. *Ibid.*, 54.

possibly being the first legally defined geographical indication, its status having been declared by a Decree of Grand Duke Cosimo III de' Medici in 1716.⁷⁴⁰ The name 'Champagne', the globally-recognized icon for the many issues and questions surrounding the recognition of rights in geographical indications at an international level, is said to have been formally recognized in 1887 by the Angers Court for use only in connection with wines produced and grown in the Champagne region of France.⁷⁴¹ This was not the first recognition of a geographical indication in France, but rather the start of a period of momentum in which courts 'confirmed that the name of a locality belonged to all the inhabitants that had interest to exploit it to make the situation of their establishment known, and the place of origin or of manufacturing of their products.'⁷⁴²

The concern in early cases recognizing geographical indications seems not to have been the identification of particular characteristics of products as a nexus to the territory of origin; rather, the names served purely to link geographical location of fabrication with product.⁷⁴³ Today, Article 22(1) of the TRIPS Agreement requires that there be a deeper nexus between territory and product: it is not sufficient that a good simply originate from a defined geographical location. For all products, not just wines and spirits, it must be shown that 'a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.' In meeting this standard, 'any aspect or element of geographical origin, known or unknown, physical or human, may underpin a quality, reputation or other characteristic of a good identified as originating in a particular place.'⁷⁴⁴

A nod to their longstanding use in the 'Old World', Article 23 of the TRIPS Agreement accords a higher level of protection to wine and spirit geographical indications than it does to indications for other goods. Specifically, Article 23(1) sets a standard of absolute protection, meaning that it requires Member States to prevent all uses of a wine or spirit geographical indication on wines or spirits not originating in the identified geographical location, 'even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.' Article 23(2) further prevents registration and requires invalidation of trademarks containing or consisting of a geographical name of a wine or spirit for wines or spirits.

To wines alone, the TRIPS Agreement directs further refinements in their current and future recognition. As to their current recognition, Article

740. See Broude, 666.

741. See Alessandro Stanziani, *Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France*, 18 Eur. J. L. Econ. 149, 157-8 (2004).

742. *Ibid.*, 157 (internal citations omitted).

743. *Ibid.*, 157-158.

744. O'Connor, *The law of geographical indications*, 54.

23(3) recognizes homonymous geographical indications, thus acknowledging the potential for a 'New World' wine region to have been named by its inhabitants after the 'Old World' wine region from which they emigrated. As to future recognition, Article 23(4) directs that negotiations be undertaken regarding the establishment of a 'multilateral system of notification and registration of geographical indications for wines eligible for protection' in their home country. This is the highest level of protection (and potential for future protection) offered to geographical indications under the TRIPS Agreement, and yet it still leaves many gaps into which unchallengeable uses may fall.

7.2.2 ISSUES FOR WINE AND SPIRIT GEOGRAPHICAL
INDICATIONS AS GTLD STRINGS

7.2.2.1 **Top-Level Domains Offer a Service, Not Goods**

The WIPO II Report highlighted 'two fundamental problems in endeavoring to apply the existing international legal framework to prevent the bad faith misuse of geographical indications in the DNS.'⁷⁴⁵ The first of these is the limitation of protection to geographical indications used to identify goods. In respect of second-level domain names, it was concluded:

The mere registration of a geographical indication as a domain name by someone with no connection whatsoever with the geographical locality in question, however cheap and tawdry a practice, does not appear to be, on its own, a violation of existing international legal rules with respect to false indications of source and geographical indications. Such a registration may violate existing standards if it is associated with conduct relating to goods. ... one can imagine various hypothetical uses of domain name registrations with respect to goods which might be considered to constitute violations of the provisions on the protection of geographical indications in the TRIPS Agreement. However, there are many circumstances in which a domain name registration, even though constituting a false or unauthorized use of a geographical indication, may not constitute a violation of existing international rules because there is no relationship between the domain name and goods.⁷⁴⁶

An obvious corollary to the limitation to goods is the exclusion of services, which has been subjected to scrutiny. The term 'good' notably replaces 'product', the term used in the Lisbon and Madrid (Indications of Source) Agreements and the Paris Convention, and this has been interpreted as evidence of the drafters' intention to exclude services from Articles 22 and

745. WIPO, *WIPO II Report*, para. 239.

746. *Ibid.*, para. 240.

23: 'It seems that where negotiators wanted to indicate that a rule in respect of indications applied to services as well as goods, they said so.'⁷⁴⁷ Others have also reached this conclusion.⁷⁴⁸ Thus, for example, a registration of the domain name *www.champagne.com* must be prevented pursuant to Article 23(1) if the website operated under that name purported to sell or offer for sale sparkling wines not originating in Champagne, France or 'Champagne-type' sparkling wines. It could not be prevented if the website offered information about such products not in the context of advertising their sale or if it offered other services (such as hospitality and tourism services offered by a hoteliers' association in the Champagne region). The existing international legal framework thus offers, in the words of the WIPO II Report, 'only a partial solution to the problem of' registration of geographical indications as second-level domain names.⁷⁴⁹

By contrast, the existing international legal framework offers no solution at all at the top-level of the DNS. The explanation for this lies in the fundamental differences between the top and lower levels of the DNS, which have been comprehensively discussed in Chapter 2. To summarize that discussion, second and lower level domain names have come to be used to identify the content of the websites to which they point. Use of a geographical indication in connection with goods is possible (though not inevitable) in that environment, where the domain name serves to identify goods offered for sale by means of an associated website. Use of a geographical indication in connection with goods is not possible, however, where the domain name serves to identify a communications portal for use by others for a variety of purposes (offering goods or services, expressing an opinion, reporting news, etc.) as top-level domains do. Top-level domains are themselves a service: the registry's primary function is to maintain an up-to-date listing of all of the second-level domain name registrations within them. This facilitates access to and between the registrants of those domain names, the registrants of domain names in other top-level domains and internet users. In short, top-level domain registries have no inherent connection to goods. They provide an environment in which others can self-identify and make available information which may or may not be connected to goods. A .football top-level domain, for example, would have only an indirect connection, if even any, to footballs. Rather, .football identifies itself as a space in which web users are able to communicate with

747. Gervais, 298. As an example of an explicit application to services, Gervais points to Art. 24(6) of the TRIPS Agreement.

748. See for example, O'Connor, *The law of geographical indications*, 53. It is also interesting to note the reference to Art. 22 in the Jamaican delegation's proposal regarding the scope of Art. 6ter of the Paris Convention, in which concern is expressed at that provision's failure to cover services. See WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, *Report Adopted by the Standing Committee*, para. 311, SCT/21/8.

749. WIPO, *WIPO II Report*, para. 240.

others, most likely about things having to do with ‘football’, which term has multiple interpretations (an item of sports equipment as well as various forms worldwide of a sport called ‘football’). The same can be said of a .champagne or a .parmigiano-reggiano top-level domain.

This means that Article 23 of the TRIPS Agreement offers no protection against uses of geographical indications for wines and spirits at the top-level of the DNS. Even to the extent that the second ‘fundamental problem’ identified in the WIPO II Report – the lack of harmonization as to the recognition of geographical indications⁷⁵⁰ – was somehow resolved, this would not change the outcome as regards geographical indications’ use as a top-level domain. To impute a connection with goods to a top-level domain is to deny the very structure of the DNS. For this reason, expansion at the top-level cannot simply mirror the geographical indications community’s attempts at managing growth at the second-level; the issues are similar, but clearly not the same.

7.2.2.2 Homonymous Wine Geographical Indications Possible, TLDs Impossible

Another issue that can be managed at the second-level of the DNS but proves insurmountable at its top-level is that of homonyms. Article 23(3) of the TRIPS Agreement recognizes homonymous geographical indications for wines by requiring that they be protected and also that the States involved resolve conflicts by establishing means of differentiation. In so doing, States are to ensure not only that consumers are not misled, but also that the producers involved are treated equitably. This recognition is made ‘subject to the provisions of paragraph 4 of Article 22’, which prevent the use of geographical indications that are ‘literally true as to the territory’ but nevertheless ‘falsely represent to the public that the goods originate in another territory’. Recognition of homonyms enables, for example, the co-existence of Rioja as a geographical indication identifying wines from the Rioja region of Spain as well as a geographical indication identifying wines from the Rioja region of Argentina.⁷⁵¹

750. *Ibid.*, para. 241.

751. Based on the example offered by Daniel Gervais of Rioja regions and wines in both Argentina and Spain in *The TRIPS Agreement: Drafting history and analysis*, 306 n. 419. This example is also used in Irene Calboli, *Expanding the Protection of Geographical Indications of Origin under TRIPS: ‘Old’ Debate or ‘New’ Opportunity?*, 10(2) Marq. Intell. Prop. L. Rev. 182, 192 (2006) (citing Felix Addor & Alexandra Grazioli, *Geographical Indications beyond Wines and Spirits: A Roadmap for a Better Protection for Geographical Indications in the WTO/TRIPS Agreement*, 5 J. World. Intell. Prop. 865, 879 (2002)). See also Iris V. Quadrio & Martin Chajchir, *Nineteenth Yearly Review of International Trademark Jurisprudence*, 102 Trademark Rep. 455, 468-469 at ‘Argentina: II.C.3. Geographical Indications/Appellations of Origin’ (2012).

The sorts of ‘creative solutions’⁷⁵² that might be employed to distinguish wines identified by homonymous names to achieve their co-existence as ‘offline’ geographical indications are of some assistance at the second-level of the DNS, but of no effect at the system’s top-level. Domain names require only absolute uniqueness, so variation at the second-level, even minor, can serve to distinguish a *www.riojaspain.com* from a *www.riojaargentina.com*. Even easier, and indeed in direct acknowledgement of the territorial nexus of geographical indications, would be to distinguish homonym wines through the use of country code top-level domains: *www.rioja.es* and *www.rioja.ar*. Yet this sort of variation is not possible at the top-level of the DNS, where concerns about user confusion are captured in the *gTLD Applicant Guidebook* via rejection and objection on grounds of confusing similarity.⁷⁵³ In other words, the bar is set higher than absolute uniqueness for top-level domain strings, and there is simply no way to accommodate homonyms for wines or indeed for any other products even if these were at some point to receive a consistent level of protection under international law. Put simply, there cannot be more than one *.rioja* internet top-level domain.

Even the availability of IDNs (domain names in non-Latin language scripts) is unlikely to offer a satisfactory answer to this problem given the likelihood that in addition to retaining the name of their ‘Old World’ region, emigrants also retained the language of their country of origin or at least a version of it insufficiently distinguishable from the original to survive objection on grounds of confusing similarity. Whether the States involved in a conflict over homonymous geographical indication new gTLDs could reach the sort of compromise called for by Article 23(3) is questionable. Also questionable is two States reaching agreement to share a gTLD, with the result that resolution of conflicting applications will be left to community priority evaluation and/or auction.⁷⁵⁴ The result under either all-or-nothing approach is a losing party’s exclusion from the top-level of the DNS. Even if a sufficiently different (and agreeable) alternative string exists, the gTLD applicant must wait until a subsequent DNS expansion round to apply for it.

Member States likely to find themselves in this position should consider that ‘if the solution adopted by a Member prejudiced the producers of another Member or could objectively mislead consumers, it could be argued that that Member had failed to comply with’⁷⁵⁵ Article 23(3). Applying this logic to the New gTLD Program, a State’s authorization of a geographical indication new gTLD application would violate Article 23(3) of the TRIPS Agreement if it ‘prejudiced the producers’ of products in another State identified by an identical geographical indication. It is not difficult to come

752. Gervais, 307.

753. ICANN, *gTLD Applicant Guidebook*, section 3.2.2.1.

754. *Ibid.*, section 4.1.

755. Gervais, 307.

to the conclusion that exclusion from the DNS root would indeed prejudice the holders of a competing geographical indication. Although likely to be few in number, conflict between homonymous geographical indications has the potential to be extremely problematic. It is imperative that the States likely to be embroiled in such conflicts (which should be easy to identify given that they would already presumably have taken action in the offline context pursuant to Article 23(3)) give consideration to this issue and develop strategies for addressing it.

In conclusion, it appears impossible to extend the protection offered by Article 23 of the TRIPS Agreement to geographical indications for wines and spirits at the top-level of the DNS. Geographical indications for other products receive an even lower level of protection, and in the next section it will be shown that these are also unable to be protected against unauthorized use as gTLDs.

7.2.3 SCOPE OF PROTECTION OF OTHER PRODUCT GEOGRAPHICAL INDICATIONS

While geographical indications for wine and spirits receive what is characterized as ‘absolute’ protection under the TRIPS Agreement, indications for all other products are said to receive only ‘relative’ protection.⁷⁵⁶ Specifically, Article 22(2) requires that Members prevent any use of a geographical indication that is misleading as to the true geographic origin of the goods. It does so by requiring Member States to take steps to prevent any communication ‘that indicates or suggests that the good in question originates in a geographical area other than the true place of origin’. Acts of competition or confusion with goods of a competitor are notably not limited, but this provision ‘would seem to require at least trying to benefit from or denigrate the reputation of an industrial sector.’⁷⁵⁷ Article 22 also brings geographical indications meeting the TRIPS definition of that term within the scope of Article 10*bis* of the Paris Convention, effectively expanding the scope of

756. See Stephen A. Bowers, *Location, Location, Location: The case against extending geographical indication protection under the TRIPS Agreement*, 31(2) A.I.P.L.A. Q. J. 129, 131 (2003); Thomas Cottier & Marion Panizzon, *Traditional Knowledge and Geographical Indications: Foundations, Interests and Negotiating Positions*, in *Trade and Intellectual Property Protection in WTO Law: Collected Essays* (Cameron May 2005); Lynne Beresford, *Geographical Indications: The Current Landscape*. But see Dwijen Rangnekar, *Demanding Stronger Protection for Geographical Indications: The Relationship between Local Knowledge, Information and Reputation*, #2004-11 United Nations University-INTECH Discussion Paper Series (2004) (arguing that it is inappropriate to consider Art. 23 as ‘absolute’ protection).

757. Gervais, 301.

Article 10bis since it does not otherwise apply to origin statements.⁷⁵⁸ The effect of this is explored in detail in Chapter 8.

As noted in the preceding section of this chapter, the TRIPS Agreement preserves the origin-connoting nature of geographical indications: specifically, Article 22 permits the nexus between good and territory to be not only particular physical characteristics but the intangible attribute of reputation. This is a significant point of departure from the Lisbon Agreement, which limits protectable appellations of origin to those whose quality and characteristics are attributable to geographical location. The TRIPS Agreement broadens the scope of protectable indications, but this does not impact upon the level of protection offered. Unlike the protection offered by Article 23 to geographical indications for wines and spirits, Article 22 does not require the prevention of 'kind', 'type', 'style', 'imitation' or similar uses of geographical indications for other products. This is subject only to the limitation in Article 22(4) prohibiting indications that are 'literally true as to the territory' but nevertheless 'falsely represent to the public that the goods originate in another territory'.

Like unauthorized wine and spirit geographical indication TLD strings, unauthorized use of geographical indications for other products is not preventable. This is not simply because they receive a lower level of protection under the TRIPS Agreement relative to wine and spirit geographical indications, but because the protection they do receive is limited, as with wine and spirit geographical indications, to names identifying goods. As recognized in the WIPO II Report more than a decade ago, the use of geographical indications as second-level domain names to lure prospective consumers to a website offering products other than those true to geographical origin could fall within the scope of Article 22(2)(a).⁷⁵⁹ Top-level domains' lack of connection to goods renders TLD strings comprised of non-wine or spirit geographical indications in all cases unpreventable.

This conclusion can be reached without consideration of another a key impediment to the recognition of rights at the international level in geographical indications, which is the lack of harmonization of protection at the international level. This was characterized as one of the 'fundamental problems' in the WIPO II Report.⁷⁶⁰ In practical terms, the lack of harmonization means that a name protected in one jurisdiction may not be protected in others. This is the heart of the divide between countries that support recognition and those that do not, a division that has only become further entrenched in the negotiations called for by Article 23(4) of the

758. See Conrad, 35-36 (further arguing at 36 that the TRIPS Agreement 'extends the purview of Article 10bis for the members of GATT/TRIPS without revealing that it is not simply the incorporation of a parallel treaty, but an extension of its scope' (internal citations omitted)).

759. See WIPO, *WIPO II Report*, para. 240.

760. *Ibid.*, para. 241.

TRIPS Agreement. In the remaining section of this chapter, the status of those negotiations is explored as a foundation for considering the possible effect that the New gTLD Program will have on the future recognition of rights in geographical indications. Two other issues are additionally taken up given their relevance to new gTLD applications: the impact of an international register on the recognition of rights in the DNS and issues of priority between trademarks and geographical indications.

7.3 OTHER ISSUES FACING GEOGRAPHICAL INDICATIONS IN THE DNS

7.3.1 INTERNATIONAL NOTIFICATION AND REGISTRATION SYSTEM

A primary reason offered in the WIPO II Report for not including geographical indications within the scope of the Uniform Domain Name Dispute Resolution Policy (UDRP) was the lack of harmonization at the international level on the recognition of rights and, therefore, the inability to point to one clear international owner of any given geographical indication.⁷⁶¹ In the TRIPS-plus environment, side agreements might, if sufficient in number of signatories and patched together, offer geographical indications the subject of those agreements a level of recognition that comes closer to being equivalent to a universal convention,⁷⁶² but this would require a significant amount of research to discern which indications these might be, if any. An international register would remove this problem, putting all on clear notice of the existence and owner of recognized geographical indications. This is the solution proposed by Article 23(4) of the TRIPS Agreement for geographical indications for wines.

The Lisbon Agreement's establishment of an international notification and registration system has far broader application in that it incorporates geographical indications for all products, not only wines. That agreement has already established an International Register which is maintained by WIPO on behalf of the twenty-seven signatories. Despite that relatively low number, the involvement of 'Old World' countries such as France, the Czech

761. *Ibid.*, at Executive summary para. (iv) and paras 241-243.

762. See Peter Drahos, *BITS and BIPS: Bilateralism in Intellectual Property*, 4 J. World Intell. Prop. 791, 802 (2001) ('The key point is that the MFN principle in TRIPS, when combined with bilateralism on intellectual property, will have the effect of spreading and setting new minimum standards of intellectual property faster than would have happened otherwise.'). See also Lucas S. Michels, *A Blueprint for International TRIPS-plus Geographical Indications Protections? An analysis of geographical indication protection proposals in the European Union – India Bilateral Trade and Investment Agreement*, 15 Gonzaga J. Int'l L. 2 (2011-2012).

Republic, Italy, Portugal and Spain makes the total number of registrations significant; France alone has more than five hundred.⁷⁶³ Appellations of origin registered under the Lisbon Agreement stand to benefit from their higher level of recognition in the New gTLD Program by reason of their being 'protected by a statute or treaty' and thus eligible for inclusion in the Trademark Clearinghouse,⁷⁶⁴ the database of authenticated legal rights that underpins several rights protection mechanisms available in new gTLDs.

While the International Register is the Lisbon Agreement's most significant contribution to the cause of protecting geographical indications at the international level, it is equally a deterrent for those who oppose recognition. This explains the absence of 'New World' wine producing countries such as the United States, Australia, Chile and Argentina from the ranks of Lisbon Agreement signatories. This dichotomy continues to manifest itself in the negotiations called for by Article 23(4). Those negotiations, considered part of the TRIPS Agreement's 'built-in agenda',⁷⁶⁵ commenced in 1998. The intervening years have seen little progress beyond a volley of proposals authored on the one side by the European Community⁷⁶⁶ and on the other by Japan and the United States, later joined by Canada and Chile.⁷⁶⁷ Since the year 2000, these proposals have focused on two issues: first, the international notification system for wines and second, the extension of the additional degree of protection offered to wines and spirits to other products. For a time, the latter issue seemed to dominate discussions, with a surprising number of 'New World' countries joining in support⁷⁶⁸ of extension amidst confusion as to whether the Doha Ministerial Declaration mandated this debate.⁷⁶⁹ The Doha Ministerial Declaration set a deadline for decisions regarding the establishment of an international notification and registration system for the Fifth Session of the Ministerial Conference held in Cancun,

763. See WIPO, *Appellations of Origin*, <http://www.wipo.int/ipdl/en/lisbon/lisbon-map.jsp> (accessed 15 Oct. 2012).

764. ICANN, *New gTLD Applicant Guidebook*, Trademark Clearinghouse, section 3.2.5.

765. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Report (1996) of the Council for TRIPS*, Part III, (1996) IP/C/8 96-4704.

766. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Implementation of Article 23.4 of the TRIPS Agreement relating to the establishment of a multilateral system of notification and registration of geographical indications*, (2000) IP/C/W/107 Communication from the European Communities and their Member States, Rev. 1 00-2521.

767. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Proposal for a multilateral system for notification and registration of geographical indications based on Article 23.4 of the TRIPS Agreement*, (1999) IP/C/W/133/Rev.1 Communication from Canada, Chile, Japan and the United States, Rev. 1 99-3125.

768. WTO Council for Trade-Related Aspects of Intellectual Property Rights, *Proposal from Bulgaria, Cuba, Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela (Revision)*, (2001) IP/C/W/247/Rev.1 01-2491.

769. See Gervais, 46-47. To clarify, 'the Doha Declarations do not add to or diminish legal obligations. The question to be considered is whether there is flexibility within the WTO

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in late 2003.⁷⁷⁰ That deadline has come and gone, and although progress was reportedly made in early 2011 in drafting a 'composite text' that sets out all of the views thus far expressed,⁷⁷¹ no agreement has been reached. Nor has agreement been reached on the issue of extension of protection.⁷⁷²

Were it not the case that geographical indications' connection to goods otherwise barred the applicability in the DNS of the protection afforded them under the TRIPS Agreement, an international notification and registration system would greatly facilitate the allocation of geographical indication new gTLDs. Such a system already exists to a certain extent at a domestic level even in countries that do not protect geographic indications as such.⁷⁷³ This occurs through trademark law in cases where geographical indications are able, most commonly as a collective mark, to satisfy registration criteria.⁷⁷⁴ The availability of collective mark registration is but one of the many ways that TRIPS members have fulfilled their obligations to prevent misuse of geographical indications.⁷⁷⁵

One can envisage a notification system for rights in geographical indications functioning in a manner similar to the Trademark Claims service developed through ICANN's New gTLD Program. This service is intended to put would be domain name applicants on notice of existing rights and offer them the choice of either terminating or continuing with a domain name application.⁷⁷⁶ Owners of marks in the Trademark Clearinghouse are to be notified of completed registrations, thus putting them in a better position to challenge such registrations. The term 'owners' is not entirely appropriate in

legal regime for binding legislative decisions that do not change obligations.' Steve Charnovitz, *The Legal Status of the Doha Declarations*, 5 J. Int'l Econ. L. 207, 210 (2002).

770. *Doha WTO Ministerial Declaration*, Art. 18, WT/MIN(01)/DEC1, 20 Nov. 2001 (available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).

771. WTO, *Multilateral system of notification and registration of geographical indications for wines and spirits: Report by the Chairman, Ambassador Darlington Mwape (Zambia) to the Trade Negotiations Committee*, TN/IP/21, (21 Apr. 2011) (available at http://www.wto.org/english/tratop_e/dda_e/chair_texts11_e/trips_e.doc).

772. See WTO, *Issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits and those related to the relationship between the TRIPS Agreement and the Convention on Biological Diversity: Report by the Director-General*, WT/GC/W/633 and TN/C/W/6I (21 Apr. 2011) (available at <http://docsonline.wto.org/imrd/directdoc.asp?DDFDocuments/t/WT/GC/W633.doc>).

773. See Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications*, 58 Hastings L.J. 299, 331 (2006) (discussing the level of regulatory intervention in France's protection of appellations and the United States' use of trademark law).

774. Collective marks are discussed in Part III, Chapter 5, section 5.3 above.

775. See n. 720 above and accompanying text. On the protection of geographical indications as collective marks under US law, see Beresford, 984.

776. The Trademark Clearinghouse is discussed in detail in Part II, Chapter 3, section 3.2.2 above.

the context of geographical indications given their communal rather than individual nature,⁷⁷⁷ but this fact does not impede the development of a register. The entrenched position of a number of States against more specific international protection of geographical indications makes the establishment of such a system unlikely, however, without a broader consideration of where they fit within the WTO Agreement framework and other issues arising under the Doha trade negotiations mandate.⁷⁷⁸

7.3.2 CONFLICT BETWEEN TRADEMARKS AND GEOGRAPHICAL INDICATIONS

While it is certainly the case that registration as a standard, collective or certification mark has advantages for geographical indications, the availability of multiple forms of protection raises the potential for conflict between them. Despite having been considered conceptual ‘equivalents’ in the context of a comparison of European Union and domestic legislation,⁷⁷⁹ geographical indications and trademarks (all forms) are distinctly separate subject matter under international law, and the legal rights in them do not in all circumstances align.

The first problem lies in the issue of priority as between trademarks and geographical indications. In other words, where one rights holder claims rights in a trademark and another in the same name as a geographical indication, which one prevails? While the Paris Convention operates from a ‘first in time, first in right’ principle, it has been considered that this is limited to trademarks as against other trademarks.⁷⁸⁰ This does not resolve the conflict but rather re-characterizes the issue to be resolved in terms of “‘who has the better right to use a geographical name?’, and not “‘who used a geographical name first?’”⁷⁸¹

The Lisbon Agreement, perhaps unsurprisingly given that it offers the highest level of protection of the existing international conventions, gives a measure of priority to protected appellations of origin. Article 5(3) of that agreement requires that States protect an internationally registered appellation unless it is declared within a year that the State is unable to ensure protection. Grounds for such a declaration are not specifically provided in the agreement, but it is presumed that an appellation’s treatment as generic or the

777. See Conrad, 12; Calboli, 185.

778. See Cottier & Panizzon, *Traditional Knowledge and Geographical Indications*.

779. Lionel Bently & Brad Sherman, *The Impact of European Geographical Indications on National Rights in Member States*, 96 *Trademark Rep.* 850, 877-878 (2006). Bently and Sherman further note that the authors of *Kerly’s Law of Trade Marks and Trade Names*, Britain’s leading treatise on trademark law, support this view.

780. See O’Connor, *The law of geographical indications*, 115.

781. *Ibid.*

existence of prior rights would fall within this ambit.⁷⁸² Where a declaration is not made, conflicting prior rights must be phased out within two years pursuant to Article 5(6).

The presumed prevailing position on priority under the TRIPS Agreement is that Article 16 confers priority on a first registered trademark,⁷⁸³ but this is not a universally held view.⁷⁸⁴ Under the heading 'Rights Conferred', Article 16(1) gives trademark owners the exclusive right to prevent the use of 'identical or similar signs'. The loose definition of 'signs' in Article 15 (headed 'Protectable Subject Matter') suggests that this priority is conferred only as against other trademarks. Article 24(5), on the other hand, provides:

Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- a. before the date of application of these provision in that Member as defined in Part VI; or
- b. before the geographical indication is protected in its country of origin;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

On its face, Article 24(5) suggests a reprise of the 'first in time, first in right' principle, whereby one party is able to use and the other not. Advocates of this interpretation call upon Article 16(1) for support, positing:

[A] right to use must include the minimum rights in respect of trademarks under the Agreement. As such, this right to use would not simply mean a right to register and continue to use in spite of the presence of an identical or similar geographical indication, but in fact a right to exclude the geographical indication concerned.⁷⁸⁵

The important question is not only one of priority, but of whether the TRIPS Agreement permits co-existence between trademarks and geographical indications. It is very clearly the case that the TRIPS Agreement permits some co-existence of conflicting geographical indications due to its allowance for homonymous indications for wines in Article 23(3). The effect of Article 24(5) is greatly reduced if, read in conjunction with the reference to

782. *Ibid.*, 115-116.

783. See Burkhart Goebel, Presentation, *Geographical Indications and Trademarks: The Road from Doha* 8 (WIPO & USPTO Worldwide Symposium on Geographical Indications 9-11 Jul. 2003) WIPO/GEO/SFO/03/11.

784. See for example, O'Connor, *The law of geographical indications*, 118 (concluding that trademarks and geographical indications receive equal protection under TRIPS).

785. Gervais, 315-316.

it in Article 24(1), it is interpreted as establishing a ‘first-in-time, first-in-right’ principle in respect of wine and spirit geographical indications only. The use in Article 24(5) of the term ‘Section’, however, suggests that it refers to the entire section 3 of the TRIPS Agreement, comprised of Articles 22, 23 and 24, ‘and not to a “section” in the sense of an “article” as that term is used in the national laws of several countries.’⁷⁸⁶ An alternate interpretation of Article 24(5) permits co-existence of conflicting geographical indications and trademarks as the natural consequence of Article 24(5) not obliging TRIPS members to:

provide the protection of geographical indications if an identical or similar trademark has been registered in good faith. However, if this protection is provided (and there is clear possibility to provide this protection), it should not ‘*prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark.*’ (emphasis in original)⁷⁸⁷

Neither interpretation can be supported by evidence of a relevant intention on the part of the TRIPS Agreement drafters, but both sides assert compatibility with the text of the Agreement itself.⁷⁸⁸ While there are ways of avoiding or resolving conflict using the legal frameworks in place,⁷⁸⁹ in the specific context of the DNS it has been shown earlier in this chapter that co-existence at the top-level is extremely difficult – if not impossible – due to the technical requirement of absolute uniqueness braced by ICANN’s disallowance of confusingly similar TLD strings. Conflicts can potentially be managed in second and lower level domain names through differentiation (unless a TLD registry operator implements policy to disallow confusingly similar domain name registrations by registrants, a policy that would be burdensome to police), but just as there cannot be two .rioja TLDs to represent both of the regions referred to by that name, there cannot be two .rioja TLDs to represent each of a geographical indication and a trademark.

The need to decide on priority as between applicants for new gTLDs will inevitably arise in top-level expansion. Where conflicts arise within a country, national laws can be relied upon. Where conflicts arise between applicants in different countries that treat geographical indications differently, some means of resolution is patently needed. Drawing from existing means of conflict resolution, the two clearest options that take into consideration the legal interest involved rather than simply resolving a

786. *Ibid.*, 315.

787. O’Connor, *The law of geographical indications*, 63.

788. *Ibid.* See also Gervais, 315-316.

789. See *European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs – Complaint by Australia, Report of the Panel*, 150 para. 7.686, WT/DS290/R 05-0936 (W.T.O. D.S.B. Panel 15 Mar. 2005) (finding that co-existence is a limited exception under TRIPS Art. 17); O’Connor, *The law of geographical indications*, 119-121.

dispute in favour of the party able to pay the most as in an auction are (i) to adopt a 'first in time, first in right' rule; or (ii) to apply unfair competition principles. The latter are discussed in detail in the next chapter, though it can be said as an initial point that this is administratively the more complex approach. From the perspective of ease and efficiency of domain name registration, it is likely preferable to base priority on timing, although this creates inequities between countries with protection of geographical indications and countries without such protection.⁷⁹⁰ ICANN's having undertaken to ensure that new gTLDs do not conflict with existing legal rights recognized under international law means that unfair competition issues must be considered.

7.3.3 IMPLICATIONS FOR LISBON AGREEMENT SIGNATORIES

A further issue arises with respect to new gTLDs for strings meeting the definition of 'appellation of origin'. Members of the Lisbon Union are required pursuant to Article 1 to protect appellations of origin 'as such'. Article 3 demands absolute protection 'against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as "kind," "type," "make," "imitation," or "the like".' This level of protection contrasts sharply with that offered to geographical indications under Article 22 of the TRIPS Agreement, which requires that Member States prevent only uses in connection with goods and constituting an act of unfair competition pursuant to Article 10*bis* of the Paris Convention.

The greater level of protection offered by the Lisbon Agreement operates to prevent the making of a new gTLD application for a string comprised of an appellation of origin notified under that agreement by an unauthorized party because the signatories are, as WIPO explains, 'under the obligation to provide a means of defence against any usurpation or imitation of an appellation of origin in their territory.'⁷⁹¹ It is plausible that the registration of a new gTLD comprised of a notified appellation by a party not associated with the notification would be deemed to constitute a 'usurpation or imitation'. In order to comply with the Lisbon Agreement, signatories' domestic law must therefore prevent the registration of new gTLDs by those not otherwise entitled to do so.

This creates an uneven playing field in ICANN's New gTLD Program. A new gTLD applicant in France must be prevented from applying for a

790. See Conrad, 42-43. See also Rimmer, 12 (highlighting problems of free riding).

791. WIPO, *The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration: Objective and Main Features, Protection to be Accorded*, <http://www.wipo.int/lisbon/en/general/> (accessed 15 Oct. 2012).

.tequila new gTLD,⁷⁹² for example, but an applicant in China, not a signatory of the Lisbon Agreement, need not be so prevented. Similarly, a new gTLD applicant in Slovakia must be prevented from applying for a .pilsner⁷⁹³ new gTLD, but an applicant in the United States, a country with a recognized beer industry but not a signatory of the Lisbon Agreement, need not be so prevented, and so on for all of the notified applications currently in the International Register of Appellations of Origin. ICANN's *gTLD Applicant Guidebook* does not itself give rise to a violation of the Lisbon Agreement, but Lisbon Union members must be aware of their obligations under that agreement in order to ensure that actions taken in the context of ICANN's New gTLD Program are not in breach.

7.4 CONCLUSIONS ON RIGHTS IN GEOGRAPHICAL INDICATIONS

All top-level domain strings constituted of geographical indications, regardless of the type of goods they identify, fall outside of the limited scope of protection offered to geographical indications under the TRIPS Agreement. This is a different conclusion than the one reached in the WIPO II Report, which found that the TRIPS Agreement was insufficient to prevent registrations of second-level domain names lacking a connection to goods. Critically, top-level domains represent a service. They facilitate interaction between second-level domain name registrants and therefore do not have a direct connection to goods. While the establishment of an international register could facilitate the registration of domain names constituted of geographical indications, this would benefit only second- and lower level domain names the use of which is directly connected to goods. The much-disputed international register, regardless of what form it could ultimately take, is of no consequence to geographical indications' use at the top-level of the DNS. This conclusion does not have any bearing on the presumed exclusive right of governments to geographic names in ICANN's *gTLD Applicant Guidebook*.

The holders of 'offline' legal rights in geographical indications are not, however, entirely foreclosed from exercising their rights in the New gTLD Program. Geographical indications 'protected by a statute or treaty'⁷⁹⁴ are eligible for inclusion in the Trademark Clearinghouse, making them eligible

792. This is due to the existence of the registration TEQUILA: Notification No. 699 by the Government of Mexico, accessible through WIPO Lisbon Express searchable database at <http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp> (accessed 15 Oct. 2012).

793. This is due to the existence of the registration PLZEN/PILSEN PILS/PILSENER/PILSNER: Notification No. 1 by organizations in the Czech Republic, accessible through WIPO Lisbon Express searchable database at <http://www.wipo.int/ipdl/en/search/lisbon/search-struct.jsp> (accessed 15 Oct. 2012).

794. ICANN, *New gTLD Applicant Guidebook*, Trademark Clearinghouse, section 3.2.5.

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to participate in sunrise and the Trademark Claims service in new gTLDs. Further, the *gTLD Applicant Guidebook*, UDRP and Uniform Rapid Suspension procedure do not differentiate standard trademarks from other forms of trademark. Registration of a geographical indication as a standard, collective or certification mark in countries in which registration criteria can be satisfied has the effect of elevating an indication to a higher level of recognition in DNS policy.

Finally, special care must be taken by Lisbon Union members to take steps to prevent the ‘usurpation or imitation’ of notified indications through their registration as a new gTLD by someone other than a notifying party. At a minimum, this is an issue that GAC members should consider within the purview of the ‘early warning’ review process available to them under ICANN’s *gTLD Applicant Guidebook*.

Chapter 8

Unfair Competition and Related Commercial Rights in Geographic Names

What is honest is not dishonest.⁷⁹⁵

8.1 UNFAIR COMPETITION LAW PRINCIPLES APPLIED TO GEOGRAPHIC NAMES

8.1.1 THE POTENTIAL OF UNFAIR COMPETITION LAW

Unfair competition law has high potential as a source of rights in geographic names given its traditional role as 'gap filler' where rights are not recognized in subject matter as such under intellectual property law or related *sui generis* regimes.⁷⁹⁶ Even where intellectual property rights are recognized, in many jurisdictions it is common practice to raise claims in the nature of unfair competition in addition to intellectual property infringement claims. That said, one must be careful to recognize the different natures of protection offered by these distinct sources of rights: in the specific context of the protection of names, trademark law protects a private property interest in a name as such, while unfair competition law regulates commercial behaviour

795. Bowen, LJ in *Angus v. Clifford*, 60 L.J. Rep. (N.S.) C.D. 456 (1891).

796. On the traditional role of unfair competition law, see Gustavo Ghidini, *Intellectual Property and Competition Law: the innovation nexus* 112 (Edward Elgar 2006).

affecting competitors or consumers.⁷⁹⁷ In other words, unfair competition law does not confer an exclusive proprietary right on an individual party, but rather aims to benefit the market as a whole. Whether this difference has any effect in actual practice is, however, questionable; it is said that 'there are overlaps for which a convincing theory has yet to be found.'⁷⁹⁸

Unfair competition law is based on a fundamentally simple understanding 'that dealings based on deceit are legally wrong.'⁷⁹⁹ It is primarily addressed at the international level by the Paris Convention for the Protection of Industrial Property, Article 1(2) of which identifies 'the repression of unfair competition' as one of that convention's express objects.⁸⁰⁰ Accordingly, Article 10*bis* (1) requires that members of the Paris Union provide 'effective protection against unfair competition', which Article 10*bis* (2) defines broadly as '[a]ny act of competition contrary to honest practices in industrial or commercial matters'. Relatedly, Article 10 requires members to prevent the 'direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.'

This definition of 'unfair competition' in the Paris Convention uses fairly broad, general terms, leaving Paris Union members to determine how best to meet their obligations in domestic law. The analysis undertaken in this chapter shows this nevertheless to be the most inclusive attempt to target unfair competition in an international convention to date. The TRIPS Agreement is notably silent on unfair competition save for limited references to Article 10*bis* of the Paris Convention: Article 22(2)(b) in the context of prohibited uses of geographical indications and Article 39 in the context of protecting undisclosed confidential information. Article IX:6 of the GATT Agreement, which is discussed below in this chapter, merely requires members to 'co-operate' to prevent false representations of product origins.

Problematic from the perspective of protecting rights in geographic names is the fact that – as with the law of trademarks – the law of unfair competition has at its heart commercial activity. Indeed, it is said that 'the first prerequisite [of unfair competition] is that the conduct must not be private, social or political, but must be commercial.'⁸⁰¹ This and other core principles of unfair competition law place considerable strain on its ability to offer all geographic names (not simply sub-sets such as geographical

797. See WIPO, *Protection against unfair competition: analysis of the present world situation*, WIPO Publication No. 725, 10 (1994).

798. Frauke Henning-Bodewig, *Unfair competition law: European Union and Member States* 5 (Kluwer Law International 2006).

799. *Black's Law Dictionary* 1667 (Bryan A. Garner & Henry Campbell Black eds., West 2009) (definition of 'unfair competition').

800. Alternatively it has been posited that 'the aim of the PC was the international protection of industrial property rights and not the protection against unfair competition.' *Law against unfair competition: towards a new paradigm in Europe?* 54 (Reto M. Hilty & Frauke Henning-Bodewig eds., Springer 2007).

801. Henning-Bodewig, 1.

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indications or geographically-named certification marks) blanket protection against unfair use. Gap filler it may be, but unfair competition law is not the solution to every problem. This is true even if the problem is a squarely commercial one (which for geographic names is frequently not the case) because '[n]ot everything that is regarded as "unfair" in the commercial sector falls under unfair competition law.'⁸⁰²

The aim of this chapter is to determine whether governments or others have rights under unfair competition law that justify preventing the registration of geographic names as new gTLDs. It begins with an examination of the purposes and general principles of unfair competition law and their application to geographic names, then turns to an evaluation of four specific categories of commercial behaviour in order to identify situations in which registration of geographic new gTLDs could potentially be prevented. It is also pointedly considered whether the lodging of an application for a new gTLD without the authorization of an 'offline' rights holder constitutes an act of unfair competition such that limitations should be implemented in top-level domain policy in respect of geographical indications.

8.1.2 PURPOSES OF UNFAIR COMPETITION LAW

Unfair competition law has long played a key role in the resolution of domain name disputes, albeit in a somewhat disguised form: the Uniform Domain Name Dispute Resolution Policy (UDRP) draws heavily from the unfair competition provisions of the Paris Convention.⁸⁰³ The applicability of that policy to domain names constituted of trademarks (the only type of name actionable under the policy) should not, however, be automatically imputed to other subject matter, particularly when proposals to widen the scope of the UDRP have previously been rejected due to lack of support in international law.⁸⁰⁴ Rather, it should be questioned as a starting point whether limiting the use of geographic names in the DNS on the basis of unfair competition – whether through the UDRP or otherwise – is consistent with the principles and purposes of unfair competition law.

There is no universally agreed singular purpose of unfair competition law, nor an all-inclusive enumeration of acts that constitute unfair competition.⁸⁰⁵ Rather, this is an area of law that is 'deeply rooted' in domestic law and, as a result, has developed in different ways to prevent different forms of

802. *Ibid.*, 1.

803. See WIPO, *WIPO I Report*, paras 172-174.

804. See n. 362 above and accompanying discussion on the scope of the UDRP.

805. See Henning-Bodewig, 19 (observing that 'relatively scant attention has been paid ... to the international competition law anchored in Article 10bis and 10ter of the Paris Convention').

commercial behaviour in different jurisdictions.⁸⁰⁶ The Paris Convention preserves these differences by leaving to its members the decision of how to identify and remedy unfair competition. In some countries, this means protecting competitors from each other's unscrupulous practices. Unfair competition law in the United States and England, for example, has as its general focus the defendant who 'poaches upon the commercial magnetism of [a] symbol'.⁸⁰⁷ Other countries, such as Spain and Germany, take a broader view of unfair competition law and use it to control not only acts that harm competitors but those that harm consumers.⁸⁰⁸ This dual-headed protection is recognizable in Article 22 of the TRIPS Agreement, which sets out the protection available to geographical indications: while Article 22(2)(a) 'is aimed at representations misleading the public, i.e., consumers', Article 22(2)(b) 'protects the interests of producers and merchants' through the application of Article 10bis of the Paris Convention.⁸⁰⁹

An understanding of the types of behaviour captured by unfair competition law first requires an understanding of the purposes of unfair competition law. Identifying behaviour that is 'unfair' requires 'taking into account particularly the interests of those "concerned" by it, namely the parties involved in the operation of the marketplace'.⁸¹⁰ When one considers these interests, four central purposes of unfair competition law emerge. When geographic names are tested against these, there is reason to question the appropriateness of relying on unfair competition law to protect them.

8.1.2.1 Promote Honesty in Commercial Dealing

At the heart of unfair competition law is the notion of fairness and, by corollary, the prevention of unfairness, which Article 10bis (2) of the Paris Convention characterizes as acts 'contrary to honest trade practices'. Honesty in this context is less a moral concept than a normative concept derived from the marketplace in question. As such, it is measured according to 'what is actually usual in business life ("trade practices"),' and then 'corrected by the ethical aspect of "honest"'.⁸¹¹

The focus on commercial dealings in unfair competition law is problematic for geographic names because many of their uses are non-commercial in nature (e.g., maps, signs, official documents and news reports). For these sorts of uses there is not a relevant trade or marketplace

806. *Introduction to Intellectual Property: Theory and Practice* 246-248 (WIPO ed., Kluwer Law International 1997).

807. *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 205 (Sup. Ct. 1942).

808. See Henning-Bodewig, 2-3. See also WIPO, *Protection against unfair competition*, 15-17.

809. Conrad, 36.

810. WIPO, *Protection against unfair competition*, 24-25.

811. Henning-Bodewig, 9.

from which to draw the requisite standard of honesty in business. There can be no commercial unfairness in the activity of providing information outside of trade in goods or services. This is not to suggest that honesty and fairness have no place in non-commercial contexts, but rather to highlight the fact that unfair competition laws cannot be relied upon to control that sort of behaviour.

Where unfair competition law has traditionally been applied in the context of geographic names is in the regulation of origin statements. Across trades and industries it has long been the expectation that where information is provided to convey the origin of a product, that information must be truthful. To behave otherwise cuts against the basic notion of honest trade practices; this is equally the case online as it is offline. Some statements are easily identifiable as connotative of origin, such as 'Made in the USA' and 'Swiss chocolate'. Geographic domain names at any level of the DNS are less easily discernible as per se connotative of origin, however. There are several reasons for this. The DNS is a global communications system the structure of which is not organized along territorial lines. Some ccTLDs are operated outside of the country represented by the country code and are targeted at domain name registrants with no connection to that country.⁸¹² There is no general rule in generic or country-code TLDs that applicants of geographic second-level domain names must be physically present in the geographic territory named. Whether geographic domain names constitute a dishonest statement of origin is therefore one of the core questions to be explored in detail in the next section of this chapter.

8.1.2.2 Promote and Protect Investment by Business

Consistent with justifications of intellectual property law on the basis of reward theory,⁸¹³ unfair competition laws are grounded in the belief that offering protection to intangible business assets such as goodwill and confidential information against unfair usurpation is a necessary incentive to

812. Tuvalu's .tv ccTLD is an example. Recognizing the unique online opportunities inherent in its ISO 3166-1 country code, the Tuvaluan government commenced a tender process for the marketing of .tv ccTLDs in the mid-1990s. See Stephen Boland & Brian Dollery, *The Value and Viability of Sovereignty-Conferred Rights in MIRAB Economies: The Case of Tuvalu*, University of New England Working Paper Series in Economics 2005-2009, 17 (available at <http://www.une.edu.au/business-school/working-papers/economics/1999-2007/econ-2005-9.pdf>). Verisign has operated the .tv domain since its acquisition of The .tv Corporation at the end of 2001. *Verisign Acquires The .tv Corporation*, PR Newswire (7 Jan. 2002) (available at <http://www.prnewswire.com/news-releases/verisign-acquires-the-tv-corporation-75291122.html>). See also IANA, *Delegation Record for .TV*, <http://www.iana.org/domains/root/db/tv.html> (accessed 15 Oct. 2012).

813. See for example, Justin Hughes, *The Philosophy of Intellectual Property*, 77 Geo. L.J. 287, 305-310 (1988-1989).

ensure their creation.⁸¹⁴ Protection by means of unfair competition law is all the more important to businesses when their assets are not able to be characterized (and therefore protected) as intellectual property. Justifying protection for geographic names on this basis is not, however, an easy fit.

Outside of their use as brands, it is difficult to conceptualize the creation of geographic names as occurring through some sort of planned, strategic, commercial process of asset generation. It is likewise difficult to characterize the creation of new geographic names as an activity that requires regulatory intervention to ensure its continuation. What immediately distinguishes the name 'France' from the name 'Polaroid' is that the latter has been created in a commercial environment for use in a commercial environment, and logically therefore derives its value from commercial attractiveness. The name 'Polaroid' must be distinctive – in other words, able to distinguish the goods or services on which it is used as originating from a particular trader – if it is to succeed in the marketplace. That distinctiveness can arise because the name is coined and has no other connotation or because it develops a reputation through use; either way, a certain degree of 'investment, labor, and strategic dissemination' is required in order to 'create[] a set of unique meanings in the minds of consumers'.⁸¹⁵ This is the primary function of a brand, the legal protection of which takes the form of a trademark.

Geographic names, by contrast, are not products of a commercially-oriented development process and their primary function is not to create a link in consumers' minds between particular goods or services and a particular trader. Their primary function is to identify a particular geographic location. Even if no other connotation is generated in a person's mind by a geographic name, if the name serves to identify the correct place on the map to which it is attributed, it is a success. Achieving this sole purpose has not traditionally involved focus groups or market surveys; the choice of a geographic name is not tested for its ability to attract consumers. These observations are not made with the intention of suggesting that strategy has no role to play in the choice of geographic names; the dispute between Greece and the former Yugoslav Republic of Macedonia over the name 'Macedonia'⁸¹⁶ offers ample room for speculation about motives in countries' naming decisions. Rather, the intention here is to highlight the fact that businesses and countries take different things into consideration and do so for different reasons when making naming decisions. These differences call into question the appropriateness of justifying the protection of geographic names under unfair competition law on the basis of ensuring geographic names' continued use and creation.

814. See *Restatement of the Law (Third): Unfair Competition* §1 Comment f (1995).

815. Coombe, 61 (internal citations omitted).

816. The 'Macedonia' name dispute is discussed in detail in Part III, Chapter 6, section 6.3.2 above.

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Where investment in a corporate sense is being made in the context of geographic names is in goodwill. Countries are increasingly seen as brands,⁸¹⁷ with reputations that can be managed with a view to creating 'a desirable identity which consumers can relate to and want to build a repeat purchase relationship with'.⁸¹⁸ This is not a new phenomenon; governments and tourist bureaus have long been using reputation to entice the tourist consumer. What is new, however, is that more attention is being paid to geographic brands, whose effectiveness and value are now measured on an annual basis similar to the way in which the world's most valuable trademarks are ranked each year.⁸¹⁹

In many countries, unfair competition law steps in to protect investment in goodwill, but protecting goodwill is not the same as protecting a name. This is because names and goodwill are two distinct (though related) concepts: goodwill is comprised, according to an oft-cited Australian judicial opinion, of 'elements',⁸²⁰ of which the name is but one:

As the differential profit advantage of a firm, goodwill may arise from superior efficiency, from convenience, from confidence, from nepotistic connections, from persuasive advertising, from successful infringement of a persuasive symbol, from threats of violence, and so on into a range of conduct entirely beyond the pale of the law.⁸²¹

Correspondingly, the goodwill of a country or other geographic location (and thus its attractiveness to consumers) is likely to be influenced not only by its name but by its exports, the stability and form of its government, its culture and heritage, the friendliness of its people, its tourism, its topography, its propensity to experience natural disasters, etc.⁸²² The name is a powerful symbol which encapsulates these qualities and brings them to the public mind similar to the way in which the 'Polaroid' brand 'through much effort and the expenditure of large amounts of money had acquired a widespread reputation and much goodwill'.⁸²³

817. See FutureBrand, *Country Brand Index 2011-2012*, <http://www.futurebrand.com/think/reports-studies/cbi/2011/overview/> (accessed 15 Oct. 2012). See generally, Forrest, *The new frontier*, 133-134.

818. Allan Bonsall & John Harrison, *Brand Aid: The Secrets of Consumer Speak* 26 n. 21 (Esstee Media 2006).

819. See for example, FutureBrand, *Country Brand Index 2011-2012*; GfK Custom Research North America, *The Anholt-GfK Roper Nation Brands Index 2012*, http://www.gfkamerica.com/practice_areas/roper_pam/nbi_index/index.en.html (accessed 15 Oct. 2012).

820. *Commissioners of Inland Revenue v. Muller & Co's Margarine, Ltd.*, A.C. 217, 223 (H.L. 1901).

821. Ralph S. Brown Jr., *Advertising and the Public Interest: Legal Protection of Trade Symbols*, 57 Yale L.J. 1165, 1199 (1948) (internal citations omitted).

822. See GfK Custom Research North America, *The Anholt-GfK Roper Nation Brands Index 2012*.

823. *Polaroid Corp. v. Polaroid, Inc.*, 319 F.2d 830, 837 (7th Cir. 1963).

Geographic names are and have for ages been created and used despite a lack of clear protection for them under international law. While there may be need of unfair competition law to protect governments' investments in goodwill, there is little need of unfair competition law to ensure the continued creation and use of geographic names. For this reason, protection of geographic names under unfair competition law can be more transparently characterized as fuelled by a desire to preserve a monopoly in a name than a desire to encourage more names' creation and use.

8.1.2.3 Promote Competition and Efficiency in the Market

There is a great paradox inherent in unfair competition law, which is that the exercise of a right to demand that others not engage in anti-competitive conduct in the name of promoting competition has inherently and unavoidably anti-competitive consequences. Unfair competition law must strike a balance between 'protect[ing] the competitive position of the enterprise' and preventing 'business practices that hinder rather than promote the efficient operation of the market.'⁸²⁴ It is not controversial to propose that a certain degree of competitive behaviour is needed to promote a healthy marketplace. It would not be appropriate, therefore, for unfair competition law to be overzealous in quashing acts aimed at gaining a competitive advantage. A seminal American text on unfair competition law succinctly explains the situation in this way:

Every competitor seeks to win trade that would otherwise go to someone else. The ultimate end point of that process could conceivably be the complete elimination of one or more rivals as effective competitors. Yet there is no violation of the law so long as the rules of the 'game' are observed. Thus it is not the injury suffered by the complainant which makes competition unfair, it is the competitor's violation of a duty to keep his competition within certain bounds.⁸²⁵

The striking of those bounds is made all the more difficult when the behaviour at issue is potentially non-commercial in nature, as in the case of geographic names. Although they can be used commercially, geographic names' primary function as informational identifiers makes it difficult to distinguish competitive uses from anti-competitive uses. It is inappropriate to simply presume that all uses of geographic names are anti-competitive unless proven otherwise: such a drastic measure would have the benefit of preventing free riders, but could also seriously impinge upon the rights of the public to use geographic names in non-competitive, non-commercial ways.

824. *Restatement (Third) of the Foreign Relations Law of the United States* §1 Comment g.

825. Rudolf Callmann & Louis Altman, *Callmann on unfair competition, trademarks and monopolies* §1:9 (4th ed., Thomson-West 1997).

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The intention of unfair competition law is said first and foremost to be to protect the market as a whole, while ‘the protection of monopolies in names is but a secondary and limiting policy.’⁸²⁶ When potentially non-commercial subject matter such as a geographic name is involved, special consideration must be given to the balance between protecting the interests a government may have in a name and protecting the public’s right to use that name in a non-commercial context. If the use at issue is non-commercial, then unfair competition law is not the appropriate means of regulating that behaviour.

Commercial use is not in question for geographical indications due to their origin-connoting role and direct link to products, making unfair competition law particularly relevant to this specific type of geographic names. Accurate origin information can help consumers identify, distinguish and select goods and services, and it has been suggested that these things have a significant impact on the operation of a market.⁸²⁷ Geographical indications are a specifically defined type of geographic name, however, and the assumption that all uses of all geographic names – commercial and non-commercial, online and offline, origin-connotative and otherwise – by someone other than relevant governments are unfair places unjustified impediments on many uses of names not falling within the scope of unfair competition law.

If the balance in unfair competition law is tipped in entirely favour of a government asserting rights in a geographic name to the exclusion of others’ use of the name, it is difficult to fulfil any of the other purposes of unfair competition law. At greatest risk are consumers, who suffer the effects of a legally-supported monopoly.⁸²⁸ The result of the great paradox of unfair competition law is that in the name of encouraging a competitive marketplace, consumers end up with fewer choices. That said, the law has long questioned consumers’ ability to make choices, and in some countries, ensuring their protection is itself considered a purpose of unfair competition law.

8.1.2.4 Protect Consumers

Not all jurisdictions view unfair competition law as an appropriate means of protecting consumers from the unscrupulous behaviour of merchants. The aim of consumer protection law from an economic point of view is to reduce

826. *Eastern Wine Corp. v. Winslow-Warren Ltd.*, 137 F.2d 955, 959 (C.C.A. 2d. 1943) (opinion of Frank, J).

827. See Bowers, 135. *Compare Broude*, 662-678.

828. See Coombe, 65-66. Coombe highlights the anti-democratic effect of control over names in the context of trademarks, but her remarks could also logically apply to geographic names.

the knowledge and experience gap between buyer and seller.⁸²⁹ This aim must be balanced with, *inter alia*, the right of freedom of expression, albeit with the recognition that commercial speech may be deemed to warrant less protection than non-commercial speech.⁸³⁰ There is no universal standard as to what constitutes commercial speech, and the particular challenges of distinguishing commercial and non-commercial use in relation to domain names have been discussed in detail in Part III Chapter 5.2.2, above.

The long-held assumption that the consumer 'always aspires to follow the lead of the advertiser, and to have his hand guided in the supermarket'⁸³¹ has morphed almost seamlessly from the offline environment to the online environment. In fact, early cases of online confusion deemed it even more likely that consumers would suffer confusion on the internet than in the bricks-and-mortar environment because of the difficulties of determining the identity and legitimacy of a website's owner.⁸³² The comical aphorism, 'On the internet, nobody knows you're a dog',⁸³³ precisely identifies this problem as well as the public's consciousness of it. It is this concern that motivated ICANN's Governmental Advisory Committee to limit registration of country names as second-level domain names in the newly delegated .info gTLD.⁸³⁴ As to whether consumers actually require this sort of protection is, however, debatable.

Not all courts or scholars have assumed the gullibility of the (offline or online) consumer. In 1925 it was argued that there were many consumers for whom 'complete indifference reigns. The buyer cannot be deceptively confused if he does not care whether he gets Thinsies or Thins.'⁸³⁵ Yet the way in which modern consumers use the internet to find information makes it unlikely that 'complete indifference reigns'. To the average contemporary online shopper may even be attributed more savvy than ignorance; the vast numbers of results yielded by existing internet search methods and tools suggest that users may reasonably be presumed to have even lower expectations of immediately finding what they seek online than offline. In the California case of *The Network Network v. CBS, Inc.*⁸³⁶ it was provocatively suggested more than a decade ago:

829. See John Vickers, Lecture, *Economics for consumer policy* 8-9 (British Academy Keynes Lecture, 29 Oct. 2003) (available at http://www.oft.gov.uk/shared_of/speeches/spe0403.pdf).

830. See for example, *Hertel v. Switzerland* (59/1997/843/1049) Eur. Ct. H.R. (1998).

831. Brown Jr, 1197 (internal citations omitted).

832. See for example, *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 50 U.S.P.Q.2d (B.N.A.) 1545, 1559-1560 (9th Cir. 1999).

833. Peter Steiner, 69(20) *New Yorker* 61 (5 Jul. 1993).

834. The reservation of country names in the .info TLD is discussed in detail in Part II, Chapter 3, section 3.2.1.1 above.

835. Brown Jr, 1197 (internal citations omitted).

836. *The Network Network v. CBS, Inc.*, 54 U.S.P.Q.2d (B.N.A.) 1150, 1155 (C.D. Cal. 2000). See also *Bruce Springsteen v. Jeff Burgar and Bruce Springsteen Club*, Case No. D2000-1532 (WIPO Arbitration and Mediation Center 25 Jan. 2001) (available at <http://>

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There is a difference between inadvertently landing on a website and being confused. Thousands of Internet users every day take a stab at what they think is the most likely domain name for a particular website. Given the limited number of letters in the alphabet, and the tendency toward the use of abbreviations in commerce generally and in domain names in particular, it is inevitable that consumers will often guess wrong.

Similar views have been expressed outside of the United States,⁸³⁷ but they have not taken hold in domain name policy. That the WIPO II Report was aimed specifically at 'misleading'⁸³⁸ uses of names in the DNS suggests that those who call for a measure of common-sense and *caveat emptor* to be applied in the wilderness that is the internet are outnumbered by those who believe the average web user to be at a disadvantage. If such a disadvantage truly exists, then unfair competition law may indeed be a useful tool to address this problem in those countries that ascribe to unfair competition the purpose of protecting consumers. As the internet and our dependence upon it as an everyday means of communication grow, it is difficult to say whether users have become savvier and adjusted their expectations accordingly, or whether the potential for confusion has increased along with the volume of information available. The future applicability of unfair competition law to online commercial behaviour will depend heavily upon the way in which the DNS develops and is used following the addition of hundreds of new top-level domains into the root through ICANN's New gTLD Program.

In conclusion, it can be said that the protection of geographic names is not a natural fit within unfair competition law. It is difficult to draw analogies between countries and businesses, and geographic names' primary function as non-commercial identifiers means that to the extent that their protection under unfair competition law can be justified, that protection must necessarily be limited to preventing only those unfair uses that are distinctly commercial in nature and falling within the sorts of activities deemed 'unfair'. Unfair competition law has proven not to be needed to ensure the continued creation and use of geographic names, but it may have a role to play in protecting online consumers against being misled in countries that

www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1532.html) (remarking that 'it is relatively unlikely that any user would seek to go straight to the internet and open the site <bruce springsteen.com> in the optimistic hope of reaching the official Bruce Springsteen website. If anyone sufficiently sophisticated in the use of the internet were to do that, they would very soon realise that the site they reached was not the official site, and consequently would move on, probably to conduct a fuller search').

837. See for example, Ueli Buri, Doctoral Dissertation in Law, Bern, *Die Verwechselbarkeit von Internet Domain Names nach schweizerischem Firmen-, Marken-, Namens- und Lauterkeitsrecht* (2000).

838. WIPO, *WIPO II Report*, v (Executive Summary).

attribute to it that aim and where likelihood of being misled actually does exist.

Governments' interests in geographic names are not primarily commercial, though they may include certain commercial aspects as a result of the increased attention to country branding. Ultimately, the multiple purposes of unfair competition law lend support for the view that the protection of governments' interests in geographic names should not automatically prevail over all other interests. Further, where government interests are protected through unfair competition law, this must be strictly limited to commercial uses of geographic names that fall within accepted understandings of what is 'unfair'.

8.1.3 ACTS OF UNFAIR COMPETITION

It is next relevant to consider whether the act of registering a geographic domain name falls within the definition of an 'act of unfair competition' provided by the Paris Convention. Article 10*bis* (2) sets up a two-part test to determine whether an act of unfair competition has occurred, seeking first to determine whether there is an 'act of competition' and then if so, whether that act is generally 'contrary to honest practices'.

8.1.3.1 Geographic TLDs: An 'Act of Competition'?

Unfair competition law seeks to control the unfair behaviour of commercial competitors for the benefit of the various parties identified in the preceding section of this chapter. As a starting point, there must be competition, because '[w]herever there is competition, there is unfair competition.'⁸³⁹ The 'act of competition' sought to be prevented by Article 10*bis* (2) is conduct of a commercial nature which is likely to affect the players within a market. Most often such conduct is directed at a competitor, though it has been shown above that the harm occasioned by unfair conduct may have a wider impact. The question thus arises: are there competitors and competition of the sort envisioned by Article 10*bis* (2) at the top-level of the DNS?

It is certainly the case that applicants for domain names at all levels of the system compete against other applicants for the ability to identify themselves by a particular name in the DNS. Since the system's earliest days, it has been possible at the second and lower levels for competing applications for a single name to be made. This led to the early adoption of a 'first come, first served' registration policy.⁸⁴⁰ Competing applications at the top-level of the DNS have likewise been made, though the instances of such conflicts are far fewer than at lower levels of the system due to the tightly controlled path

839. Callmann & Altman, §1:1.

840. See n. 301 above.

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of development at the top-level.⁸⁴¹ Open and uncapped top-level expansion rounds are certain to generate an increase in the number of conflicting top-level domain applications. This is borne out by the applications received by ICANN in the New gTLD Program: of the 1,930 new gTLD applications filed during the application period of January to May, 2012, ICANN's analysis identified 751, nearly 40%, in direct contention.⁸⁴²

Even so, competition in the context of gTLD applications is not quite competition for market share in the traditional sense. Domain name applicants are competitors in that they vie for control of a unique resource. Allocation of the unique resource has the effect of granting the right of entry into the market, similar to the effect of the granting of a business license or permit in a regulated market. To the extent that an applicant engages in unfair acts in the course of preparing or submitting its application for a new gTLD string, this could have the effect of harming other applicants, web users, and even the functionality and perceived legitimacy of the system as a whole.

It is less easy to characterize the situation as competitive once new gTLDs are created, however, because it is not quite clear that the registries of delegated new gTLD strings are actually in competition with other TLD registries. On the one hand, it could be said that the availability of far greater numbers of top-level domains in which to register domain names will increase competition among top-level domain registries. This was precisely the aim of the two 'proof of concept' top-level expansion rounds, but it has yet to fully bear out in practice.⁸⁴³ On the other hand it must be questioned whether new gTLDs do in fact compete with each other, particularly in the case of 'sponsored' or 'community based' gTLDs that are targeted at or are even restricted to a defined segment of the internet community. Will a new .paris top-level domain compete, for example, with a new .eco top-level domain – or even any of the existing top-level domains save the universal generic .com, .net and .org – for domain name registrants?

Article 10*bis* of Paris Convention notably requires action only when there are competitors, and it is not clear that competitors exist in this context. Member States have the freedom to 'grant protection against certain acts even if the parties involved are not competing against each other',⁸⁴⁴ but this is not required under the Paris Convention or other international law.

8.1.3.2 Geographic TLDs: 'Contrary to Honest Practices'?

The most fundamental question in the application of unfair competition law to geographic domain names is whether the simple act of registering a

841. Top-level DNS development is discussed in Part I, Chapter 2, section 2.4 above.

842. ICANN, *Program Statistics*, <http://newgtlds.icann.org/en/program-status/statistics> (accessed 15 Oct. 2012).

843. See n. 188 above.

844. WIPO, *Protection against unfair competition*, 18.

geographic domain name or applying for a TLD string is inherently 'contrary to honest practices' when that act is carried out by anyone other than the relevant government or public authority (in the case of a geographic name) or the geographical indication holder (in the case of a geographical indication). Governments in particular have been quick to assume that the only legitimate interests in geographic domain names are their own. This point has been made not only in international law fora but in domestic courts and UDRP disputes. A group of such cases involve a United States-based company called Virtual Countries, which registered during 1999 and 2000 various country names as second-level domain names and operated thirty-one websites under those names.⁸⁴⁵ The complaint made by the government of New Zealand against Virtual Countries' registration of *www.newzealand.com* is illustrative of governments' general sentiment in this situation: 'Virtual Countries has no rights or legitimate interests in respect of the domain name [*newzealand.com*] because only the Complainant as Head of the Sovereign State of New Zealand, or its agencies, can have those rights or interests.'⁸⁴⁶

If the government is the only party with 'rights or legitimate interests' in geographic domain names, it must logically follow that the registration of geographic domain names without government authorization is inherently 'contrary to honest practices'. Yet as a universal rule this is problematic, because what are deemed honest practices in one country may not be so deemed in another. To the extent that 'honest practices' can be identified from international trade norms, then these should be considered,⁸⁴⁷ but agreed standards of honesty in commercial behaviour have proven elusive even at a regional level.⁸⁴⁸

It is difficult to prove the existence of agreed standards of honesty at a global level given their wide use in a variety of contexts. The use of geographic names in non-commercial contexts in the offline environment is ordinarily not subject to a requirement of government approval. There are, of course, bound to be variations in domestic approaches, but teachers, schoolchildren, journalists, researchers and politicians in free speech-promoting societies usually need not seek government clearance before speaking or writing geographic names. Further, as the recent survey conducted by the WIPO Special Committee on the Law of Trademarks, Industrial Designs and Geographical Indications evidences, many countries

845. See for example, *Virtual Countries, Inc. v. Republic of South Africa and South African Tourism Board*, No. 00 Civ. 84888 U.S. Dist. LEXIS (S.D.N.Y. 2001); *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754; *Puerto Rico Tourism Company v. Virtual Countries*, WIPO Case No. D2002-1129. See also discussion in Rimmer, *Virtual Countries*, 126.

846. *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

847. See Bodenhausen, 144.

848. See Henning-Bodewig, 20.

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have taken steps to limit proprietary rights in geographic names as trademarks.⁸⁴⁹ This has the practical effect of ensuring that geographic names remain accessible for public commercial use.

In the online environment, responses to third party use of geographic names are inconsistent. In some cases governments have been unable to convince UDRP panelists that unauthorized geographic domain name registrants have no legitimate interest in the names in question. The earlier-mentioned dispute between the government of New Zealand and Virtual Countries over the domain name www.newzealand.com is a notable example. The panel in that dispute considered it unnecessary to specifically address the question of Virtual Countries' legitimate interest in the domain name, but it was nevertheless pointed out that the use of the name on an operative, 'genuine' website 'although sketchy and badly in need of being updated' weighed in the registrant's favour.⁸⁵⁰

Further insight is provided by a subsequent dispute involving the domain name www.andalucia.com, in which the panel relied upon consensus views that had by that point emerged from UDRP decisions. In response to the question, 'Does a respondent automatically have a legitimate interest in a domain name comprised of a generic (dictionary) word(s)?'⁸⁵¹ the panel found:

While the general rule is not necessarily, there is an exception, that is stated thusly: 'However: If a respondent is using a generic word to describe his product/business or to profit from the generic value of the word without intending to take advantage of complainant's rights in that word, then it has a legitimate interest.'

...

The Panel finds that where, as here, a respondent is using a geographic indication to describe his product/business or to profit from the geographic sense of the word without intending to take advantage of complainant's rights in that word, then the respondent has a legitimate interest in respect of the domain name.⁸⁵²

849. This survey is discussed in detail in Part III, Chapter 6, section 6.2.1.2 above.

850. *New Zealand v. Virtual Countries*, WIPO Case No. D2002-0754.

851. WIPO, *WIPO Overview of WIPO Panel Views on Selected UDRP Questions: 2.2 Does a respondent automatically have a legitimate interest in a domain name comprised of a generic word(s)?*, <http://www.wipo.int/amc/en/domains/search/overview/index.html#15> (accessed 15 Oct. 2012).

852. *Junta de Andalucia Consejeria de Turismo, Comercio y Deporte, Turismo Andaluz, S.A. v. Andalucia.com Limited*, Case No. D2006-0749 (WIPO Arbitration and Mediation Center 13 Oct. 2006) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2006/d2006-0749.html>). See also *Asphalt Research Technology, Inc. v. National Press & Publishing, Inc.*, Case No. D2000-1005 (WIPO Arbitration and Mediation Center 13 Nov. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1005.html>); *Porto Chico Stores, Inc. v. Otavio Zambon*, Case No. D2000-1270 (WIPO Arbitration and Mediation Center 15 Nov. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1270.html>).

Similar questions have arisen in respect of domain names comprised of geographical indications. The registrant of the domain name www.parmaham.com, for example, was not found to have a legitimate interest in the name 'parma ham',⁸⁵³ but the result may have been different had the domain name at issue resolved to an active website. Taking a slightly different approach, the sole panelist in that dispute found that possession of the domain name by the respondent, who was not otherwise affiliated with the holder of the geographical indication, nevertheless did not constitute bad faith. It was noted that this finding would not necessarily preclude a finding of unfair competition under domestic law. An issue is potentially also raised in relation to Article 22 of the TRIPS Agreement, but only, as concluded in the previous chapter, if the website was related to goods (in the immediate example, Prosciutto di Parma).

As to whether the global online public perceives the registration of a geographic domain name by a registrant other than the relevant government as 'contrary to honest practices', this would be difficult to determine in a global marketplace. Despite concerns about globalization and a resultant homogenization of consumer tastes and preferences, there remain significant cultural and other differences that prevent the formulation of a single perception or interpretation of most names. It has already been argued in the previous chapter that this divergence of consumer interpretation remains one of the greatest challenges to recognizing rights in geographical indications at the international level. The same problem hinders their protection under unfair competition law at the international level: terms which are in some countries protected as identifying a particular product originating from a particular geographical location are in other countries considered generic. As such, their use in the latter countries by someone other than producers of the product in the named location could not be considered dishonest.

Accordingly, if protection of geographic names is to be based on Article 10*bis* of the Paris Convention, this must result from a name-by-name, country-by-country determination of whether or not use of the name by a particular party without government authorization is 'honest practice'. This would be a resource-intensive undertaking, since not just the substance of the standard of honesty but even how it is determined that something is an 'honest practice' differs from country to country. Even *ex post* analysis of disputes involving similar names arising in multiple territories would present challenges, given the differing standards of 'unfairness' that may have been applied. Further, if it is the case that '[t]he most important factor for

www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1270.html); *Gorstew Limited v. Worldwidewebsales.com*, Case No. D2002-0744 (WIPO Arbitration and Mediation Center 23 Oct. 2002) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2002/d2002-0744.html>).

853. *Consorzio del Prosciutto di Parma v. Domain Name Clearing Company, LLC*, Case No. D2000-0629 (WIPO Arbitration and Mediation Center 18 Sep. 2000) (available at <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0629.html>).

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determining “unfairness” in the marketplace ... is derived from the *purpose* of unfair competition law’,⁸⁵⁴ there is little hope of arriving at any universal standard because the differing purposes of unfair competition law in various jurisdictions will lead to differing standards. In particular, what is considered fair in countries that carve consumer protection out from unfair competition law will differ from those countries that do not.⁸⁵⁵

It should thus not simply be assumed that the registration of a geographic domain name by a non-government registrant or the registration of a geographical indication domain name by a non-local producer falls squarely within the broadly worded definition of ‘unfair competition’ provided by Article 10*bis* (2) of the Paris Convention. Deeper consideration is needed to determine whether unauthorized registrations of geographic domain names fall within any of the specifically enumerated acts of unfair competition provided for under the Paris Convention. This will now be explored.

8.2 SPECIFIC ACTS OF UNFAIR COMMERCIAL BEHAVIOUR

Paragraph (1) of Article 10*bis* of the Paris Convention is of a general nature, not obliging States to create new law ‘if their existing general legislation – for example, provisions of civil law directed against torts, or principles of common law – suffices to assure effective protection against unfair competition.’⁸⁵⁶ Paragraphs (2) and (3) are less general in nature; while neither provides a comprehensive, authoritative list of impermissible acts of unfair competition, paragraph (2) offers the broad definition just discussed and paragraph (3) identifies three specific acts which, at a minimum, must be prohibited by members’ domestic law. These acts seek to prevent unfair competition, on the one hand by stopping an enterprise from disparaging its competitors, and on the other hand by attempting to narrow the knowledge and experience gap between enterprise and consumer. Of these three acts that the convention specifically identifies as unfairly competitive, it is said that they share one aspect in particular:

The *common aspect* of these most important, but by no means exhaustive, examples of unfair market behavior is the attempt (by an entrepreneur) to succeed in competition without relying on his own achievements in terms of quality and price of his products and services, but rather by taking undue advantage of the work of another or by influencing consumer demand with false or misleading statements.

854. WIPO, *Protection against unfair competition*, 24-25.

855. See Henning-Bodewig, 21.

856. Bodenhausen, 143.

Practices that involve such methods are therefore doubtful at the outset as to their fairness in competition.⁸⁵⁷

It must be borne in mind that although Article 10*bis* (3) specifically identifies three behaviours as unfairly competitive, this list is not exhaustive; members are required to target all acts which would fall within the broad definition of unfair competition set out in Article 10*bis* (2), the relationship of which to geographic names generally and geographic domain names particularly has been discussed in the immediately preceding section of this chapter. Further, although geographic domain name registration is not expressly addressed by Article 10*bis* (3) and even to the extent that this provision is interpreted as not covering geographic domain name registration, there is nothing to prevent members from creating domestic law to that effect.

In addition to Article 10*bis*, which is specifically headed 'Unfair competition', Article 10 of the Paris Convention also addresses commercial behaviour that has the effect of harming competitors, consumers, or both. It makes actionable the use of false indications of source and thus is particularly relevant to the use of geographical indications. It is likewise applicable to other geographic names the use of which could be interpreted as connoting origin. The remainder of this chapter is devoted to an examination of these provisions in order to determine whether any of them offers grounds for restricting the registrability of geographic names as new gTLD strings.

8.2.1 FALSE INDICATIONS OF SOURCE

The first attempt to control unfairly competitive acts at the international level took the form of preventions against false indications of source. At the 1880 conference that would result in the drafting of the Paris Convention, it was declared a priority that:

Tout produit portant illicitement soit la marque d'un fabricant ou d'un commerçant établi dans l'un des pays de l'Union, soit une indication de provenance dudit pays, sera prohibé à l'entrée dans tous les autres États contractants, exclu du transit et de l'entrepôt, et pourra être l'objet d'une saisie suivie, s'il y a lieu, d'une action en justice.⁸⁵⁸

The prohibition against false indications of origin took shape as Article 10, in which indications were actionable only to the extent that they were used in conjunction with a false, fictitious, or deceptive trade name.⁸⁵⁹ Since revision at the 1958 Lisbon Conference, Article 10 applies to all direct or

857. WIPO, *Protection against unfair competition*, 24.

858. Ministère des Affaires Étrangères de la France, *Conférence Internationale pour la Protection de la Propriété Industrielle*, 14.

859. See Conrad, 23.

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indirect uses of a false indication of the source of goods. It is not expressly limited to geographical source, but that is identified as its most common application.⁸⁶⁰

Two things seriously hinder the applicability of Article 10 to geographic domain names. First, the indications of source covered by Article 10 are confined to those relating to goods, with the result that this provision is relevant only to second-level domain names corresponding to a website dealing in goods. Article 10 has no application to top-level domains because they bear no direct connection to goods. Rather, top-level domains represent the service of providing an online communications portal that others may, if they so choose, use to engage in commercial activity involving goods.

Second, even for those second-level domain names having a direct nexus to goods, or if a nexus between top-level domains and goods were thought to exist, Article 10 has no practical effect because the remedy for its breach is seizure of the falsely identified goods upon importation. This would have no effect on a domain name at any level of the DNS. Article 10 targets the cross-border movement of falsely identified goods; geographic domain names do not fall within this ambit.

Similar limitations arise in the application of Article IX:6 of the GATT Agreement, which deals with 'marks of origin'. It provides:

The contracting parties shall co-operate with each other with a view to preventing the use of trade names in such a manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of the territory of a contracting party as are protected by its legislation. Each contracting party shall accord full and sympathetic consideration to such requests or representations as may be made by any other contracting party regarding the application of the undertaking set forth in the preceding sentence to names of products which have been communicated to it by the other contracting party.

As an initial matter, the obligations imposed by this provision are significantly weaker than those imposed by Article 10 of the Paris Convention, requiring only 'co-operation with a view to' preventing false representations of origin. As with Article 10, the application of GATT Article IX:6 is not applicable to services. This likewise renders it only partially applicable to second-level domain names and entirely inapplicable to top-level domain strings. In addition, the capability of this provision to protect geographic names is hindered by its having been given a very narrow interpretation in the case of *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*.⁸⁶¹ The Panel in that case found

860. See Bodenhausen, 139.

861. *Japan – Customs Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages*, L6216 adopted 10 Nov. 1987, BISD 34S/83 (GATT Panel Report).

that the use of terms such as ‘Riesling’ or ‘chateau’ by Japanese manufacturers was not detrimental to the names of products produced by the European Communities.

Like the Paris Convention, the GATT Agreement does not expressly prevent members from offering greater protection to origin statements under domestic law than is required by their treaty obligations. On the contrary, GATT Article XX(d) allows contracting parties to adopt or enforce measures ‘necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to [. . .] the protection of patents, trade marks, copyrights and the prevention of deceptive practices’. The term ‘deceptive practices’ has notably been interpreted to include ‘false marking of geographical origin.’⁸⁶² There is, however, no scope for protection of non-commercial names under the GATT.

Neither Article 10 of the Paris Convention or Article IX:6 of the GATT specifically offers rights that enable one party to prevent another’s registration and use of a geographic top-level domain string. Some scope exists under these provisions for restricting registration of second and lower level domain names, but this is limited to the use of specifically origin-connoting geographic names used to identify websites offering goods. Member States are not prevented from enacting specific legislation preventing unauthorized registration of domain names as a false statement of origin, but any such rights would be enforceable only in the jurisdiction in which they are granted.

8.2.2 ACTS CREATING CONFUSION WITH A COMPETITOR

Turning now to the first of the three acts that are specifically identified as unfairly competitive by the Paris Convention, Article 10*bis* (3)(i) prohibits ‘all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor’. The term ‘all acts’ is sufficiently broad to be interpreted as including the registration and use of a name at any level of the DNS. The following two elements must additionally be satisfied for Article 10*bis* (3)(i) to justify a general rule of preventing their delegation to applicants without government authorization:

- The acts of applying for and operating a geographic gTLD, irrespective of the registrant’s intent,⁸⁶³ are likely to create confusion with the government.

862. Gervais, 7, citing *WTO Guide to GATT Law and Practice* 583 (6th ed., 1995).

863. See WIPO (ed.), *Introduction to Intellectual Property*, 254 (nothing that while irrelevant to the determination of whether an act of unfair competition has taken place, intent may be deemed relevant to the determination of sanctions.)

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- Unauthorized geographic gTLD applicants and relevant governments are competitors.

These steps are analysed in the sub-sections that follow.

8.2.2.1 Likelihood of Creating Confusion

It has been argued that society has become conditioned to ‘assume that all the iconic indicia of consumer culture must be owned, and thus that *any* appearance of them must be approved by their official owners.’⁸⁶⁴ If this is so, confusion is likely to result from the use of geographic names in the DNS, fuelled by the authoritative or official status of their presumptive owners. There are various means of determining confusion in domestic law, but most commonly it is established using a ‘likelihood of confusion’ test derived from trademark law.⁸⁶⁵ This test has played a major role in trademark owners’ efforts to extend their offline rights into the online environment. The standard applied is ordinarily that of ‘an average (reasonable) consumer, having normal attentiveness with regard to the nature of the product or service or the place where it is offered’.⁸⁶⁶ In the context of this study the following question arises: would the average, reasonable, normally attentive internet user be likely to be confused by geographic domain names registered by or delegated to parties other than governments? The following two fabricated examples are illustrative of this issue:

- When the average internet user in Country A sees the top-level domain .uruguay, do they understand it to be delegated to or affiliated with the country of Uruguay?
- When the average internet user in Country A sees the domain name ‘mombasa.visit’, do they understand this second-level domain in the .visit top-level domain to be registered by or affiliated with the city of Mombasa?

The answers to these questions depend on a range of factors, of which several can be borrowed from trademark law:⁸⁶⁷

- The similarity between the geographic name and geographic domain name/string.
- The reputation or degree of distinctiveness of the geographic name/string and the location it names.
- The reputation of the government/s relevant to the name/string.

864. Coombe, 65 (internal citations omitted).

865. See AIPPI, *Effective protection against unfair competition under Article 10bis Paris Convention of 1883*, AIPPI Y.B. 1994/II, 398, 6.3. (1994)

866. *Ibid.*, 6.5.

867. See WIPO (ed.), *Introduction to Intellectual Property*, 255.

- Internet user sophistication regarding the DNS (e.g., some users will know that not all country code TLDs are operated by or formally affiliated with the government of the territory represented).⁸⁶⁸
- The relationship of the reasonable internet user to the name (local familiar names may be interpreted differently than non-local unfamiliar names).
- The existence of other, non-geographic meanings of the name (the names ‘Turkey’ and ‘Orange’, for example).
- The existence of multiple geographic locations having the same name (Oxford, Ohio, USA and Oxford, England, for example).
- The relationship, if any, between a second-level domain name and the top-level domain in which it is registered (e.g., tokyo.japan may be assumed by the reasonable person to be associated with the government while cooking.japan may be understood differently).

Reliance upon the ‘reasonable person’ standard in the global context presents significant challenges because of the widely varied experience and knowledge of internet users across the globe. The reasonable internet user in one jurisdiction may be affected by the factors noted above in a different way than the reasonable internet user in another jurisdiction. Identifying a global standard would require capturing the many domestic standards and finding among them sufficient consistencies, to the extent that any exist. There is thus scant support for a general rule that any registration of a geographic domain name by a non-government registrant is likely to confuse.

There is greater scope for consistency in findings of likelihood of confusion when the domain name or string in question is a distinctive geographical indication.⁸⁶⁹ The identification of a global ‘reasonable person’ standard is influenced by the fact that the ordinary use of a geographical identification is as an identifier of source. Consistent use of wine and spirit geographical indications resulting from the higher level of protection afforded them under Article 23 of the TRIPS Agreement increases the capacity for likelihood of confusion. The international register as proposed by Article 23⁸⁷⁰ could, if it were to be established, have the effect of strengthening the public’s awareness of the indications recorded by it. Certain geographical indications may also benefit from widespread recognition through a patchwork of bi- and multilateral agreements between the origin country and trade partners. The European Union in particular has

868. Country-code TLD administration is discussed at Part I, Chapter 2, section 2.4.2 above. The example of Tuvalu’s .tv ccTLD, which has no territorial restrictions and operates as if it were an open gTLD, is provided in n. 812 above.

869. See WIPO (ed.), *Introduction to Intellectual Property*, 256-257.

870. The proposed international register is discussed in Part III, Chapter 7, section 7.3.1 above.

made the recognition of geographical indications a key issue in recent agreements with its trade partners.⁸⁷¹

In countries in which a geographical indication is interpreted as identifying a type of (rather than a particular) product, there is no connotation of origin and thus no likelihood of confusion. Courts tend to rely on the meaning of a term to the relevant public, as ascertained from such things as dictionary definitions, telephone directories, media sources and other publications, along with the use of the term made by the party claiming ownership, its competitors and others.⁸⁷² It would be interesting to consider whether the convention of using lower-case letters in domain names has any effect on public perception, given that geographical indications are often identified in written expression with capital letters following the convention of proper (i.e., non-generic) names.

These issues lead to the conclusion that name-by-name, jurisdiction-by-jurisdiction analysis is needed to determine whether registration as a domain name or delegation as a gTLD of geographical indications or other geographic names falls within the scope of Article 10*bis* (3)(i). It is overreaching for States to prevent registration of geographic domain names on the basis of the existence of a general rule among all Paris Union members that this activity is inherently likely to confuse.

8.2.2.2 Confusion with a Competitor

In cases in which likelihood of confusion is found, unauthorized registration/delegation of a geographic domain name will not fall within the scope of Article 10*bis* (3)(i) if the registrant/registry operator and government or geographical indication holder are not competitors. To clarify, the likelihood of confusion must exist between two parties in a market, with advantages accruing to one competitor because consumers believe that competitor to be another competitor. General confusion about a market is not sufficient.

As noted earlier in this chapter, competition exists in the DNS but not in a clear, conventional sense. All new gTLD applicants compete against each other for monopoly control of a uniquely named domain. In the

871. A summary of key EU bilateral agreements on geographical indications made in the ten years following the implementation of the TRIPS Agreement is provided in O'Connor and Company & Insight Consulting, *Geographical indications and TRIPS: 10 Years Later... A roadmap for EU GI holders to get protection in other WTO Members*, http://trade.ec.europa.eu/doclib/docs/2007/june/tradoc_135088.pdf. Recently-signed agreements addressing geographical indication protection include the Trade Agreement between the European Union and Colombia and Peru (Annex XIII) and the EU-South Korea FTA (Chapter 10, sub-s. B). See Trade Agreement between the European Union and Colombia and Peru (26 Jun. 2012) (available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=691>); EU-South Korea Free Trade Agreement (6 Oct. 2010) (available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:127:SOM:EN:HTML>).

872. See Xuan-Thao N. Nguyen, *Nationalizing Trademarks: A new international trademark jurisprudence?*, 39 Wake Forest L. Rev. 729, 744-745 (2004).

application process, a non-State geographic gTLD applicant is in competition with a government applicant. Once the string is delegated to a successful applicant, the focus turns to operation of the TLD registry and the relevant question becomes whether the non-State geographic gTLD registry operator is in competition with the government of that geographic location. This depends upon the gTLD and its operator, in particular what the mission and purpose of the gTLD are and whether these are likely to cause confusion with the 'establishment, the goods, or the industrial or commercial activities' of the government.

Outright rejection of gTLD applications lacking government authorization is unsupportable under Article 10*bis* (3)(i) because this fails to take into account the mission and purpose of the proposed domain and whether this gives rise to a competitive relationship. Further, it is certainly the case that not all geographic gTLD operators will be in competition with relevant governments. Domain names comprising a proprietary name and the derogatory word 'sucks' (so-called 'sucks sites') provide clear examples of potentially non-competing, non-commercial domains. This issue had not yet presented at the top-level of the DNS prior to the New gTLD Program, but two applications were made in the program for the top-level string '.sucks'.⁸⁷³ Even if these applications are not successful,⁸⁷⁴ they serve as an example of what is often non-commercial speech that cannot be considered confusion with a competitor.

The absence of a likelihood of confusion in all cases and the potential for confusion outside of a competitive relationship support a conclusion that Article 10*bis* (3)(i) does not oblige Paris Union Member States to prevent the unauthorized registration of geographical indications and other geographic names as domain names. Neither does Article 10*bis* (3)(i) prevent States from adopting and enforcing such a universal rule through domestic law.

8.2.3 FALSE ALLEGATIONS DISCREDITING A COMPETITOR

As the second specifically identified act of prohibited unfair competition, Article 10*bis* (3)(ii) of the Paris Convention targets 'false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor'. It is essentially a provision that protects a commercial enterprise from harm to its commercial

873. See ICANN, *Reveal Day 13 June 2012: New gTLD Applied-For Strings*, <http://newgtlds.icann.org/en/program-status/application-results> (13 Jun. 2012, accessed 15 Oct. 2012).

874. Kevin Murphy, *Governments probe domain land-snatch: many.gTLDs.suck*, *The Register* (29 Jun. 2012) (available at http://www.theregister.co.uk/2012/06/29/domain_land_grab_under_the_microscope/). Murphy comments that the 'companies that have applied for .sucks ... face an uphill battle selling their proposed benefits to the GAC and to ICANN's influential intellectual property lobby.'

reputation. With that in mind, it may be of even greater use to online businesses than offline businesses, because online reputation is potentially more difficult to build and therefore more valuable to the enterprise.⁸⁷⁵ Yet while this may be the case for businesses and their brand-oriented domain names, it should not automatically be assumed to be so for those interested in geographic domain names.

It is helpful to begin by distinguishing Article 10*bis* (3)(i) from Article 10*bis* (3)(ii): misleading the public into confusion involves communicating something (usually positive) about one's own identity or products, while making a false allegation involves communicating something negative about another market player. In order for Article 10*bis* (3)(ii) to be called upon to prevent the unauthorized registration of geographic domain names or application for a geographic gTLD, the act of registration/application must be interpreted as the making of a false allegation. Additionally, that false allegation must be of a discrediting nature. It is difficult to see how the simple act of registering a geographic domain or applying for a TLD string could satisfy either of these elements.

8.2.3.1 False Allegations

Making an application for a geographic gTLD such as .london or for a geographic second-level domain such as champagne.com cannot on its own be characterized as the making of a false allegation. That these actions should even be characterized as an 'allegation' is not at all obvious given the ordinary meaning of that term as 'a claim that someone has done something wrong, typically an unfounded one.'⁸⁷⁶ There may be some scope for interpreting a geographic gTLD string as a claim the applicant makes about itself, but it is not logical to characterize a geographic gTLD as a claim about another party.

Even if domain names generally or geographic domain names specifically are understood in this manner, it is inappropriate to assume that the claim they make is false. Geographic names can be interpreted in a variety of ways, including most obviously as the identifier of a particular geographic location. Only false allegations are expressly prohibited by this provision, and it is indubitably not the case that all of the possible interpretations of a geographic name are inherently false. The same can be said of domain names more generally. Here it helps to return to the discussion of what a domain name is, first and foremost the identifier of a particular location in the DNS. It is true that domain names have taken on initially unintended semantic

875. See Dan Jerker B. Svantesson, *The right of reputation in the Internet era*, 23(3) Int'l Rev. L. Comp. & Tech. 169, 170 (2009) (positing that reputation has a much greater role to play online than off because 'online you simply do not have the same possibilities of building trust through means such as location, shop structure, etc.').

876. *The Concise Oxford English Dictionary* 34 (Catherine Soanes & Angus Stevenson eds., 11th ed. revised, Oxford University Press 2008).

significance, but to consider the act of applying for a top-level domain name the making of a false allegation is to push that significance to illogical limits. It should, however, be acknowledged that Paris Union members remain free to prohibit through domestic law true but nevertheless disparaging statements.⁸⁷⁷

8.2.3.2 Discrediting a Competitor

Even if it is found that a geographic domain name or string constitutes a false allegation, that allegation must be ‘of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor’, what WIPO characterizes as an ‘attack’ on one’s competitor.⁸⁷⁸ The ordinary meaning of the verb form of the word ‘discredit’ as ‘harm the good reputation of, cause (an idea or account) to seem false or unreliable’⁸⁷⁹ serves to emphasize that the allegations at issue in Article 10bis (3)(ii), unlike the misleading activity targeted by Article 10bis (3)(i), are specifically directed at others in the market.

The act of filing an application for a geographic domain name cannot, on its own, be said to constitute an attack on others. Such a finding could only be reached by considering the context in the geographic domain name is used, for example in conjunction with pejorative words. It could be said that a top-level domain such as .australiasucks or the domain name ‘australia’ registered in a new .sucks TLD (‘australia.sucks’) discredits everything about Australia, including its ‘establishment’, ‘goods’, and ‘industrial or commercial activities’. Opinions are not actionable,⁸⁸⁰ however, and it can be argued that registrants of such domain names are using the domain name system to express an opinion rather than an objective fact.

Furthermore, discrediting though it may be, the use of a name in a ‘sucks site’ may be non-commercial in nature and made by a party not constituting a ‘competitor’. Like Article 10bis (3)(i), Article 10bis (3)(ii) does not require that States prevent acts, however undesirable, against those who are not competitors. Accordingly, most countries limit disparagement to ‘cases where there is at least some sort of competitive relationship between the plaintiff and the defendant.’⁸⁸¹ Countries that do extend the scope of this provision are not required by Article 10bis (3)(ii) to do so, but neither are they prevented from doing so.

Restrictions on the registration of geographic domain names on the basis of their constituting a false allegation that discredits a competitor thus lack support from Article 10bis (3)(ii). Paris Union members are not obliged

877. See AIPPI, 7.1.

878. WIPO (ed.), *Introduction to Intellectual Property*, 266.

879. Soanes & Stevenson (eds.), *The Concise Oxford English Dictionary*, 409-410.

880. See Lisa P. Ramsey, *Free Speech and International Obligations to Protect Trademarks*, 35 *Yale J. Int'l L.* 405, 421 (2010).

881. WIPO (ed.), *Introduction to Intellectual Property*, 266.

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to prevent the registration of geographic names as domain names or strings, and it is difficult to see how Member States can rely on Article 10*bis* (3)(ii) as a basis for domestic law to that effect. A State's claim to rights on this basis appears less motivated by a desire to prevent unfair competition than a desire to foreclose all competition in order to prevent any slights against or encroachments upon the State's reputation. If that is the true intention, a more appropriate source of rights to consider is the trademark theory of dilution, the potential application of which to geographic names is discussed in the final section of this chapter.

8.2.4 INDICATIONS OR ALLEGATIONS LIABLE TO MISLEAD THE PUBLIC

Article 10*bis* (3)(iii) of the Paris Convention sets out the last of the three specifically prohibited acts of unfair competition, 'indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.' The Austrian proposal from which this provision originated included the word 'origin', but its removal was motivated by objections raised by the United States.⁸⁸² Origin statements or indications going to 'the *identity of the producer*, his *establishment* or his *industrial or commercial activities*' (emphasis in original) were thus beyond the reach of Article 10*bis*, and to the extent not covered by Article 10, relegated to domestic law.⁸⁸³ The International Association for the Protection of Intellectual Property (AIPPI) has observed, however, that 'in general, all kinds of allegations, not restricted to those listed in Article 10*bis*, are covered by such protection, including allegations referring to the geographical origin of the products'.⁸⁸⁴ Furthermore, despite the inapplicability on its face to geographical indications, this provision nevertheless 'became a launching point for'⁸⁸⁵ the drafting of Articles 22, 23 and 24 of the TRIPS Agreement respecting geographical indications. The end result is a curious one, in that section 22(2) of the TRIPS Agreement effectively extends the scope of protection under Article 10*bis* of the Paris Convention by bringing geographical indications, which are by definition origin statements, within its scope.⁸⁸⁶

882. See J. Thomas McCarthy & Veronica Colby Devitt, *Protection of Geographical Denominations: Domestic and International*, 69 *Trademark Rep.* 199, 201-203 (1979).

883. See Bodenhausen, 146 (internal citations omitted).

884. AIPPI, 8.1.

885. Hughes, *Spirited Debate*, 312.

886. See Conrad, 35-36.

8.2.4.1 Misleading

As with standards of truthfulness and fairness, the question of whether an indication or allegation is misleading inevitably varies from jurisdiction to jurisdiction.⁸⁸⁷ Some countries tolerate exaggeration up to a point, but there is no universal agreement as to where that point lies.⁸⁸⁸ This makes it difficult to enumerate specifically misleading acts at the international level. It is generally the case that in order to fall within the scope of Article 10*bis* (3)(iii), the indication or allegation in question need not be inherently false or actually result in a false impression in the consumer's mind. Rather, its misleading character is determined by the consumer's reaction, which 'may differ from country to country and may also depend on the kind of addressee (consumers or traders) and the type of goods or services. The Paris Convention leaves this question to member States'.⁸⁸⁹

The question in the context of geographic names' use in the DNS is whether their delegation to (top-level) or registration by (second or lower level) an applicant other than a government or geographical indication holder is inherently misleading to the average, reasonable internet user. As discussed in the context of the prohibition through Article 10*bis* (3)(i) of 'all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor', global reasonableness standards are difficult if not impossible to identify. It is extremely difficult to gauge public perception on a global scale, and attempts to do are very likely to reveal that the savvy and experience attributed to the average internet user differs from country to country and perhaps even within a country.

8.2.4.2 Limited to Goods

Even if geographic top-level domains are considered inherently misleading, there is an insurmountable obstacle to the application of Article 10*bis* (3)(iii), which is the limitation of that provision to 'indications or allegations' made about goods. As has been argued in the context of geographical indications in the previous chapter, unlike second-level domains (which may, although need not, have a direct connection to goods), top-level domains and their operators have no such connection. Rather, they provide a service by making available a communications portal. A .champagne gTLD, for example, could be a space in the DNS for domain name registrants to communicate commercial and non-commercial information about Champagne the region, Champagne the product originating from that region, or other things.

While Article 10*bis* (3)(iii) may offer protection against the registration of geographic second- and lower level domain names to the extent that these

887. See AIPPI, 8.2.

888. See WIPO (ed.), *Introduction to Intellectual Property*, 261-262 and 264.

889. *Ibid.*, 262.

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are a) used in connection with goods and b) deemed misleading under domestic law as regards those goods, no such protection is afforded in the context of top-level domain strings. For the same reasons for which it was concluded the previous chapter that there are no preventable uses of geographical indications at the top-level of the DNS, it can be concluded that Article 10*bis* (3)(iii) does not oblige Paris Union Member States to prevent geographic gTLD applications by non-State applicants. It is open to members to deem the registration of a geographic domain name at any level of the DNS by a party other than the relevant government or geographical indication holder inherently misleading, but this is not required by the Paris Convention. Nor is there any evident consistency amongst States adopting this broader approach.

8.3 PROTECTION OF REPUTATION

Although it seems logical to link a desire to prevent reputational harm with unfair commercial behaviour, the preceding analysis of Paris Convention Articles 10 and 10*bis* illustrates the very limited protection available to reputation through international unfair competition law. The concerns of governments and geographical indication holders about misappropriation of identity by others' use of geographic names are not limited to actions of competitors, nor does the term 'competitor' have much traction in this context. Even to the very limited extent that Articles 10 and 10*bis* protect these interests, they are clearly not sufficient bases for broader claims to exclusive rights in geographic names. Two further, related doctrines of rights protection will now be considered to determine their potential for filling the gaps left by unfair competition law: dilution and personality rights.

8.3.1 DILUTION

Dilution sits uneasily alongside unfair competition principles because its prevention of the use of a trademark in connection with even unrelated goods or services effectively makes competition in that sector impossible. Put simply: 'How could there be unfair competition when there was no competition?'⁸⁹⁰ Dilution is therefore logically addressed in the Paris Convention not in Article 10*bis*, but rather separately in Article 6*bis*, which applies only to 'well-known' trademarks.

The function of the doctrine of dilution is to prevent the erosion by anyone – direct competitors or otherwise – of the reputation of famous

890. Brown Jr, 1192.

trademarks.⁸⁹¹ The broader range of preventable acts fills in some of the gaps identified in the previous section of this chapter in terms of the applicability of unfair competition law to geographic names' use in the DNS. It has already been suggested that dilution may be usefully applied at the second-level of the DNS 'if a customer became confused about the owner of the domain name, purchased goods from a cybersquatter thinking they were made by the brand and lost confidence in the brand, thereby harming its reputation and value.'⁸⁹²

There is precedent for protecting geographic names under Article 6*bis* even where they are not registered as trademarks: Article 6*bis* has successfully been relied upon to support a claim to rights in the name of the government of the Spanish region of Catalunya, 'Generalitat de Catalunya'. In a UDRP dispute brought by the local government, the name in question was found to be protected on the basis of its well-known status and Spanish law's recognition of unregistered well-known marks.⁸⁹³ The key in this and similar cases is domestic law's recognition of a geographic name as a trademark, which has the automatic effect of bringing the name within the scope of the UDRP. If domestic law does not consider the name a trademark, then the UDRP is inapplicable and the party asserting rights in the name can rely only on whatever other rights might be available under domestic law.

Setting aside the possibility of bringing a UDRP claim, the domestic applicability of dilution theory may extend beyond trademarks. This has significant potential for the protection of geographic names as a possible future development in international law. The protection of geographical indications in some European jurisdictions, for example, has been compared to the protection against dilution afforded to famous trademarks in the United States,⁸⁹⁴ which is where trademark dilution theory originated. Not coincidentally, then, have the European Commission's proposals for increased protection of geographical indications under the TRIPS Agreement been said to resemble a dilution or 'dilution plus' type of protection.⁸⁹⁵

In its 1996 Model Provisions on Protection against Unfair Competition, the World Intellectual Property Organization proposed amending Article 10*bis* (3) to include acts that damage goodwill or reputation.⁸⁹⁶ Such an amendment would increase support for the protection of geographic names, in particular by eliminating the need for a competitive relationship between

891. See Callmann & Altman, 22:15. On well-known marks and their potential reservation from domain name registrability, see Part II, Chapter 3, section 3.2.1.3 above.

892. Elizabeth C. Woodard, *The UDRP, ADR, and Arbitration: Using proven solutions to address perceived problems with the UDRP*, 19 Fordham Intell. Prop. Media & Ent. L. J. 1169, 1176 n. 31 (2009).

893. *Catalunya v. Wolf*, WIPO Case No. D2002-1124.

894. See Hughes, *Spirited Debate*, 347-349.

895. *Ibid.*, 319.

896. See WIPO, *Model Provisions on Protection Against Unfair Competition*, WIPO Pub. No. 832 (1996).

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the parties, with the operative situation being ‘any act or practice in the course of industrial or commercial activities’.⁸⁹⁷ Interpreted broadly, as instructed by the accompanying Notes, this would include ‘activities of professionals and non-profit making activities.’⁸⁹⁸

In summary, the proposed amendment to Article 10*bis* (3) has as-yet not been agreed upon and the ‘model’ provisions, which are directed at countries that are as an initial matter introducing unfair competition laws into national legislation in order to comply with their obligations under the TRIPS Agreement, are not binding. Nevertheless, these things are indicative of a desire at the international level to broaden the protection offered by dilution and to bring geographic names within the scope of unfair competition law.⁸⁹⁹ Currently, the protection against dilution offered by Article 6*bis* of the Paris Convention is available only to geographic names recognized under domestic trademark law. Nor is Article 10*bis* (3), in its present wording, able to prevent damage to reputation except by competitors and in the very limited constellations identified in its sub-sections (i), (ii) and (iii).

8.3.2 GEOGRAPHIC NAMES AND PERSONALITY RIGHTS

There are strong conceptual links between unfair competition and the protection of personality or identity. Like individuals, governments are concerned about identity theft in the online environment. The recognition of personality rights in geographic names could address States’ concerns by preventing unauthorized parties from holding themselves out as the government or its authorized representative on the internet. This sort of protection ordinarily has as its focus the reputation of persons; it must therefore be questioned whether international law recognizes personality rights of States such that these rights might be called upon by governments to prevent unauthorized applications for geographic gTLDs.

WIPO has considered this question in the context of protecting personal names from unauthorized registration as second-level domain names, and concluded that the domestic nature of personality protection and the diversity of domestic approaches are obstacles to the existence of an international norm of protection of personal names.⁹⁰⁰ In jurisdictions where protection exists for personal names, this generally takes the form of personality law, which derives from individuality and personhood.⁹⁰¹ Such a theory could recognize that a State’s identification with a symbolic name gives rise to a ‘personality stake’⁹⁰² in that name; the use of that name by another could

897. *Ibid.*, 62 Art. 1(1).

898. Henning-Bodewig, 24.

899. See Gervais, 298-299.

900. See WIPO, *WIPO II Report*, para. 178.

901. See Melville B. Nimmer, *The Right of Publicity*, 19 Law & Contemp. Probs. 203 (1954).

902. Hughes, *The Philosophy of Intellectual Property*, 340-341.

plausibly be interpreted as analogous to appropriation of an individual's interest in his or her personality.⁹⁰³ Yet the characteristics of individuality and personhood underpinning protection are unique to human beings and lacking in other forms of legal person. On this basis, personality theory has been deemed to be of limited application to protecting corporations' trademarks.⁹⁰⁴ The same logic refutes governments' claims to geographic names on the basis of personality.

Even where human personality rights are recognized in domestic law,⁹⁰⁵ they cannot be characterized as rights in a name as such.⁹⁰⁶ First, they are limited to protecting commercial value in a name,⁹⁰⁷ and ordinarily this stands to benefit only famous persons. Even then, not all uses of the famous person's name can be prevented; in particular, non-commercial, informational uses are not preventable where the right to free speech is protected.⁹⁰⁸ In the context of domain names, it is certainly not the case that any person can object to a registration of his or her name as a domain name on the basis of personality theory, and in any event the multiplicity of names will make it virtually impossible for every person with a common name to have his or her own domain name.

If a personality theory of statehood exists, to the extent that it is based upon existing personality doctrines respecting persons, the protection it offers is likewise limited. Though their relatively low numbers and global notoriety create commercial value in States' names, the benefit to States of a personality theory would be limited to preventing commercial uses of a country name. Most sub-national geographic names will have more difficulty in demonstrating requisite fame than country names. Non-commercial use of geographic names in diplomatic, official, descriptive or informative contexts – realistically a large proportion of the possible uses of geographic names – cannot be prevented. A complete prohibition on the unauthorized registration of geographic domain names on this basis would require as a conceptual first step deeming the act of registration, irrespective of the nature of the proposed use of the domain, an inherently commercial activity.⁹⁰⁹

The internet has undeniably given rise to concerns about misappropriated identity and corresponding harm to reputation. There is nevertheless no

903. See Leon Green, *The Right to Privacy*, 27 Ill. L. Rev. 237 (1932).

904. See Anupam Chander, *The New, New Property*, 81 Texas L. Rev. 715, 748 (2003), citing Margaret Jane Radin, *Reinterpreting Property* 12-13 and 112 (University of Chicago Press 1993).

905. See Madow, 132 n. 23 and n. 24.

906. See WIPO, *WIPO II Report*, para. 172.

907. See Madow, 130.

908. See WIPO, *WIPO II Report*, para. 196 (contemplating the 'chilling effect on free speech' if personal names were to be protected under the UDRP).

909. On the inherently commercial nature of internet transactions and the effect that such a determination would have on DNS law and policy, see Part III, Chapter 5, section 5.2.2 above.

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international legal framework currently in place to prevent the harm that could potentially result from the registration of a geographic domain name by a party not authorized to do so by a relevant government. There are conceptual obstacles to applying human personality rights to non-human interests, and even if this were not the case, human personality rights are not recognized as an international norm. A theory of State personality is not yet extant, and its future development would likely require significant departure from existing notions underpinning personality protection available to persons.

8.4 CONCLUSIONS ON COMMERCIAL RIGHTS IN GEOGRAPHIC NAMES

This chapter has challenged justifications of restrictions on geographic names in the DNS on the basis of international unfair competition law. Governments' claims to rights in geographic names on this basis appear to be grounded more in a desire to exercise control than to promote honesty in commercial dealing, promote and protect commercial investment, promote competition or protect consumers. One is ultimately inclined to agree with the comments made in a 1945 decision of the United States Second Circuit Court of Appeals that "the doctrine of so-called "unfair competition" is really a doctrine of "unfair intrusion on a monopoly".⁹¹⁰

As a starting point, the notion of 'competitors' in the context of the top-level of the DNS is strained. It is prudent to question whether an applicant for a new geographic gTLD is a competitor, in the ordinary sense of that term, with existing TLD registries, other applicants for new gTLDs, or governments relevant to a geographic name. If not, unfair competition law as provided for in Article 10*bis* of the Paris Convention is inapplicable to geographic gTLDs. Yet even if this challenge is overcome, there remain other considerable obstacles to applying international unfair competition law at the top-level of the DNS.

Preventing the registration of geographic gTLDs cannot be justified on the basis of all registrations being a false indication of the source of goods or an indication or allegation liable to mislead the public about goods, because top-level domains and the registries that operate them lack the requisite connection to goods. The then-Director General of WIPO pursued the inclusion of services in Article 10*bis* (3) in 1977,⁹¹¹ but the attempt was unsuccessful. This provision remains applicable only to goods and therefore cannot be applied to the top-level of the DNS.

910. *Standard Brands v. Smidler*, 151 F.2d 34, 40 (C.C.A. 2d 1945) (concurring opinion of Frank, J.).

911. See McCarthy & Devitt, 204. Services were included in the first TRIPS negotiation draft, but later removed. See Conrad, 34 n. 101.

Whether a TLD string can on its own constitute an allegation discrediting a competitor is doubtful. Dilution theory, which is conceptually at odds with unfair competition law but relatedly targets commercial behaviour that causes harm, is recognized in international law, but at this stage applies only to trademarks. It remains to be seen whether this form of protection will ultimately be extended to geographical indications through the TRIPS Agreement or some other instrument. Nor is there a norm in international law recognizing personality rights in respect of states.

There is scope for protecting the rights of geographical indication holders (which unlike government interests do have a clearly and directly commercial application) by preventing their registration as top-level domain strings, but this protection depends in large part on the distinctiveness of the indication. Until awareness is achieved more broadly, whether through an international register or otherwise, few names will benefit from this protection. Like geographic names generally, geographical indications are subject to a name-by-name, jurisdiction-by-jurisdiction analysis as to their distinctiveness and likelihood of creating confusion.

These considerations lead to the conclusion that neither Article 10 nor Article 10*bis* of the Paris Convention obliges Paris Union members to prohibit as acts of unfair competition the unauthorized registration of geographic names or geographical indications as top-level domain strings. The same conclusion is reached with respect to Article 6*bis* of the Paris Convention and GATT Article IX:6. It is important to emphasize, however, that Article 10*bis* (3) is not exhaustive; the broader definition of 'unfair competition' provided in Article 10*bis* (2) makes this clear. While the three specifically enumerated acts of unfair competition 'are important examples of unfair competition and may even cover the majority of acts committed in practice ... there exist manifold other ways and means to commit unfair competition which do not fall into any of these three categories.'⁹¹² WIPO's Model Laws are evidence of a view that the unfair competition provisions of the Paris Convention require clarification and strengthening.

It is also important to emphasize that although the Paris Convention does not specifically oblige States to prevent the registration of geographic domain names as false indications of origin or as acts of unfair competition, it does not prevent members from enacting domestic law to that effect. Unfair competition law remains a domestic source of rights with the subject matter protected as well as the means of protection left open for States to decide. Greater protection for geographic names generally and geographical indications specifically, through unfair competition or anti-dilution law, may motivate the marketplace to provide better, more accurate information or perhaps even better quality products. In the context of the DNS, this may upset the delicate balance between laws protecting commercial signs, competition law and free speech. Although there was found in 1925 'no

912. AIPPI, para. 1.

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substantial precedent to indicate the degree of control of an industry through trade symbols which would be held a restraint of trade or an attempt to monopolize any part of trade or commerce', the process of evaluating new gTLD applications and delegating new gTLDs could just bring about the sort of 'scheme of industrial dominion'⁹¹³ that was then speculated of.

913. Brown Jr, 1202.

Chapter 9

Human Rights in Geographic Names

What are we? A nation? A region? In the Internet we are a community of interest.⁹¹⁴

9.1 LINKING GEOGRAPHIC DOMAIN NAMES WITH HUMAN RIGHTS

9.1.1 HUMAN RIGHTS, INTERNET ACCESS, AND IDENTITY

In the relatively short time since its being made accessible to the public, the internet has come to play an integral role in peoples' daily lives. This is so much the case that it can now be plausibly argued that obstacles impeding a person's ability to access and use the internet have the effect of impinging upon that person's ability to survive and thrive in the modern world. Much has been written about the potential benefits of technology to humankind and the continuation and development of cultures, languages and communities;⁹¹⁵ indeed, this has been a prime reason for expanding the top-level of the DNS since the privatization of the internet with the formation of ICANN, a corporate body specifically charged by the United States government with reflecting in its decision-making processes 'the functional, geographic and

914. Gerrand, *Cultural diversity in cyberspace*, quoting Amadeu Abril i Abril.

915. See for example, Celia Lury, *Cultural rights: technology, legality, and personality* (Routledge 1993); Kyra Landzelius ed., *Native on the net* (Routledge 2006); *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

cultural diversity of the Internet'.⁹¹⁶ As ICANN proceeds with expansion of the top-level of the DNS, an argument can be made that rejecting an application for a new gTLD can have the practical effect of denying the applicant (and, to the extent that the application is made on behalf of a community, that community) from expressing itself online and having an online identity. Given the fundamental nature of the internet to contemporary humanity, it is therefore imperative that any restrictions placed by ICANN on the creation of new generic top-level domains is closely examined with the rights of the persons and communities affected by them in mind.

The implications of the technology underpinning the DNS, in particular the requirement of absolute name uniqueness, have been discussed in earlier chapters of this book in the context of internet governance issues, but there are also major societal implications embedded in the decision-making processes that will result in a greater number of gTLDs. Conceptual links can be drawn between the societal implications of these decisions and the fundamental attributes of humanity that are acknowledged and protected through human rights law. The aim of this final chapter is to explore those implications and the potential of human rights as a basis for challenging States' assumptions of exclusive rights in geographic names and control over their use in the DNS.

The relevance of human rights to new gTLD policy has been recognized within ICANN from the start of the policy development process: in its 2007 recommendations to the Board of Directors the Generic Names Supporting Organization (GNSO) expressly identified the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights as potential sources of existing legal rights, conflict with which it advised avoiding.⁹¹⁷ These instruments and others are considered in this chapter as possible sources of human rights in geographic names which may conflict with a policy that gives States exclusive control over their use in the DNS.

Some human rights lack a precise definition, making it difficult to determine whether particular actions fall within their scope. This can be seen as an advantage or a disadvantage to those who seek to challenge States' rights in geographic names. It is on the one hand an advantage that human rights treaties and customs are in a state of development; if a claim can plausibly be based on any of the universal aspects of humanity protected by human rights law, it may be more favourably received than a claim to rights based on capitalistic attitudes to property ownership.⁹¹⁸ It is nonetheless a disadvantage that no specific human right to possess, control or use a geographic name has been codified or crystallized in international law. Standing in the way of such a precisely articulated right coming into

916. ICANN, *Bylaws*, Article 1 section 2(4).

917. GNSO, *Final Report on the Introduction of New Generic Top-Level Domains*, Recommendation 3.

918. See Michael F. Brown, *Who Owns Native Culture?* 40 (Harvard University Press 2003).

existence is a reluctance to interpret the term 'human rights' too liberally for fear of diluting the effectiveness of human rights law in redressing major wrongs.⁹¹⁹ Yet even without such specificity, certain internationally recognized human rights of a broader nature, such as the rights to national identity, self-determination, freedom of expression, culture, language and property, as well as the doctrine of common heritage of mankind, may potentially be called upon in support of a right of persons to use geographic names.

Precisely because of the lack of specificity in articulating the bounds of human rights, the intention here is not to catalogue all of the rights that could potentially be interpreted as encompassing a right to geographic names. Rather, the intention is to focus on key rights for which there is a compelling connection to geographic names and explore the strengths and weaknesses of those connections. Before commencing this analysis, it is important first to identify the core concepts of the international human rights law framework into which this discussion fits. This chapter thus begins with a discussion of the subjects and sources international human rights law, explaining their particular relevance to geographic names and their use in the DNS. This foundation is then built upon by examining five specific human rights: the right to self-determination, the right to national identity, the right to freedom of expression, the right to culture and the right to language. The substance of each of these rights is discussed in order to evaluate their potential for encompassing a right of persons or peoples make use of a geographic name in the DNS.

Recalling earlier chapters' consideration of the links between geographic names and property rights, the third section of this chapter explores the potential for geographic names' recognition as the property or non-property of mankind. It begins with a discussion of the recognition in international law of a right to property, then progresses to consideration of the intellectual property-based concept of the public domain. This chapter ends by turning to natural resources law to consider the applicability the concept of the common heritage of mankind. Conclusions on human rights relating to geographic names are then summarized.

9.1.2 DISTINGUISHING HUMAN RIGHTS AND INTELLECTUAL PROPERTY RIGHTS

There 'is little doubt' as to the intention of human rights law as 'endow[ing] individuals directly with basic rights'⁹²⁰ under international law. These rights

919. See Richard B. Bilder, *An Overview of International Human Rights Law*, in *Guide to International Human Rights Practice* 15 (Hurst Hannum ed., Transnational Publishers 2004).

920. Rene Provost, *International Human Rights and Humanitarian Law* 18 (Cambridge University Press 2002).

'apply always and everywhere',⁹²¹ but an individual's being acknowledged as having the capacity to possess rights 'does not necessarily imply the capacity to exercise those rights oneself'.⁹²² Rather, human rights law imposes obligations on (in some cases, all) States to respect and promote human rights on the individual's behalf. In addition to the obligation upon them not to infringe human rights, States are obliged to protect these rights against interference by private parties.⁹²³ Increasingly, international law recognizes not just individual but collective or community rights, as it comes to be acknowledged that modern State theory and the fundamental precepts of international law derived from it inadequately capture 'the multiple, overlapping spheres of community, authority, and interdependency that actually exist in the human experience'.⁹²⁴ Identity (whether online or offline) is not purely individualistic: rights affecting identity must take into account individual and collective interests, and these must be balanced not just between individuals as against other individuals and communities, but between the individual and his or her own community.⁹²⁵

This tension is also inherent in intellectual property law, with its traditional aim of protecting the creative efforts and outputs of identifiable individual creators. The almost-complete ignorance in the TRIPS Agreement of community-generated creative works has provoked debate about the need for *sui generis* protection regimes based on or beyond the existing intellectual property law framework.⁹²⁶ In the meanwhile, human rights law offers

921. *Ibid.*, 19, quoting Report on Human Rights in Armed Conflict, U.N. Doc. A/8052 (1970) 13, para. 25.

922. *Peter Pázmány University v. Czechoslovakia*, P.C.I.J. Reports Ser. A/B No. 61, 231 (P.C.I.J. 1933).

923. If ICANN's New gTLD Program policy of recognizing exclusive rights of States to geographic names is deemed inconsistent with international law under any of the bases explored in this study, this gives rise to an interesting possibility that the United States has an obligation under human rights law to compel ICANN, an American corporation, to revise its policy of requiring government consent or non-objection to applications for geographic new gTLDs. This issue lies beyond the scope of this study but is identified here for later consideration. On the obligation to protect, see *generally*, Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* 448 (2d ed. revised, N.P. Engel 2005).

924. S. James Anaya, *Indigenous Peoples in International Law* 101 (2d ed., Oxford University Press 2004).

925. As an example of a situation requiring balancing of the rights of individuals vis-à-vis their community, Anaya points (at 136) to the Human Rights Committee's decision in the case of *Kitok v. Sweden*, Communication No. 197/1985, *Report of the Human Rights Committee*, U.N. GOAR, 43rd Sess., Supp. No. 40, at 207, U.N. Doc. A/43/40, Annex 7(G) (1988) (views adopted 27 Jul. 1988).

926. See for example, Thomas Cottier & Marion Panizzon, *Legal Perspectives on Traditional Knowledge: The case for intellectual property protection*, 7 J. Int'l Econ. L. 371 (2004); Jeannette Mwangi, *TRIPS and Agricultural Biotechnology: Implications for the Right to Food in Africa*, in *Human Rights and Intellectual Property Rights: Tensions and Convergences* 241-288 (Mpazi Sinjela ed., Martinus Nijhoff 2007).

an alternative means of protecting and preserving communities' culture, language and ways of life.⁹²⁷

Despite this apparent overlap, it must be borne in mind that the aims of intellectual property law and the rights it protects are not equivalent to the aims and protections afforded by human rights law. The United Nations' Committee on Economic, Social and Cultural Rights makes this clear in its General Comment No. 17,⁹²⁸ which explains the rationale of Article 15(1)(c) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). That provision sets out the 'right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author'. In distinguishing this right from the rights that accrue to authors and inventors under intellectual property laws, the Committee explained:⁹²⁹

The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author is a human right, which derives from the inherent dignity and worth of all persons. This fact distinguishes Article 15, paragraph 1 (c), and other human rights from most legal entitlements recognized in intellectual property systems. Human rights are fundamental, inalienable and universal entitlements belonging to individuals and, under certain circumstances, groups of individuals and communities. Human rights are fundamental as they are inherent to the human person as such, whereas intellectual property rights are first and foremost means by which States seek to provide incentives for inventiveness and creativity, encourage the dissemination of creative and innovative productions, as well as the development of cultural identities, and preserve the integrity of scientific, literary and artistic productions for the benefit of society as a whole.

Human rights are further distinguished from intellectual property rights by their indefinite duration and the essentially personal, rather than financial, interests they protect.

These fundamental differences offer unique perspectives when human rights are considered in the interpretation of laws recognizing intellectual property rights. These differences also give rise to a clear potential for conflict in the exercise of human rights with the exercise of intellectual

927. See Dominic McGoldrick, *Culture, Cultures, and Cultural Rights*, in *Economic, Social and Cultural Rights in Action 454* (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

928. *The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (Article 15, paragraph 1(c), of the Covenant)* U.N. Doc. E/C.12/GC/17 (available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/E.C.12.GC.17.En?OpenDocument>).

929. *Ibid.*, para. 1.

property rights; protection afforded to one party in respect of a particular aspect of culture or identity or product of intellectual effort (a geographic name, for example) under one system could be afforded to a different party under the other, or a right recognized under one may not be recognized at all under the other. Prominent scholars have found evidence of this in case law, yet this issue is not effectively addressed by either the TRIPS Agreement or human rights instruments.⁹³⁰

9.1.3 SOURCES OF HUMAN RIGHTS LAW

The sources of international human rights law are the same as those relied upon in other areas of international law and are identified in Article 38(1) of the Statute of the International Court of Justice. Of the three principal sources set out in Article 38(1) it bears noting that treaties possess a special relevance in the human rights context; there are now a significant number of treaties in force between States regarding matters of human rights, and leading scholars characterize treaties as being of 'paramount importance'⁹³¹ to international human rights law. Particularly significant among these is the United Nations Charter, to which nearly all States throughout the world are bound and by which they are united to the common general purpose of 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.⁹³² In addition to this broadly worded obligation there are a number of 'core'⁹³³ treaties of global effect that deal with specific aspects of human rights.⁹³⁴ Beyond these,

930. On the lack of a general cultural exception in WTO agreements, see Mary E. Footer & Christoph Beat Graber, *Trade Liberalization and Cultural Policy*, 3(1) J. Int'l Econ. L. 115 (2000); Deborah Z. Cass, *The constitutionalization of the World Trade Organization: legitimacy, democracy, and community in the international trading system* (Oxford University Press 2005). On the balance between free speech and free trade, see *Human Rights and International Trade* (Thomas Cottier, Joost Pauwelyn & Elisabeth Bürgi Bonanomi eds., Oxford University Press 2006).

931. Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, Aust'l Y.B. Int'l L. 82, 85 (1988-1989).

932. Charter of the United Nations, Art. 1(3) (26 Jun. 1945, entered into force 24 Oct. 1945) 59 Stat. 1031; TS 993; 3 Bevans 1153.

933. United Nations, *Office of the United Nations High Commissioner for Human Rights: International Law*, <http://www2.ohchr.org/english/law/index.htm#core> (accessed 15 Oct. 2012).

934. These include the International Covenant on Civil and Political Rights (16 Dec. 1966, entered into force 23 Mar. 1976) 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights (16 Dec. 1966, entered into force 3 Jan. 1976) 993 U.N.T.S. 3; International Convention on the Elimination of All Forms of Racial Discrimination, (21 Dec. 1965, entered into force 4 Jan. 1969) 660 U.N.T.S. 195; Convention on the Elimination of All Forms of Discrimination against Women (18 Dec. 1979, entered into force 3 Sep. 1981) U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (10 Dec. 1984, entered into force 26 Jun. 1987) 39 U.N. GAOR Supp. (No. 51) at 197, U.N.

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numerous bi- and multilateral treaties contribute to the significant and growing framework of international human rights conventions.

Given the fundamental nature of human rights to all mankind, customary human rights law is also important in that its universal applicability allows for the exercise of rights even in the absence of a State's membership in treaties recognizing human rights.⁹³⁵ That said, proving the existence of a customary rule is not without difficulty, as has already been shown in previous chapters of this book in the contexts of other bases of rights, because it requires broad empirical analysis of State practice and *opinio juris*. In the human rights context, the imprecision of the definition and scope of particular rights creates additional challenges in proving the existence of customary rules. In spite of this, there is broad agreement that certain basic human rights have assumed the status of customary international law,⁹³⁶ though exactly which rights have done so is debated. Commonly on such a list are freedoms from genocide, slavery, torture and racial discrimination.⁹³⁷ There is also support for recognizing certain rights of indigenous peoples as having crystallized into customary norms.⁹³⁸

Exposition of customary human rights law is further complicated by a degree of overlap between custom and general principles of international law. This is exemplified by the treatment of the right of self-determination, which is relevant to the use of geographic names by peoples in their full and free participation in representative government. The right of self-determination, which is discussed in detail in the next section of this chapter, has been characterized as having its origins in general principle,⁹³⁹ in custom,⁹⁴⁰ and arguably either principle or custom.⁹⁴¹ If a general practice becomes established State practice, the question becomes the origin of the norm. It is not necessary for the purposes of this study, however, to pinpoint

Doc. A/39/51 (1984); Convention on the Rights of the Child (20 Nov. 1989, entered into force 2 Sep. 1990) 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (18 Dec. 1990, entered into force 1 Jul. 2003) 47 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/47/49 (1990); Convention on the Rights of Persons with Disabilities (13 Dec. 2006, entered into force 3 May 2008) U.N. Doc. A/61/611; International Convention for the Protection of All Persons from Enforced Disappearance (20 Dec. 2006, entered into force 23 Dec. 2010) U.N. Doc. A/61/488.

935. See Provost, 55.

936. See Bilder, 10, citing Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 Ga. J. Int'l & Comp. L. 287 (1995-1996).

937. See for example, Gillian D. Triggs, *International Law: Contemporary principles and practices* 951-952 (2d ed., LexisNexis Butterworths 2011); *Restatement (Third) of the Foreign Relations Law of the United States* §702.

938. See Anaya, *Indigenous Peoples in International Law*, 64.

939. See for example, Hurst Hannum, *The Right of Self-Determination in the Twenty-First Century*, 55 Wash. & Lee L. Rev. 773, 775 (1998).

940. See for example, Triggs, 952.

941. See for example, Theodor Meron, *Human rights and humanitarian norms as customary law* 97 (Clarendon Press 1989).

the origin of a particular norm; the critical concern here is whether a norm exists, not how it originated.

Finally, in identifying the sources of international human rights law, mention must be made of the significance of so-called 'soft law' because, as with the development of norms respecting the internet, much of the dialogue respecting human rights occurs outside the formal rubric of Article 38(1) of the Statute of the ICJ.⁹⁴² United Nations General Assembly resolutions, for example, are recommendations only and not legally binding on members. They are nevertheless of high significance because of their capacity to influence State practice. Likewise, the Universal Declaration of Human Rights is not a legally binding instrument; as stated in its Preamble, it is 'a common standard of achievement for all peoples and all nations.'⁹⁴³ It too 'has force as a morally, though not legally, binding document, as a yardstick by which to measure the development of the rule of law, and its authority is enhanced by the universality of its acceptance by Members of the United Nations.'⁹⁴⁴ These and other non-binding instruments establish standards that can result in changes to State behaviour and ultimately lead to the formal, voluntary, observable assertions of consensus by States needed to generate a rule of customary international law.⁹⁴⁵ With this in mind, such standards are considered in this chapter as a fundamental aspect of the potential future recognition of (if not a formal source of existing) rights in geographic names under international human rights law.

9.2 PARTICULAR HUMAN RIGHTS RELEVANT TO GEOGRAPHIC NAMES

National identity, expression, culture and language are all interconnected, symbiotic elements of human existence: nations and national identity are frequently formed out of linguistic communities and culture is the product of the ways in which and languages with which humans express themselves. It is difficult, therefore, to partition these rights into discrete analytical sections and evaluate their relevance to geographic names without a certain degree of overlap. Further, the precise parameters of the rights to national identity and self-determination, expression, culture and language are not settled. Notwithstanding these challenges, compelling arguments can be made linking geographic names with each.

942. So-called 'soft law' and its broader relevance to this study is discussed in Part II, Chapter 4, section 4.2.3 above.

943. An alternative view is asserted in M.G. Kaladharan Nayar, *Human Rights: The United Nations and United States Foreign Policy*, 19(3) Harv. Int'l L.J. 813, 816-817 (1978) (arguing that the Universal Declaration in its entirety is customary international law).

944. Ruth Donner, *The Regulation of Nationality in International Law* 191 (2d ed., Transnational Publishers 1994).

945. See Simma & Alston, 90.

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The analysis in this chapter is structured to first identify the theoretical connections between a particular human right and geographic names. Where appropriate because of a deviation with an ordinary understanding of rights holders under international law, beneficiaries of the right in question are identified. The legal basis, substance and limitations of each right are then discussed in order to evaluate potential conflicts with ICANN's policy of requiring government authorization of applications for geographic new gTLDs. Conclusions are made at the end of the analysis of each right, and then summarized together at the end of the chapter.

9.2.1 RIGHT TO NATIONAL IDENTITY AND RIGHT OF SELF-DETERMINATION

9.2.1.1 Connections between National Identity and Geographic Names

Human beings have long identified themselves by reference to nationality. It has been said that this is 'not inevitable ... [but] is extremely important for how people define themselves.'⁹⁴⁶ In the day-to-day human experience, national identity is not only a complex legal concept deriving from State sovereignty but also a social concept deriving from the innate human processes of self- and group-identification. The oft-quoted English philosopher John Stuart Mill aptly described this social aspect, what he termed the 'feeling of nationality', as potentially 'generated by various causes':

Sometimes it is the effect of identity of race and descent. Community of language, community of religion, greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political precedents; the possession of national history and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. None of these circumstances however are either indispensable, or necessarily sufficient by themselves.⁹⁴⁷

The tendency to relate as individuals and groups with nations (though acknowledging the difficulty inherent in defining the term 'nation'⁹⁴⁸) is, in this view, a fundamental aspect of the human experience. This helps to explain the multi-purpose role of geographic names in human lives and

946. James Summers, *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations* 20 (Martinus Nijhoff 2007) (internal citations omitted).

947. John Stuart Mill, *Considerations on Representative Government* 294 (Parker, Son & Boum 1861).

948. See James Mayall, *Nationalism and international society* 2 (Cambridge University Press 1990).

specifically why a geographic name such as 'France' can serve not only the practical function of identifying a particular geographic location on a map but also the symbolic function of, to use Mill's term, the 'feeling of nationality' that is shared by the people of that location.

Effective articulation of one's 'feeling of nationality' is dependent upon having the freedom to make use of names and symbols representative of nationality. By corollary, governments' constraints on the use of national names and symbols impede the dynamic and ongoing processes of individual and group self-identification, ultimately impinging upon democratic freedom.⁹⁴⁹ These tensions have crept into the online world, where they are likely amplified by three additional factors: the global reach of the internet as a communications medium, governments' limited ability to exert control due to their narrow role in internet governance, and the 'tremendous potential [of the internet] as a staging ground for identity-claims'.⁹⁵⁰ The integral role that domain names play in online identification is unmistakably clear and has been so since the commercial launch of the DNS. Indeed, the primary reason for increasing the number of available gTLDs is to offer greater opportunity for under-represented communities to stake identity-claims in the internet.⁹⁵¹

Even a cursory review of efforts at DNS policy-making in the ICANN environment reveals that most have had as their aim relieving what was identified early on as the 'considerable amount of tension [that] has unwittingly been created between, on the one hand, addresses on the Internet in a human-friendly form which carry the power of connotation and identification and, on the other hand, the recognized rights of identification in the real world ...'.⁹⁵² Particular attention has been paid to trademark rights; the efforts of that community to transpose its rights in the 'real' (in other words, 'offline') world to the 'online' world have been explored in detail in Chapter 3.

The trademark community's experience is illustrative of the trend of relying on offline identity to justify claims to online identity, but the ubiquity of the internet in contemporary human experience could just as easily give rise to the reverse situation, where online identity is used to justify claims to offline identity. Illustrative of this situation is the Occupied Territory of Palestine's experience in seeking the creation of its own ccTLD. Creation of a .ps domain was initially refused because of the absence of the two-letter country code 'PS' from the International Standardization Organization's ISO 3166-1 list, inclusion in which requires United Nations recognition.⁹⁵³ Interim measures involving the creation of a Palestinian second-level domain

949. See Coombe, 143.

950. Kyra Landzelius, *Introduction: Native on the net*, in *Native on the Net* 14 (Kyra Landzelius ed., Routledge 2006).

951. ICANN, *gTLD Applicant Guidebook*, Preamble.

952. WIPO, *WIPO 1 Report*, para. 22.

953. The process of ccTLD creation and delegation is discussed in Part I, Chapter 2, section 2.4.2 above.

within the .int gTLD, which would have resulted in domain names taking the form `www.examplename.palestine.int`, were justified on the basis of Palestine's status as a Permanent Observer to the United Nations.⁹⁵⁴ Palestinians were otherwise forced to choose between global gTLDs like .com and Israel's .is ccTLD.⁹⁵⁵

This example shows that in the modern world, offline and online identity are inextricably intertwined, and that achieving recognition of identity in the online world may for some be a milestone in an ongoing struggle for recognition of identity in the offline world.⁹⁵⁶ It further shows that despite the trend of globalization, the world order is still heavily reliant upon States and state theory for legitimization. Palestine's status remains an issue of debate, but as a first step a .ps ccTLD required, and as a second step became part of, Palestine's claims to sovereignty. This helps to explain the significance attributed to .ps in its Domain Registration Policy, which states: 'Domain names under the .ps domain and the contents they point to, are considered virtual extensions of the Palestinian sovereignty with applicability of Palestinian law to the said extensions'.⁹⁵⁷ The significance of the .ps domain has not been lost on the Palestinian internet community. In an early 2001 article, Ghassan Qadah, then-administrator of .ps and senior technology advisor to the Palestinian National Authority, characterized the ccTLD as an 'important symbol for the Palestinian state,'⁹⁵⁸ the creation of which represented a breakthrough in legitimacy in the eyes of the global community.

The process of creating and delegating ccTLDs remains tied to the ISO-3166-1 list, and those seeking their creation today will face the same challenges faced by the proponents of the .ps ccTLD more than a decade ago. Prior to the launch of the New gTLD Program, comparable difficulties were faced by applicants of new gTLDs, whose chance of success was severely hampered by ICANN's discretion and the tight quantitative limits placed in the two 'proof of concept' gTLD expansion rounds. The New gTLD Program is so significant because it is without quantitative limits: any application for a new gTLD meeting the criteria set out in the *gTLD Applicant Guidebook* will result in the creation of the applied-for string. This is a real opportunity

954. See IANA, *Report on Request for Delegation of the .ps Top-Level Domain*, <http://www.iana.org/reports/ps-report-22mar00.htm> (22 Mar. 2000, accessed 15 Oct. 2012).

955. See Oscar S. Cisneros, *Dot-PS: Domain Without a Country*, *Wired.com* (12 Jan. 2001) (available at <http://wired.com/print/politics/law/news/2001/01/41135>).

956. 'The Palestinians' main objective was to achieve recognition for themselves not merely as refugees deserving of help on humanitarian grounds, but as a people with political aspirations.' David Hirst, *The Gun and the Olive Branch: The Roots of Violence in the Middle East* 461-462 (Thunder's Mouth Press/Nation Books 2003).

957. Palestinian National Internet Naming Authority, *PNINA Registration Policies and Procedures for Registering Domains under the .ps ccTLD*, section 2.2, <http://www.pnina.ps/domains/registration-policy/> (accessed 15 Oct. 2012).

958. Cisneros.

for previously unsuccessful as well as first time applicants to stake identity claims in the DNS.

Geographic new gTLDs may be desired by those who identify in the offline world with existing, recognized nations or territories and wish to transpose their offline identity onto the online environment just as trademark owners have done with their offline trademark rights. The human rights to expression, culture and language which are discussed in the subsequent sections of this chapter are most relevant to that situation. Others may, like the proponents of the .ps ccTLD, hope to facilitate the realization of their offline political aspirations through recognition of their online identity in the form of a top-level domain. For those applicants, ICANN's New gTLD Program represents an opportunity to establish an online national identity as a platform to acquiring offline national identity. The right of self-determination, also inherently linked to identity,⁹⁵⁹ is also potentially relevant in that context. Before delving into the substance, scope and limitations of the rights of national identity and self-determination, however, a distinction should be made between their respective beneficiaries.

9.2.1.2 Beneficiaries of the Right to National Identity and Right of Self-determination

An initial distinction can be made between the right to national identity and the right of self-determination: in the case of the former, international law recognizes the rights of individuals while in the latter, international law recognizes the rights of peoples.⁹⁶⁰ In other words, while the right to national identity follows the pattern of individual human rights, self-determination is collective in nature. This is not to suggest that individual rights may not also have the effect of protecting collective interests, but rather to emphasize that international law singles out certain groups for additional protection through the right of self-determination.⁹⁶¹

The term 'peoples' is not clearly defined in the international conventions in which it is used, nor has a generally accepted definition emerged from the interpretation of those conventions.⁹⁶² This raises particular

959. See Karen Knop, *Interpretation and Identity*, in *Diversity and Self-Determination in International Law* (Cambridge University Press 2002).

960. Common Articles 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provide: 'All peoples have the right of self-determination.' Further, the United Nations Charter provides in Article 1(2) that one of the purposes of the United Nations is to '[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace' (emphasis added). By contrast, Article 15(1) of the Universal Declaration of Human Rights recognizes the right of 'everyone ... to a nationality'.

961. See Brownlie, 579-580.

962. See Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, 43(2) *Int'l & Comp. L.Q.* 241 (1994).

challenges, although it has been suggested that the very fact of its being undefined is what makes the term 'peoples' so significant: 'If it is claimed that a group is a people there is no agreed standard against which that claim can be measured. It is purely a matter of perception. ... [This] may be a problem for lawyers, but it lubricates the politics of nationalism.'⁹⁶³ Distinctions have been made between the terms 'peoples' and 'populations', with the former being 'generally regarded as implying a greater and more positive recognition of group identity and corresponding attributes of community.'⁹⁶⁴ For reasons that are discussed in detail in the next section of this chapter, having the status of a 'people' has been equated with claims to independent statehood. The term 'populations', on the other hand, has traditionally been used to signify a lower level of recognition in international law, and it is this term that States prefer when a claim to rights is seen as a threat to sovereignty. This is a distinction that relies on a narrow positivist view,⁹⁶⁵ and it has proven to be an obstacle to communities that do not fit within, and in some cases do not even aspire to fit within, the State-centric model.

A clear illustration of this problem is found in the efforts of indigenous peoples to achieve recognition under international law. It is in this context that much of the discussion of the beneficiaries of human rights takes place. The world's population has been said to include roughly 300 million indigenous people,⁹⁶⁶ yet despite their numbers and the fact that they inhabit almost every part of the world, it is difficult to assess with precision their status under international law because of this problem of terminology. Some States are reluctant to use the phrase 'indigenous peoples' in the international law context because 'it is too close to the concept of "people"'⁹⁶⁷ and thus the right of self-determination. In spite of this it has been argued that it is 'in any case proper to conclude that, as a matter of already existing international law, the principle or right of self-determination applies in one way or another to indigenous peoples.'⁹⁶⁸ Why some States might continue to find this problematic turns on certain outdated conceptions of the substance of the contemporary right of self-determination.

963. Summers, xlii (internal citations omitted).

964. Anaya, *Indigenous Peoples in International Law*, 60.

965. *Ibid.*, 101. See also Knop, 53-54.

966. See Alessandro Fodella, *International Law and the Diversity of Indigenous Peoples*, 30 *Vt. L. Rev.* 565, 566 (2006).

967. Summers, xliii. See also Anaya, *Indigenous Peoples in International Law*, 61-72.

968. Anaya, *Indigenous Peoples in International Law*, 112. See also Glenn T. Morris, *In Support of the Right of Self-Determination for Indigenous Peoples under International Law*, 29 *German Y.B. Int'l L.* 277 (1986).

9.2.1.3 Legal Basis, Status, and Substance of the Right of Self-determination

The right of self-determination is expressed in the UN Charter, which provides in Article 1(2) that one of the purposes of the United Nations is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace'. This is supported by obligations under Article 55 to promote economic and social cooperation. The right of self-determination is codified as common Article 1(1) in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), by virtue of which peoples 'freely determine their political status and freely pursue their economic, social and cultural development.'

Because of its acknowledged⁹⁶⁹ *jus cogens*⁹⁷⁰ status, the right of self-determination 'informs and complements other general principles of international law, viz., of State sovereignty, the equality of states, and the equality of peoples within a State.'⁹⁷¹ Historically, the substance of the right of self-determination has been conjoined with its remedial aspects, the 'most controversial'⁹⁷² and prominent of which is secession. With the demise of colonialism and the inclusion of the right of self-determination in the ICCPR, however, it has been observed that a shift occurred from an externally-focused right to an internally-focused⁹⁷³ right which:

ceased to be a rule applicable only to specific territories (at first, the defeated European powers; later, the overseas trust territories and colonies) and became a right of everyone. It also, at least for now, stopped being a principle of exclusion (secession) and also became one of inclusion: the right to participate. The right now entitles peoples in all

969. See Crawford, 101; Brownlie, 580-581; Triggs, 995.

970. Art. 53 of the Vienna Convention on the Law of Treaties identifies *jus cogens* as 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.'

971. See Brownlie, 582. See also Francisco Forrest Martin, *Delineating a Hierarchical Outline of International Law Sources and Norms*, 65(2) Saskatchewan L. Rev. 341, 343 (2002).

972. Sarah Joseph et al., *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 101 (Oxford University Press 2000). See also Anaya, *Indigenous Peoples in International Law*, 99 ('In its most prominent modern manifestation within the international system, self-determination has promoted the demise of colonial institutions of government and the emergence of a new political order for subject peoples.'). On the historical connection between self-determination and colonialization with specific examples, see Nathaniel Berman, *Sovereignty in Abeyance: Self-Determination and International Law*, 7 Wis. Int'l L.J. 51, 84-103 (1988).

973. See Rupert Emerson, *Self-Determination*, 465-466; Joseph et al., 101-104; Triggs, 996.

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states to free, fair and open participation in the democratic process of governance freely chosen by each state.⁹⁷⁴

Accordingly, contemporary articulations of the right of self-determination recognize the right of peoples 'to be full and equal participants in the creation of the institutions of government under which they live and, further, to live within a governing institutional order in which they are perpetually in control of their own destinies.'⁹⁷⁵ The right is thus called upon to help peoples 'assert their identities, to preserve their languages, cultures, and traditions and to achieve greater self-management and autonomy, free from undue interference from central governments.'⁹⁷⁶ This broad understanding of self-determination acknowledges the human need to associate in and self-identify as members of groups⁹⁷⁷ and not be unduly restricted in doing so. The right to self-determination so understood can be seen to prevent States from exercising control over identity symbols (such as geographic names) without the input of the peoples who identify with those symbols.

The right of self-determination does not, however, shed light on the existence of an exclusive right of States in geographic names. Rather, what the right of self-determination does is prevent States from taking unilateral, unconsulted decisions respecting the name by which a 'people' identifies. Unilateral, unconsulted decisions regarding the control of geographic names in the DNS could in this way be deemed analogous to State practices in the offline world that have the effect of forcibly incorporating indigenous peoples into a majority society to the detriment of their group identity, which in turn affects their ability to exercise their economic, social and cultural rights.⁹⁷⁸ Arguably, a decision by a central government to deny a 'people' the ability to identify online by a particular name could prevent the group's preservation and expression of its identity, which could logically be seen to impinge upon the group's ability to exercise its economic, social and cultural rights.

974. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 Am. J. Int'l L. 46, 58-59 (1992).

975. Anaya, *Indigenous Peoples in International Law*, 113 (internal citations omitted).

976. Australian Government Delegation, Speaking Notes on Self-Determination, 2 (24 Jul. 1991), quoted in Anaya, *Indigenous Peoples in International Law*, 111.

977. See Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 Am. J. Int'l L. 359, 376-382 (1996) (discussing 'identity as a personal act of self-determination').

978. As an example of such a case, see Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin and Resolution on the Friendly Settlement Procedure Regarding the Human Rights Situation of a Segment of the Nicaraguan Population of Miskito Origin*, O.A.S. Doc. OEA/Ser.L/V/II.62, doc. 10, rev. 3 (1983) OEA/Ser.L/V/II.62, doc. 26 (1984) (Case No. 7964 (Nicaragua)). On the links between participation and economic, social and cultural rights, see Richard Burchill, *Democracy and the Promotion and Protection of Socio-Economic Rights*, in *Economic, Social and Cultural Rights in Action* 375-379 (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

Finally but importantly, the right of self-determination prevents particular actions taken by States. It does not prevent actions by non-State actors, amongst which notable in the context of this study is ICANN. A challenge could not be raised by a 'people' against ICANN asserting that its policies regarding geographic new gTLDs violate their right to self-determination. It would need to be considered whether such a challenge could be raised against the United States in order to compel ICANN, a corporation registered in that jurisdiction, to change its policy.⁹⁷⁹

9.2.1.4 Legal Basis, Substance, and Limitations of the Right to National Identity

There is 'a growing consciousness [of the existence of a] personal right to compose one's identity',⁹⁸⁰ and much has been written about national identity in particular national contexts.⁹⁸¹ International law recognizes a right to national identity,⁹⁸² but that right is of only limited application to geographic names.

The most direct articulation of a right to national identity can be found in Article 8 of the Convention on the Rights of the Child, which requires that 'States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.' Commentary indicates that 'the purpose of this provision is to prevent a child from being afforded less protection by the society and the State because he is stateless', not to 'make it an obligation for States to give their nationality to every child born in their territory.'⁹⁸³ In other words, the concern is that children have a nationality rather than that they have a *particular* nationality.

Article 24(3) of the ICCPR recognizes the 'special'⁹⁸⁴ right of all children to 'acquire a nationality'. Article 15(1) of the Universal Declaration

979. See n. 923 above.

980. Franck, *Clan and Superclan*, 359.

981. See for example, Ahmet İçduygu & Özlem Kaygusuz, *The Politics of Citizenship by Drawing Borders: Foreign Policy and the Construction of National Citizenship Identity in Turkey*, 40(6) *Middle Eastern Studies* 26 (2004); Aneta Mihaylova, *National versus Regional Identity: the 'Other' Romanians in Greater Romania*, 1(2006) *Balkan Studies* 9 (2006); Nan Seuffert, *Jurisprudence of National Identity: Kaleidoscopes of imperialism and globalisation from Aotearoa New Zealand* (Ashgate 2006); Lauren Gilbert, *National Identity and Immigration Policy in the U.S. and the European Union*, 14(1) *Colum. J. Eur. L.* 99 (2007-2008); Jo Eric Khushf Murkens, *'We want our identity back': the revival of national sovereignty in the German Federal Constitutional Court's decision on the Lisbon Treaty*, 2 *Bundesverfassungsgericht* 530 (2010).

982. See generally, Donner.

983. United Nations Office of the United Nations High Commissioner for Human Rights, *CCPR General Comment No. 17: Rights of the child (Art. 24)* para. 8 (1989) (available at <http://www.unhchr.ch/tbs/doc.nsf/0/cc0f1f8c391478b7c12563ed004b35e3?Opendocument>).

984. Nowak, 560.

of Human Rights, by contrast, recognizes the right of ‘everyone ... to a nationality’, while Articles 6 and 33 of the Declaration on the Rights of Indigenous Peoples similarly do so in respect of indigenous persons. These provisions support the conclusion that a person’s possession of some national identity is protected, but this has no bearing on a person’s right to possess a particular nationality.

The latter issue is one left to domestic law, as provided for in the 1930 Convention on Certain Questions in Relation to the Conflict of Nationality Laws⁹⁸⁵ and confirmed in the seminal *Nottebohm* case, in which it was said that it ‘is for every sovereign State ... to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation.’⁹⁸⁶ International law thus only imposes upon States an obligation to ensure that each person has an identity.

It is difficult to see how this right could be infringed by a policy of exclusive state control of geographic names, unless a decision to deny a person the right to identify him/herself online using a particular name puts that person’s possession of having any nationality at risk. At the same time, neither does the right to national identity offer specific support to States’ claims of exclusivity in geographic names. A person’s right to use a particular name in order to identify him or herself is more logically characterized in terms of a right of self-expression, so it is to this particular human right that focus now turns.

9.2.2 RIGHT TO FREEDOM OF EXPRESSION

9.2.2.1 Connections between Free Expression and Geographic Names

The tendency with which human beings identify themselves according to their nationality has been highlighted in the previous section of this chapter in order to draw a connection between geographic names and the human rights of national identity and self-determination. The same tendency can be relied upon in connecting geographic names and the human right to freedom of expression. Geographic names are integral to human vocabulary. Beyond their obvious roles as identifiers of a particular geographical location and their necessity in articulations of national identity, geographic names also help individuals to describe and articulate opinions and ideas about the world, its people, politics, culture, environment and products. Their broad

985. Convention on Certain Questions in Relation to the Conflict of Nationality Laws, Art. 1. (12 Apr. 1930, entered into force 1 Jul. 1937) 179 L.N.T.S. 89.

986. *Nottebohm Case (second phase)*, Judgment of April 6th, 19 JJ, I.C.J. Reports 1955, p.4, 20-21. For an identification of rules commonly adopted by States to determine nationality, see Brownlie, 388-394.

range of uses, non-commercial and commercial, is evidenced by the multiplicity of potential sources of rights in them as identified and discussed in this and earlier chapters.

While being mindful of the sorts of restrictions against false or misleading use that have been examined in the previous chapter, it is difficult to discuss the world without being able to use the names that identify the subject of discussion. It has been remarked that '[a] news reporter cannot very well be expected to refer to "the football club based in Manchester, England" every time he or she wishes to report on the exploits of Manchester United.'⁹⁸⁷ Taking this example one step further and focusing on geographic names rather than on trademarks, neither can a reporter (or indeed a school pupil, a journalist, a researcher or a person at the dinner table) be rationally expected to refer to 'the football club based in the second most populous urban district in the country that occupies two-thirds of the island nation located between roughly 54.5 and 52.2 degrees latitude and through which the prime meridian runs'.

Requiring that we communicate in this way when referring to geographic names would almost surely chill communication; this is not an end to which a society that favours intellectual and social development aspires.⁹⁸⁸ This helps to explain why the right to free expression is considered one of the most fundamental of all human rights, and it opens the door to a correlative human right to express one's self using geographic names. Placing the articulation of geographic names in the DNS exclusively in the control of States arguably impinges upon this right, bearing in mind the potentially commercial as well as non-commercial nature of expression involving geographic names.⁹⁸⁹

9.2.2.2 Legal Basis, Substance, and Limitations of the Right to Freedom of Expression

The right to free expression is 'not infrequently termed the core of the [International] Covenant [on Civil and Political Rights] and the touchstone for all other rights guaranteed therein.'⁹⁹⁰ Article 19 of the ICCPR sets out the scope of the right as well as its limitations:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

987. Frederick M. Abbott et al., *International Intellectual Property in an Integrated World Economy* 271 (Aspen 2007).

988. See Joseph et al., 386.

989. See n. 830 above and accompanying discussion on the need to balance consumer protection with freedom of expression.

990. Nowak, 438 (internal citations omitted).

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Paragraph 1 acknowledges the 'right to hold opinions'. This right is interpreted as absolute in its passive form (possession), but pursuant to paragraphs 2 and 3, not absolute in its active form (expression).⁹⁹¹ This means that a person may hold whatever opinions he/she wishes in his/her mind, but the communication of those opinions to others may be restricted in certain situations.⁹⁹² The use of the term 'opinions' here is perhaps misleadingly limiting; it has been noted that the use of the phrase 'information and ideas of all kinds' in paragraph 2 was intended to signal that 'every communicable type of subjective idea and opinion, of value-neutral news and information, of commercial advertising, art works, political commentary regardless of how critical, pornography, etc., is protected',⁹⁹³ including information and ideas expressed in commercial contexts or of a commercial nature.⁹⁹⁴

The broadly worded range of protected types and means of expression make it clear that the right to free expression applies to all types of expression, including expression made on the internet and irrespective of whether online activity is considered inherently commercial. This is a particularly significant point to the question of whether international law recognizes rights in geographic names, because many of the other bases of rights explored in the previous chapters of this book (trademarks, geographical indications, prevention of unfair competition, dilution, personality rights) rely on commercial activity. The right to free expression notably also applies irrespective of whether the act in question is considered political—even politically critical—expression.⁹⁹⁵ It could thus potentially be called upon to

991. See Joseph et al., 387.

992. See for example, *Faurisson v. France*, 4 I.H.R.R. 444 (Hum. Rts. Comm. 1996).

993. Nowak, 444.

994. See for example, *Ballantyne, Davidson, McIntyre v. Canada*, U.N. Doc. CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (1993).

995. The individual's right to engage in politically critical expression has been deemed paramount even where States have based this on national security and public order. See for example, *Mukong v. Cameroon*, 2 I.H.R.R. 131 (Hum. Rts. Comm. 1995).

defend the registration of a geographic domain name with a connotation that is considered undesirable by a relevant government.⁹⁹⁶

The right to freedom of expression may only be restricted in furtherance of the aims specified in ICCPR Article 19(3), about which it is recorded that 'more than 30 concrete proposals for restrictions'⁹⁹⁷ were made in the drafting process. Of these 'most related to expression that instigates or incites to criminal actions or violent overthrow of the government, reveals State or trade secrets, undermines friendly relations with other States, impairs the independence of the judiciary, infringes rights of personality (honour, good reputation) or is pornographic or blasphemous.'⁹⁹⁸ The final text takes a different approach, identifying not specific instances in which expression can be restricted, but rather permissible purposes justifying restriction. Of these, the purposes of protecting national security and public order ('ordre public') and ensuring respect for the rights of others have greater relevance to geographic names than the purposes of protecting public health or morals.

Protection of national security focuses on activities that pose 'serious cases of political or military threat to the entire nation'.⁹⁹⁹ Commonly falling within this ambit are disclosures of State secrets.¹⁰⁰⁰ This is clearly not relevant to the use of geographic names, save in the rare constellation in which revelation of a particular name in State secrets has the effect of identifying the State in question. The primary issue in such a case is, in any event, the revelation of the secret rather than the use of the State's name. Such a constellation would also implicate the right to freedom of information recognized in Article 2(1) of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which is qualified by Article 19(3) allowing for restrictions on the basis of '[r]espect of the rights or reputations of others' and 'protection of national security or of public order (ordre public), or of public health or morals'. Yet in practice, national security has been treated more broadly, merging with 'public order', which is directed at activities that affect the 'peaceful and effective functioning of society'.¹⁰⁰¹ Accordingly, restrictions are commonly aimed at the sorts of expressions 'which may incite crime, violence or mass panic'¹⁰⁰² but would also apply to expressions advocating the overthrow or de-stabilization of a government.

996. An example is the www.tamilnet.com website, discussed in Mark Whitaker, *Internet counter counter-insurgency: TamilNet.com and ethnic conflict in Sri Lanka*, in *Native on the Net* 255-271 (Kyra Landzelius ed., Routledge 2006).

997. Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 457.

998. *Ibid.*

999. *Ibid.*, 463-464.

1000. See Joseph et al., 400.

1001. *Ibid.*, 396.

1002. *Ibid.*, 396 and 401, citing *Kim v. Republic of Korea* (574/94) and *Park v. Republic of Korea* (628/95).

While geographic names could be (and indeed have been, as the Catalan linguistic community's experience with the .cat gTLD application demonstrates¹⁰⁰³) interpreted as an expression of destabilizing sentiments, this is countered by the fact that geographic names are not inherently politically threatening. They are not inherently fighting words, nor are they inherently directed at inciting the sorts of grave situations to which national security and public order are directed. They could plausibly be seen to indirectly play a role in inciting 'crime, violence, or mass panic', but such a determination is entirely dependent on the context in which they are used, bearing in mind the need to 'specify the precise nature of the threat allegedly posed by the author's exercise of freedom of expression.'¹⁰⁰⁴

A stronger case can be made that a second- or lower level domain name has the potential to incite 'crime, violence or mass panic' than a gTLD string because of the connection between lower level domain names and content. The function of a top-level domain, by contrast, is not to identify content but to provide a service, a channel of communication. An indirect link to content could be made by targeting a top-level domain at particular domain name registrants (e.g., a policy of restricting domain name registration to members of an anti-government group), but this is clearly an exception and not the rule. Restricting all uses of geographic names on this basis would surely prove excessive and unnecessary. Rather, the determination that a name disrupts national security or public order can be made on a case-by-case basis only.

This conclusion has special significance to applications for new gTLDs because of the provision within the *gTLD Applicant Guidebook* of a 'limited public interest objection' (what in earlier drafts was termed the 'morality and public order exception').¹⁰⁰⁵ Each objection made on this ground must likewise be considered on a case-by-case basis. In relying on this objection, governments should take care to specify the precise nature of the threat to national security or public order. A statement of discomfort with an applied-for name, as is made possible by the *gTLD Applicant Guidebook* in its provision for 'early warning' by the Governmental Advisory Committee (GAC),¹⁰⁰⁶ will not suffice to satisfy States' obligations under Article 19(3)(b) of the ICCPR.

Lastly, restrictions of expression are permitted for the purpose of ensuring 'respect of the rights or reputations of others'. This study could hopefully be of use in this regard. The existence of multiple sources of

1003. The .cat gTLD application is discussed in Part I, Chapter 1, section 1.2.2.3 above.

1004. *Keun-Tae Kim v. Republic of Korea*, para. 12.5, U.N. Doc. CCPR/C/64/D/574/1994 (U.N. Hum. Rts. Comm. 1999).

1005. ICANN, *gTLD Applicant Guidebook*, section 3.2.1. On the potential applicability of the so-called 'limited public interest objection' to geographic new gTLD applications, see Part I, Chapter 1, section 1.2.2.3 above.

1006. ICANN, *gTLD Applicant Guidebook*, section 1.1.2.4. See also ICANN, *New gTLD Program Explanatory Memorandum: Early Warning*.

potentially conflicting rights in geographic names revealed in this study requires that States consider and prioritize in the application of Article 19(3)(a) of the ICCPR these multiple interests proportionately in domestic law. It is not at all clear how this can be achieved in the context of the DNS, however, given that the delegation of a new gTLD to one applicant has the practical effect of denying all others across the globe the use of that name as a top-level domain string. This problem is exacerbated by a policy of rejecting strings on the basis of confusing similarity.¹⁰⁰⁷

Recent experience suggests that the winner in a contest between self-expression rights and property rights is increasingly likely to be a property rights holder.¹⁰⁰⁸ This raises interesting implications that go beyond mere domain name disputes into the realm of freedom and liberty, and the formation of DNS policy offers an opportunity to explore these. The challenge that arises not only in the exercise of the right to freedom of expression but all of the human rights considered in this chapter is that to the extent that persons or 'peoples' have a right to use a geographic name, that right can only practically be exercised in the context of top-level domains by one registry operator (or, in respect of a community based application, by one operator on behalf of a community). These issues lie beyond the scope of this study, but are raised here for future discussion.

A more general question is whether the right to freedom of expression encompasses a right to express oneself using a geographic name. This is a right the exercise of which depends entirely on context. It would be difficult to specify beyond the general limitations articulated in Article 19(3) of the ICCPR situations in which a person's expression of a geographic name must categorically be prohibited. ICANN should for that reason avoid imposing such a blanket prohibition in new gTLD policy. It is further the case that Article 19 of the ICCPR does not require the prohibition of expression in any form or for any purpose; rather, it gives States the possibility of imposing restrictions where these can be duly justified. This neither specifically proves nor denies the existence of an exclusive right of States to geographic names, though it does at least suggest that multiple interests may exist in names, which in turn suggests non-exclusivity. It also indicates that where restrictions imposed by States have the effect of impinging upon free expression, those restrictions must be for one of the purposes identified in Articles 19(3)(a) or (b). The likelihood of those circumstances being present in the context of an application to ICANN for a new gTLD is remote. In summary, arguments justifying restrictions on geographic gTLDs for the purposes of national security or public order must be individually scrutinized rather than assumed.

1007. See ICANN, *gTLD Applicant Guidebook*, section 2.2.1.1.2.

1008. See Wendy Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*, 102 Yale L.J. 1533, 1537 (1993) (positing that '[t]he incantation "property" seems sufficient to render free speech issues invisible').

9.2.3 RIGHT TO CULTURE

9.2.3.1 Connections between Culture and Geographic Names

Although certainly not confined by geographical boundaries, culture is inherently linked to geography. Many aspects of culture are drawn from the land, with climate, topography, presence of natural resources, proximity to neighbours and sea access, among other things, having an impact on how people interpret their surroundings.¹⁰⁰⁹ These interpretations and the ways in which people express them through such things as music, arts, literature, lifestyle, religious beliefs and traditions meld together to form culture, which the United Nations Educational, Scientific and Cultural Organization (UNESCO) defines as the 'set of distinctive spiritual, material, intellectual, and emotional features of a society or a social group'.¹⁰¹⁰ The people that share these features often, though not always, also share geographical location. Sometimes the link between geography and culture is not recent, relying instead on historic places. An example of this is Indonesia's attempt to develop a national culture following independence through initiatives that included the creation of a new national motto expressed in an ancient language no longer in use but 'connected to the past of ancient feudal kingdoms on Java and Bali, with few remaining links to the rest of Indonesia'.¹⁰¹¹ One can also point to geographic name changes motivated by decolonization and inspired by names of places of historical significance, including Bombay/Mumbai¹⁰¹² and Burma/Myanmar.¹⁰¹³

Geographic names can be considered representative or symbolic of a nation and its culture, though the appropriateness of the term 'national culture' is debatable. Few, if any, modern States are mono-cultural.¹⁰¹⁴ To the extent that there is a recognized 'national culture', this is likely to be the culture of a dominant majority, the promotion of which at one extreme risks eliminating minority cultures. At the other extreme lies the appropriation of minorities' cultural symbols into national culture without the support or

1009. See Johanna Gibson, *The lay of the land: the geography of traditional cultural expression*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 182-204 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008); Triggs, 319-323.

1010. Universal Declaration on Cultural Diversity, Preamble, adopted by the UNESCO General Conference on 2 Nov. 2001, 31C/Resolution 25.

1011. Christoph Antons, *Traditional cultural expressions and their significance for development in a digital environment: examples from Australia and Southeast Asia*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 289 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

1012. See generally, Thomas Blom Hansen, *Wages of violence: naming and identity in postcolonial Bombay* (Princeton University Press 2001).

1013. See generally, Gustaaf Houtman, *Mental culture in Burmese crisis politics: Aung San Suu Kyi and the National League for Democracy* 43-47 (Institute for the Study of Languages & Cultures of Asia & Africa 1999).

1014. See McGoldrick, 450.

permission of the affected minorities.¹⁰¹⁵ The focus in discussions of protecting and promoting cultural rights is therefore less on nations and more on minority and particularly indigenous groups within nations, based on the assumption 'that majorities can take care of, and protect, their own dominant culture.'¹⁰¹⁶

Indigenous peoples' culture is particularly linked to geography because the characterization of a people as 'indigenous' generally points to the inhabitation of a particular geographic territory.¹⁰¹⁷ Western thinking on indigenesness tends to go one step further by identifying the group as the first inhabitants of a territory, meaning that they lived in the geographic location prior to the arrival of colonizing outsiders.¹⁰¹⁸ The cultural rights of indigenous peoples so-defined are therefore called upon to 'preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems'.¹⁰¹⁹ In other parts of the world, indigenesness is not seen as dependent on colonization or minority status; in some countries 'the majority or even the whole population'¹⁰²⁰ is characterized as indigenous. In practice, the lack of an agreed definition of 'indigenous people' makes it difficult to apply these understandings to real-life disputes. Further, as recognized at the beginning of this chapter, some States are reluctant to formally recognize the link between 'indigenous peoples' and territory out of concerns that this could lead to claims of independent statehood.¹⁰²¹

Even without an agreed legal definition of 'indigenous peoples', it is clear that indigenesness involves a connection to geographic territory. For many indigenous groups, the relationship with land and their environment has great significance to their culture.¹⁰²² For these groups in particular, the names used to identify the land may have a cultural meaning beyond mere identification; members may wish to call upon the human right to culture to

1015. See for example, *Harold Joseph Thomas v. David George Brown & James Morrison Vallely Tennant*, 215 F.C.A. (Fed. Ct. Aust'l 1997).

1016. McGoldrick, 452.

1017. See Anaya, *Indigenous Peoples in International Law*, 3; Landzelius, *Introduction: Native on the net*, 34 n. 5 (offering the following definition of 'indigenous' as 'conventional': 'disadvantaged descendants of those peoples that inhabited a territory prior to formation of a state').

1018. See Jeremy Waldron, *Indigeneity? First Peoples and Last Occupancy*, 1 N.Z. J. Pub. & Int'l L. 55 (2002).

1019. Landzelius, *Introduction: Native on the net*, 34 n. 5, quoting International Work Group for Indigenous Affairs (www.iwgia.org).

1020. Antons, 291.

1021. See Anaya, *Indigenous Peoples in International Law*, 65. See also discussion earlier in this chapter, at Part III, Chapter 9, section 9.2.1.3, on the right of self-determination.

1022. See Podella, 565-566.

protect this from misuse or misappropriation by others who do not comprehend its significance.¹⁰²³ Further, to deprive such a group of the free use of its name may impinge upon its ability to interact materially and intellectually, to preserve and create its culture.

9.2.3.2 Legal Basis and Substance of the Right to Culture

The human right to culture is widely recognized in human rights law instruments, both binding and non-binding: it is provided for in varying terms in the Universal Declaration of Human Rights (Articles 22 and 27), the ICESCR (Article 15(1)(a)), the ICCPR (Article 27), the Convention on the Rights of the Child (Article 30) and the Declaration on the Rights of Indigenous Peoples (Articles 8, 11 and 31), and it is the focus of UNESCO's Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions¹⁰²⁴ and the Convention for the Safeguarding of Intangible Cultural Heritage.¹⁰²⁵ Each of these instruments refers in some way to a right to participate in or practice a culture, but none expressly acknowledges a right to possess a culture. Article 15(1)(a) of the ICESCR is illustrative of this point: it specifically recognizes 'the right of everyone (a) To take part in cultural life', and 'the participatory element has been interpreted as including a right to express one's own cultural life.'¹⁰²⁶ Yet it must logically be said that a 'right to participate in a culture can only exist if there is a culture'.¹⁰²⁷ This argument is supported by the specific obligation imposed upon States by Article 15(2) to 'conserve, develop and diffuse culture.'

Beyond this right of all persons to 'take part' in culture, members of minorities are specifically afforded rights to 'enjoy' their cultures. Article 27 of the ICCPR relevantly provides:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their religion, or to use their own language.

The cultural rights of children of minority groups are recognized in similar terms in Article 30 of the Convention on the Rights of the Child.¹⁰²⁸ Articles

1023. See Antons, 296.

1024. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (18 Dec. 1990, entered into force 18 Mar. 2007) 33C/Res. 42.

1025. Convention for the Safeguarding of the Intangible Cultural Heritage (17 Oct. 2003, entered into force 20 Apr. 2006) 32C/Res. 32.

1026. McGoldrick, 453.

1027. *Ibid.*, 454.

1028. Convention on the Rights of the Child, Art. 30 (20 Nov. 1989, entered into force 2 Sep. 1990), 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989): 'In those

8, 11 and 31 of the Declaration on the Rights of Indigenous Peoples¹⁰²⁹ relatedly call for the recognition of cultural rights of indigenous peoples.

Certain difficulties arise in the application of cultural rights to counter States' claims of exclusive rights in geographic names and their use in the DNS. First, the substance of the right to culture is very much in debate because of the fact that culture 'is not a static concept: cultures change all the time'.¹⁰³⁰ Nor is culture a universal concept such that it could be definitively said that a right to control or use geographic names is an essential aspect of all cultures. Jurisprudence in this area reveals that a determination that the right to culture encompasses a right to control or use a geographic name depends upon the importance of the name in question to the existence of the particular culture in question.

A further issue arises in that even if it is determined that the use of a geographic name is integral to a particular culture, it is not axiomatic that a policy of exclusive State control over geographic names impinges upon the right of persons, children or minorities to take part in or enjoy their culture. That Article 15 of the ICESCR specifically provides for the 'right *freely* to participate' (emphasis added) is significant, however, in that restrictions on the right to use a geographic name are patently inhibitive of *free* participation. In the context of the DNS and given the integral role played by the internet in creating, preserving and communicating culture,¹⁰³¹ a policy of requiring government authorization of applications for geographic new

States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.'

1029. United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly 2 Oct. 2007, G.A. Res. A/RES/61/295:

Art. 8(1): Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Art. 11(1): Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

Art. 31(1): Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

1030. Lyndel V. Prott, *Cultural Rights as Peoples' Rights in International Law*, in *The Rights of Peoples* 95 (James Crawford ed., Oxford University Press 1992).

1031. See Kathryn Bowrey, *Law & Internet Cultures* (Cambridge University Press 2005); Mira Burri-Nenova, *The long tail of the rainbow serpent: new technologies and the protection*

gTLDs would arguably require involvement of the State to a degree that impinges upon *free* participation in online cultural life. While there are no cases on these specific facts, an analogy can be drawn from other 'offline' constellations. In the case of *Oninayak v. Canada*,¹⁰³² for example, it was argued that the survival of the Lubicon Lake Band people depended upon their connection to the land, which was integrally connected to their culture. Because of this integral connection between land and culture, Article 27 of the ICCPR was deemed infringed by the Canadian government having allowed the provincial government of Alberta to grant leases for oil and gas exploration on lands belonging to the Lubicon Lake Band. A similar argument could be made in a situation where a State denies members of a cultural group the ability to identify themselves in the online environment using a geographic domain name or string.

In summary, there is no general right to culture that universally and in all cases supports a corresponding right of members of cultural groups to control or make use of a geographic name. Such a right does exist, but is limited to members of a cultural group in which a geographic name is integral. Nevertheless, the existence of this right serves to refute the exclusivity of rights claimed by States in geographic names. It also places restrictions on State decision-making respecting the use of geographic names by others.

9.2.3.3 Promoting Cultural Diversity

Beyond the individual's right to participate in culture, there is also increasing emphasis in international legal discourse on humanity's interest in cultural diversity.¹⁰³³ These interests have not yet developed into norms that recognize rights to culture, however. UNESCO's Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions (the 'UNESCO Convention') is the most prominent example: it does not create rights respecting culture or cultural diversity. The obligations set out in that convention are not absolute, being articulated in the following terms: in Article 6, 'each Party *may* adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory' (emphasis added) and

and promotion of traditional cultural expressions, in Intellectual Property and Traditional Cultural Expressions in a Digital Environment 205-236 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008).

1032. *Ominayak, Chief of the Lubicon Lake Band v. Canada*, Communication No. 267/1984, Report of the Human Rights Committee U.N. GOAR, 45th Sess., Supp. No. 40, Vol. 2, at 1, U.N. Doc. A/45/40, Annex 9(A) (1990).

1033. See for example, Cottier, *The Agreement on Trade-Related Aspects of Intellectual Property Rights*, 170; Fodella, *International Law and the Diversity of Indigenous Peoples; Accommodating cultural diversity* (Stephen Tierney ed., Ashgate 2007); *Cultural Diversity, Heritage and Human Rights: Intersections in theory and practice* (Michele Langfield et al. eds., Routledge 2010).

in Article 7, ‘shall endeavour to create in their territory an environment which encourages individuals and social groups’ (emphasis added). This has no bearing on the existence or exclusivity of State rights in geographic names, but the UNESCO Convention is nevertheless indirectly relevant to DNS policy on geographic names.

Geographic names per se are not inherently an element of cultural diversity,¹⁰³⁴ but their use in the context of the DNS has tremendous potential in terms of facilitating cultural diversity by providing a channel for the creation and dissemination of cultural expression. States party to the UNESCO Convention are not specifically obliged to enact measures respecting domain names in order to promote or preserve cultural diversity. The UNESCO Convention does recognize that in making decisions to promote or protect cultural diversity, States may have to prioritize conflicting interests. This is critical in the context of competing claims arising from the exercise of cultural rights, the possibility of which is not sufficiently acknowledged or addressed by other multilateral treaties respecting the right to culture, including the ICCPR and the ICESCR.

Prioritization of conflicting cultural interests is, understandably, entirely avoided by ICANN in the *gTLD Applicant Guidebook*. The rough guidance offered by the Convention on the Protection and Promotion of Cultural Diversity of Cultural Expressions as to how such competing claims might be addressed could nevertheless be useful to identifying the considerations that should be borne in mind in the resolution of disputes involving culturally significant gTLD strings.

9.2.3.4 Cultural Property

Another growing area of discourse in the area of cultural rights relates to cultural property.¹⁰³⁵ The notion of culture as property is largely based upon

1034. The term ‘cultural diversity’ is defined in Art. 4(1) of the UNESCO Convention as ‘the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. ... [It] is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used’.

1035. See generally, John Henry Merryman, *Two Ways of Thinking About Cultural Property*, 80(4) *Am. J. Int’l L.* 831 (1986); Lyndel V. Prott, *Problems of Private International Law for the Protection of the Cultural Heritage*, 217 *Recueil des Cours de l’Academie de la Haye* 301 (1989); Fiona Macmillan, *Human rights, cultural property and intellectual property: three concepts in search of a relationship*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008); Jürgen Bröhmer & Jennifer Greaney, *Der Schutz der Kulturgüter der australischen Ureinwohner*, in *Verfassung – Völkerrecht – Kulturgüterschutz* (Michaela Wittinger, Rudolf Wendt & Georg Röss eds., Duncker & Humblot 2011).

Western intellectual property doctrines, but at the same time also awkwardly depends on the application of those doctrines to 'cross-cultural claims that cannot be addressed solely by reference to values that have traditionally been embedded within the legal commentaries on property.'¹⁰³⁶ While the use of the term 'property' in this discourse unmistakably 'implies control in the form of an ability to alienate, exploit and exclude others'¹⁰³⁷ as possessed by a single individual, the added cultural element implies a different rationale for this protection than pure commercial interest. Thus cultural property differs from other forms of property in significant ways:

first, that it is 'owned' in common or, at least, publicly; secondly, that the ownership rights focus on preservation, access and the sharing of benefits associated with it; and thirdly, that the role of cultural property rights is to prevent or limit the privatization of cultural property.¹⁰³⁸

Discussion of legal protection for cultural property diverges into two broad themes: protection of 'cultural expressions' and protection of 'traditional knowledge'. For neither of these terms is there an agreed definition and likewise for neither is there yet an agreed legal protection framework. These concepts are nevertheless arguably the principal focus of today's international intellectual property law development efforts. The volume of scholarship on cultural expressions and traditional knowledge means that an examination of whether either of these encompasses a particular subject matter such as geographic names constitutes a study unto itself. Such a detailed enquiry lies outside of the scope of this work, but the considerable recent effort expended at the international level in the contexts of human rights, international trade law¹⁰³⁹ and intellectual property law¹⁰⁴⁰ demands that the potential of cultural expressions and traditional knowledge as

1036. Tatiana Flessas, *Cultural Property Defined, and Redefined as Nietzschean Aphorism*, 24 *Cardozo L. Rev.* 1067, 1068 n. 3 (2003), quoted in *The Resolution of Cultural Property Disputes: Some Issues of Definition* 55 (Kathryn Last ed., Kluwer Law International 2004).

1037. *The Resolution of Cultural Property Disputes* 55 (Kathryn Last ed.).

1038. Macmillan, *Human rights, cultural property and intellectual property*, 91.

1039. The scope for protecting cultural property in international trade law beyond the narrow issue of geographical indications (which is discussed later in this chapter in the context of traditional knowledge) is being considered, but as the UN Sub-Commission for the Protection and Promotion of Human Rights resolution on 'Intellectual Property and Human Rights' warns, it is necessary to be aware of 'actual or potential conflicts that exist between the implementation of TRIPS and the realization of economic, social and cultural rights.' United Nations Sub-Commission on Human Rights, *Resolution 2000/7: Intellectual Property Rights and Human Rights*, U.N. Doc. E/CN.4/SUB.2/RES/2000/7 (2000). For detailed discussion on this issue, see for example, Pamela Samuelson, *Implications of the Agreement on Trade Related Aspects of Intellectual Property Rights for Cultural Dimensions of National Copyright Laws*, 23(1-2) *J. Cult. Econ.* 95 (1999); John Henry Meryman, *Cultural Property, International Trade and Human Rights*, 19 *Cardozo Arts & Ent. L.J.* 51 (2001); Cottier, *The Agreement on Trade-Related Aspects of*

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existing or future sources of rights in geographic names be raised here for later, thorough consideration.

9.2.3.4.1 *Geographic Names as Cultural Expressions*

The term 'cultural expression' has been encountered in earlier sections of this chapter in the context of the human right to culture and the promotion of cultural diversity. There, it was noted that the UNESCO Convention creates no binding obligations on State parties with respect to cultural expressions, which are defined in Article 4(3) as 'those expressions that result from the creativity of individuals, groups and societies, and that have cultural content.' What the UNESCO Convention does is acknowledge the role that cultural expressions play in society and, controversially, the 'complementarity of economic and cultural aspects of development'.¹⁰⁴¹ With these things in mind, the UNESCO Convention offers States guidance on the implementation of measures aimed at promoting and protecting the diversity of cultural expressions.

The World Intellectual Property Organization takes a different approach, focusing instead on intellectual property law frameworks. In June 2011, its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the 'Intergovernmental Committee') released draft articles on the protection of 'traditional cultural expressions' (or 'TCEs', as they are also known).¹⁰⁴² In draft alternative forms,¹⁰⁴³ the articles propose to define the subject matter of protection using key intellectual property (of which in particular copyright) terminology.

Intellectual Property Rights; Fiona Macmillan, *Copyright, the World Trade Organization and Cultural Self Determination*, in *New Directions in Copyright Law* (Fiona Macmillan ed., Edward Elgar 2007).

1040. See for example, Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*; Peter K. Yu, *Intellectual Property and Human Rights in the Nonmultilateral Era*, 64 Fla. L. Rev. 1045, 1072 (2012).

1041. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Art. 2(5).

1042. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Initial Draft Report*, WIPO Doc. WIPO/GRTKF/IC/18/11 Prov. (2011) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_19/wipo_grtkf_ic_19_ref_grtkf_18_11_prov.pdf).

1043. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Cultural Expressions: Draft Articles*, WIPO Doc. WIPO/GRTKF/IC/22/4 (2012) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_4.pdf). See also WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Like-Minded Countries Contribution to the Draft Articles on the Protection of Traditional Cultural Expressions*, WIPO Doc. WIPO/GRTKF/IC/22/5 (2012) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_5.pdf).

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The protection envisaged by draft Article 3 is, in both proposed options, likewise broadly reliant upon intellectual property terminology. On the other hand, the 'Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions' updated and published by the Secretariat in early 2012¹⁰⁴⁴ evidences the need to extend beyond intellectual property in understanding these culture-based concepts. A more significant difference between the UNESCO Convention and the WIPO Draft Articles than terminology is the fact that the latter creates rights and clear obligations respecting cultural expressions, whilst the former does not.

Both instruments attribute a relatively wide scope of subject matter as falling within 'cultural expressions', but they do so using different approaches, with UNESCO focusing on cultural content and WIPO focusing on the form of expression. This is a direct result of differing motivations of human rights law and intellectual property law. Despite these differences, an argument can be made that geographic names fall within the scope of the protected subject matters of both of these instruments. WIPO's Draft Articles are the most clearly applicable given their express inclusion in sub-paragraph (a) of 'names' as covered subject matter. Falling within the UNESCO Convention's definition of 'cultural expression', on the other hand, depends on a name's having such a strong link to a culture that it can be considered 'cultural content'. The requirement that protected subject matter 'result from the creativity of individuals, groups and societies' may prove an obstacle to geographic names' protection given that they are often inspired by historic, geographic or other features rather than being the product of human creativity. In this geographic names differ from things that would typically be characterized as creative cultural expressions, such as music, dance, stories and artworks.

Even if geographic names fall within either of these definitions of cultural expressions, no binding obligations have as-yet been created for their protection. Surveys conducted as part of WIPO's Cultural Heritage Project¹⁰⁴⁵ evidence the fact that protection of TCEs is at this stage still a work in progress even at the domestic level. Work within WIPO's Intergovernmental Committee to finalize the Draft Articles is ongoing and appears to be making progress. This is an area of high potential for the recognition of rights in geographic names in the (perhaps even near) future, but not currently a source of legal rights in geographic names under international law.

1044. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Glossary of Key Terms Related to Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, WIPO Doc. WIPO/GRTKF/IC/22/INF/8 (2012) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_22/wipo_grtkf_ic_22_4.pdf).

1045. WIPO, *Creative Heritage Project: Surveys of Existing Practices, Protocols and Policies*, <http://www.wipo.int/tk/en/culturalheritage/surveys.html> (accessed 15 Oct. 2012).

9.2.3.4.2 *Geographic Names as Traditional Knowledge*

While the term 'cultural expression' tends to focus upon the results of creativity (the *what* of culture), the term 'traditional knowledge' tends to focus upon creative energies themselves (the *how* of culture). Though it too lacks an agreed definition, 'traditional knowledge' is broadly understood as something of value to a community because of its production and use by that community often (though not necessarily) over a lengthy period of time.¹⁰⁴⁶ It is also frequently associated with the relationship between people and the environment in which they live. Accordingly, traditional knowledge may include knowledge of 'plants and animals and their properties; minerals and soils and their properties; combinations of organic and inorganic matters; processes and technologies; means of enhancing individual health and welfare; means of enhancing collective health and welfare; [and] artistic expressions.'¹⁰⁴⁷ The medicines, healing practices, religious ceremonies, handicrafts and other ways of life that are derived from this knowledge are valuable to the communities that develop and use them in terms of the community's continued ability to survive and thrive, but they may also have commercial value to outsiders. The incidence of outsiders appropriating and using traditional knowledge, particularly when this occurs without compensation, has given rise to interest in its protection.

The potential subject matter of traditional knowledge covers a broad range of activities. This is reflected in the variety of participants involved in efforts to protect it at the international level, including the World Intellectual Property Organization, the World Trade Organization, the United Nations' Food and Agriculture Organization, the United Nations Conference on Trade and Development, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization.¹⁰⁴⁸ There are not yet any multilateral conventions of global force that specifically protect 'traditional knowledge' as a discrete subject matter, though the Convention on Biological Diversity¹⁰⁴⁹ represents a significant step forward for the protection of the biological resources upon which many forms of traditional knowledge are based.

1046. See Antony Taubman & Matthias Leistner, *Analysis of Different Areas of Indigenous Resources: Traditional Knowledge*, in *Indigenous Heritage and Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore* 59-60 (Silke von Lewinski ed., Kluwer Law International 2008).

1047. Bernard O'Connor, *Protecting Traditional Knowledge. An Overview of a Developing Area of Intellectual Property Law*, 6(5) *J. World Intell. Prop.* 677, 677-678 (2005). See also Thomas Cottier, *The Protection of Genetic Resources and Traditional Knowledge: Toward More Specific Rights and Obligations in World Trade Law*, 1 *J. Int'l Econ. L.* 555 (1998).

1048. See Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*.

1049. Convention on Biological Diversity (5 Jun. 1992, entered into force 29 Dec. 1993) 1760 U.N.T.S. 79; 31 I.L.M. 818.

In conjunction with its work on protecting traditional cultural expressions, WIPO's Intergovernmental Committee is also currently engaged in efforts to protect traditional knowledge, though it has been said that international protection of TCEs is more 'mature'.¹⁰⁵⁰ Draft articles on the protection of traditional knowledge¹⁰⁵¹ are under development, and similar to the draft articles on traditional cultural expressions, the definition of 'traditional knowledge',¹⁰⁵² eligibility criteria (draft Article 1) and the scope of protection (draft Article 3) are at this stage drafted in optional forms.

Meanwhile, regional frameworks for the protection of traditional knowledge are also gaining ground, the most notable of which being the African Regional Intellectual Property Organization (ARIPO) Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (the 'Swakopmund Protocol').¹⁰⁵³ Although not yet in force,¹⁰⁵⁴ the Swakopmund Protocol is instructive in terms of its broad but relatively concise definition of 'traditional knowledge',¹⁰⁵⁵ and detailed criteria¹⁰⁵⁶ of

1050. WIPO, *A new dawn for custodians of TK in Africa*, WIPO Magazine (December 2010) (available at http://www.wipo.int/wipo_magazine/en/2010/06/article_0008.html).

1051. WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Knowledge: Draft Articles*, WIPO Doc. WIPO/GRTKF/IC/21/4 (2012) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_4.pdf); WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *Like-Minded Countries Contribution to the Draft Articles on the Protection of Traditional Knowledge*, WIPO Doc. WIPO/GRTKF/IC/21/5 (2012) (available at http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_21/wipo_grtkf_ic_21_5.pdf).

1052. Option 1: For the purposes of this instrument, the term 'traditional knowledge' refers to the know-how, skills, innovations, practices, teachings and learning, resulting from intellectual activity and developed within a traditional context.

Option 2: Traditional knowledge is knowledge that is dynamic and evolving, resulting from intellectual activities which is passed on from generation to generation and includes but is not limited to know-how, skills, innovations, practices, processes and learning and teaching, that subsist in codified, oral or other forms of knowledge systems. Traditional knowledge also includes knowledge that is associated with biodiversity, traditional lifestyles and natural resources.

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, *The Protection of Traditional Knowledge: Draft Articles*, Art. 1.

1053. Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore (9 Aug. 2010, not in force).

1054. The Swakopmund Protocol was signed by nine ARIPO Member States: Botswana, Ghana, Kenya, Lesotho, Liberia, Mozambique, Namibia, Zambia and Zimbabwe. Pursuant to section 27, the Protocol will enter into force three months after six Member States have deposited instruments of ratification or accession.

1055. Swakopmund Protocol, Art. 2.1: "'traditional knowledge' shall refer to any knowledge originating from a local or traditional community that is the result of intellectual activity and insight in a traditional context, including know-how, skills, innovations, practices and learning, where the knowledge is embodied in the traditional lifestyle of a community, or contained in the codified knowledge systems passed on from one

protectability which directly link knowledge to a particular community and its cultural identity.

Names are notably not expressly included in the definition of 'traditional knowledge' in the Swakopmund Protocol or in either of the definitional options in WIPO's Draft Articles on the Protection of Traditional Knowledge. It is questionable whether a geographic name could be interpreted to implicitly fall within the sorts of knowledge protected under either, given that they focus on how knowledge is generated rather than the form of its expression.

Even if a connection cannot be drawn between traditional knowledge and geographic names as a general matter, such a connection can potentially be drawn between traditional knowledge and products identified by geographical indications.¹⁰⁵⁷ This is because geographical indications implicitly represent the *how* element that geographic names more broadly do not. Those who support the recognition and protection of geographical indications recognize that the aim of their protection goes beyond the mere name to 'protection of a certain quality and reputation that is attributable to a product that is made in a defined place.'¹⁰⁵⁸ This quality and reputation is frequently derived not only from particular characteristics of the geographical territory from which a product originates, but from the human interaction with that territory and the knowledge employed to transform elements in their natural state into distinctive products.¹⁰⁵⁹

It has been shown in Chapter 7 that the international intellectual property law framework offers only limited protection to geographical indications against unauthorized use. Geographical indications as presently recognized thus have little capacity to protect the cultural aspects that inhere in them. Specifically, geographical indications are considered not to possess:

the independent capacity to protect local cultures of production, consumption or identity, or to prevent the erosion of cultural diversity. Market forces inevitably induce changes in local production methods and consumption preferences, in spite of the GIs that should, in theory, play a role in preserving them, and the proliferation of GIs has itself

generation to another. The term shall not be limited to a specific technical field, and may include agricultural, environmental or medical knowledge, and knowledge associated with genetic resources.'

1056. Swakopmund Protocol, Art. 4.

1057. See Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*.

1058. O'Connor, *The law of geographical indications*, 18. See also Conrad, 13.

1059. See Dev Gangjee, *Melton Mowbray and the GI Pie in the Sky: Exploring cartographies of protection*, 2006(3) *Intell. Prop. Q.* 291, 300-308 (2006) (discussing 'the link between product and place'). See also Stephen R. Munzer & Phyllis Chen Simon, *Territory, Plants, and Land-Use Rights among the San of Southern Africa: A Case Study in Regional Biodiversity, Traditional Knowledge, and Intellectual Property*, 17 *Wm. & Mary Bill Rts J.* 831 (2009).

diluted the claims of special reputation, typicity, and cultural identity of GI-endowed locales.¹⁰⁶⁰

Traditional knowledge protection has been proposed as a means of addressing these inadequacies and facilitating the protection of both a geographical indication as such and the cultural knowledge it represents.¹⁰⁶¹ This is an interesting future possibility, but the scope that traditional knowledge protection currently offers for recognizing rights in geographic names (of which geographical indications in particular) is only speculative. Taking guidance from the Swakopmund Protocol, geographic names are not expressly provided for and a plain reading of the definition and eligibility criteria of 'traditional knowledge' renders it unlikely that these will be interpreted to implicitly geographic names.

9.2.4 Right to Language

Closely linked to the right to culture is the right to language. Culture and language are symbiotic aspects of life; many forms of cultural expression use language, and the words that comprise languages are constantly evolving and being drawn from speakers' cultural interactions and experiences. This is not unique to modern civilization; the German writer Johann Wolfgang von Goethe observed the following of late eighteenth century life: 'So unübersetzlich sind die Eigenheiten jeder Sprache; denn vom höchsten bis zum tiefsten Wort bezieht sich alles auf Eigentümlichkeiten der Nation, es sei nun in Charakter, Gesinnungen oder Zuständen.' ['It is impossible to translate the idiosyncrasies of each language; every word, from the most arcane down to the simplest, is permeated by the particular nature of the nation, be it in character, outlook or circumstances.']¹⁰⁶²

Modern technologies seem to be moving human societies away from such culturally and nationally distinct languages, however. The ease and affordability of global cultural dissemination via the internet contributes to the growing trend of linguistic homogenization, and it has been estimated that as much as '95 per cent of the languages today will have no long-term prospects of survival'.¹⁰⁶³ The death of languages is linked to the death of

1060. Broude, 678. See also Rhonda Chesmond, *Protection or Privatisation of Culture? The cultural dimension of the international intellectual property debate on geographical indications of origin*, 29(9) Eur. Intell. Prop. Rev. 379 (2007).

1061. See Cottier & Panizzon, *Traditional Knowledge and Geographical Indications*; Olufunmilayo B. Arewa, *TRIPS and Traditional Knowledge: Local Communities, Local Knowledge, and Global Intellectual Property Frameworks*, 10 Marquette Intell. Prop. L. Rev. 155 (2006); Gervais, 130-140.

1062. Johann Wolfgang von Goethe, *Italienische Reise 1786-1788 Teil 1* (Den 5. Oktober, nachts), 80 (Hirmer Verlag 1961) (trans. Dinah Cannell in Konrad Schröder, *Languages, in What is Europe? Aspects of European Cultural Diversity* 13 (Monica Shelley & Margaret Winck eds., Routledge 1995).

1063. Schröder, *Languages*, 14.

cultures, and this is generally viewed as undesirable.¹⁰⁶⁴ Paradoxically, the internet may have just as much of a role to play in reversing this trend as it has had in its creation by helping waning linguistic communities to overcome challenges to communication such as geographical isolation, unsupportive government language policies and political conflict. One step in this direction is ICANN's introduction in 2010 of 'Internationalized Domain Names' (IDNs), enabling domain names to be represented in non-Latin scripts.¹⁰⁶⁵ The introduction of IDN new gTLDs promises even greater possibilities for linguistic communities to promote, preserve and develop their language in the online world.¹⁰⁶⁶

It is not surprising that much of the discussion surrounding human rights and language takes place within the context of minority rights. As is the case with cultural rights, it can be argued that the majority is sufficiently well equipped to protect its linguistic interests, but that its doing so puts the continued existence of minority languages at risk. Article 27 of the ICCPR is clearly relevant given its recognition of the right of persons of 'ethnic, religious or linguistic' minority groups to, *inter alia*, 'use their own language'. Article 30 of the International Convention on the Rights of the Child additionally recognizes the right of a child belonging to a minority or indigenous group to 'use his or her own language'. These are, however, the only instruments of global effect to specifically recognize a right to language.

To clarify, the Charter of the United Nations recognizes at Article 1(3) a right of non-discrimination on the basis of language, as do Articles 2(1) of the ICCPR and 2(2) of the ICESCR, but this is not axiomatically subject to interpretation as a right to language. The Committee on the Elimination of Discrimination has recommended that States' obligations to prevent discrimination be interpreted as ensuring 'that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages',¹⁰⁶⁷ but even this is not expressly a right to language. Nor does the additional protection offered to indigenous people and minorities by Articles 27 and 30 of the ICCPR and International Convention on the Rights of the Child, respectively, expressly recognize a right to language. Rather, protection in both of these instruments is articulated in terms of a right to *use* or *practice* a language, similar to the way in which the right to *participate in* culture is recognized in the ICESCR

1064. See for example, Gerrand, *Cultural diversity in cyberspace*.

1065. On Internationalized Domain Names (IDNs), see Part I, Chapter 1, section 1.2.2.3 above.

1066. IDN strings comprised 6%, or 116 of 1,930, of applied-for strings in the first round of the New gTLD Program. ICANN, *New Generic Top-Level Domains: Quick Facts about applied-for new gTLD strings*, <http://newgtlds.icann.org/en/program-status/statistics/applications-quick-facts-13jun12-en.pdf> (13 Jun. 2012, accessed 15 Oct. 2012).

1067. United Nations Committee on the Elimination of Racial Discrimination, General Recommendation No. 23: Indigenous Peoples (1997) (available at <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/73984290dfea022b802565160056fe1c?Opendocument#%2>).

rather than a right to culture. The analysis of the right under Article 15 of the ICESCR 'to take part in the cultural life of the community' cited earlier in this chapter is aptly recalled here; borrowing those words, the right to use a language logically 'can only exist if there is a'¹⁰⁶⁸ language. This statement seems sensible in the context of the right to language, but nevertheless lacks support in international law in the way that the right to culture is supported through Article 15(2) of the ICESCR, which requires States to take steps necessary for culture's conservation and development. In spite of this, it is posited that:

normative expectations converge at least to the extent that states feel an obligation to provide *some* affirmative support for the use of indigenous languages and to ensure that indigenous people do not suffer discrimination for failure to speak the dominant language of the state in which they live.¹⁰⁶⁹

The scope for a broader right of indigenous peoples to language is supported by the Declaration on the Rights of Indigenous Peoples, Article 13(1) of which is of particular relevance here. It provides: 'Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, **and to designate and retain their own names for communities, places and persons**' (emphasis added). The Declaration on the Rights of Indigenous Peoples is not binding and thus not a formal source of rights in geographic names, but the language just emphasized suggests at a minimum that there is some recognition at the international level of the importance of geographic names to indigenous peoples. Otherwise, nothing in the ongoing discourse on legal rights in geographic names suggests that there is currently a custom or general principle of recognizing this right of indigenous peoples to 'retain their own names for communities [and] places'.

Recognition of the human right to language in international law thus appears to be limited to particular segments of the human population and the particular context of preventing discrimination. While there are regional agreements that provide for rights respecting language,¹⁰⁷⁰ these are also limited to the non-discrimination context and do not create specific rights to language that might support a correlative right to use or control a geographic name. Nor has support for a right to language been found outside of human rights law in the area of international trade law.¹⁰⁷¹

1068. McGoldrick, 454. See discussion above at section 9.2.3.2.

1069. Anaya, *Indigenous Peoples in International Law*, 139 (internal citations omitted).

1070. For example, the European Convention on Human Rights recognizes at Art. 14 a right to non-discrimination on the basis of language. Convention for the Protection of Human Rights and Fundamental Freedoms (4 Nov. 1950, entered into force 3 Sep. 1953) E.T.S. 5; 213 U.N.T.S. 221.

1071. See Broude, 682 (concluding that the potential for using trade-restrictive measures to preserve language, 'a national treasure of sorts,' under GATT Art. XX(f) is very low).

Against this backdrop it must be considered whether actions of the State that have the effect of preventing a particular linguistic community from having an online identity in the form of a geographic internet top-level domain could be interpreted as discrimination on the basis of language. In cases in which language and geographic territory share a name, a restriction on the linguistic community's application for that domain name or string could plausibly constitute discrimination by preventing that community from expressing itself on the internet. On the other hand, a policy of State control of geographic names would not be discriminatory if, for example, domain name registration within gTLDs were open to members of the linguistic community. Further, the policy underpinning the operation of the domain and use of domain names registered within it could not discriminate against in-language content and users. A hypothetical example would be a decision by the government of the United Kingdom to apply for a .cymru gTLD in which domain name registrants are prohibited from registering Welsh-language names or displaying Welsh-language content.¹⁰⁷²

The human right to language thus appears at present to offer scant support for a right of persons to make use of or exercise control over geographic names. Application of the right to language is limited to preventing State actions that discriminate on the basis of language. Preventing a linguistic community's access to the internet could in certain circumstances constitute a breach of this right. It does not automatically follow, however, that the recognition of exclusive State rights in a geographic domain name is discriminatory. That said, neither does the human right to language prove the existence of an exclusive right of States to geographic names; what it does is obligate States using geographic names not to do so in ways that discriminate against linguistic communities.

9.2.5 RIGHT TO PROPERTY

Several forms of property have been explored in this and earlier chapters as potential bases of rights under international law in geographic names: in the context of human rights, cultural property (including cultural expressions and traditional knowledge), and in the context of intellectual property, trademarks and geographical indications. These regimes protect exclusive individual – and to a lesser extent collective – rights to property in a particular form or satisfying particular criteria. What remains as a final area of enquiry is to consider whether geographic names can be considered as either the

¹⁰⁷² This example did not eventuate in the actual application process; the .cymru application made by Nominet UK, the registry operator of the United Kingdom's .uk ccTLD, specifically supports 'the registration of internationalized domain names (IDNs) to support the Welsh language'. See ICANN, *Application Details, String: CYMRU*, Question 23, <http://gldresult.icann.org/application-result/applicationstatus/application-details/1420> (accessed 15 Oct. 2012).

property of individuals or, alternatively, belonging to all humankind. The starting point in answering these questions is the recognition in international law of an individual's right to property and its potential applicability to geographic names. This then leads to a discussion of the notion of public property, what was termed '*res publicae*' in Roman law. Lastly, it is shown that these historic notions of property remain a feature of contemporary legal frameworks, appearing in the intellectual property context in the concept of the public domain.

9.2.5.1 The Human Right to Property and Individuals' Rights in Geographic Names

A human right to property remains elusive and indefinite in international law. It is recognized most clearly in the non-binding United Nations Declaration on Human Rights, Article 17 of which provides:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

A right to property is not provided for in either the ICCPR or the ICESCR, though both address property in the context of non-discrimination.¹⁰⁷³ 'There is reason to believe, however, that it was the precise formulation of the contours of the right to property, rather than disagreement over its existence in some form, that proved the stumbling block (and even then, only narrowly so).'¹⁰⁷⁴ This is supported by the express recognition of a right to property in regional agreements, amongst which the European Convention on Human Rights,¹⁰⁷⁵ the African Charter on Human and Peoples Rights¹⁰⁷⁶ and the

1073. See International Covenant on Civil and Political Rights, Arts. 2(1), 24(1) and 26(1); International Covenant on Economic, Social and Cultural Rights, Art. 2(2).

1074. Francisco Forrest Martin et al., *International Human Rights Law and Practice: Cases, Treaties and Materials* 868-869 (Kluwer Law International 1997) citing William A. Schabas, *The Omission of the Right to Property in the International Covenants*, 4 Hague Y.B. Int'l L. 135 (1991).

1075. Art. 1 of the Optional Protocol to the Convention provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

1076. African Charter on Human and Peoples' Rights, Art. 14 (27 Jun. 1981, entered into force 21 Oct. 1986) O.A.U. Doc. CAB/LEG/67/3 Rev 5, discussed in Mashood A. Baderin, *The African Commission on Human and Peoples' Rights and the Implementation of Economic, Social and Cultural Rights in Africa*, in *Economic, Social and Cultural Rights in Action* 151-153 (Mashood A. Baderin & Robert McCorquodale eds., Oxford University Press 2007).

American Convention on Human Rights.¹⁰⁷⁷ Further support for the existence of a right to property can be derived from the non-binding United Nations General Assembly Resolution on Respect for the Right of Everyone to Own Property Alone as Well as in Association with Others and Its Contribution to the Economic and Social Development of Member States.¹⁰⁷⁸

Although it may broadly (even if not universally) be agreed that a human right to property exists in some form in international law, there is disagreement as to the precise substance of the right and limitations to it.¹⁰⁷⁹ This is less problematic in the regional instruments just noted. Article 17(2) of the European Charter on the Fundamental Rights of the European Union,¹⁰⁸⁰ for example, specifically states: 'Intellectual property shall be protected.' The European Convention on Human Rights is another example; although a right to property is not expressly provided for, analysis shows that protection of intellectual property, including trademarks, bears out in cases.¹⁰⁸¹

The most common and general aspect of the right to property at the international level is its protection of individuals 'against wrongful state action'.¹⁰⁸² Whether protection against arbitrary and uncompensated taking of property is the only protection offered by an international law-based right to property is unclear but possible. Related arguments may be made to the effect that a taking constitutes a violation of the TRIPS Agreement's guarantees of protection to trademarks and geographical indications.¹⁰⁸³ Another broader possibility that is philosophically supported by the belief that property rights are directly linked to economic prosperity¹⁰⁸⁴ is its encompassing a positive right to acquire and possess at least *some* property. Even this broader view does not extend so far as to justifying claims to

1077. American Convention on Human Rights, Art. 21 (22 Nov. 1969, entered into force 17 Jul. 1978) 1144 U.N.T.S. 123.

1078. *Respect for the right of everyone to own property alone as well as in association with others and its contribution to the economic and social development of Member States*, 14 Dec. 1990, United Nations General Assembly Doc. A/RES/45/98.

1079. See *Restatement (Third) of the Foreign Relations Law of the United States* §711 comment d.

1080. Charter of Fundamental Rights of the European Union, OJ 2000/C 364/01.

1081. See Goebel, 7.

1082. Forrest Martin et al., *International Human Rights Law and Practice*, 866.

1083. See for example, *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS434/1; *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS435/1; *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS441/1.

1084. *Ibid.*

acquire or own *particular* property, however. Nor have claims based solely on a right to property been accepted in international courts.¹⁰⁸⁵

While there are regional laws that support a right to property as protecting particular property,¹⁰⁸⁶ international law does not go so far. International law does, however, offer support for the claim that a property right recognized in a geographic name (e.g., as a trademark, geographical indication or as cultural property) cannot arbitrarily be taken away. In the specific context of the New gTLD Program, this should motivate governments to provide clear reasons for denying support of a geographic new gTLD application made by an applicant possessing a geographic trademark or geographical indication.

9.2.5.2 Collective Property Rights in Geographic Names

9.2.5.2.1 Geographic Names as Public Property: 'Res Publicae'

Various societies and political ideologies have held to varying degrees the belief that some things in life are the property of the public at large. In law, this has roots in the Roman concept of '*res publicae*', in which public access was ensured by operation of law.¹⁰⁸⁷ Classic examples of *res publicae* include highways, railways, harbours, ports and bridges. These things 'are overwhelmingly the physical spaces required for mobility—lanes for travel, transportation, navigation, and communication among distant locations.'¹⁰⁸⁸ Their desirability to the public and use by all, in addition to their susceptibility to a certain degree of control to ensure their orderly use,¹⁰⁸⁹ justifies ownership by all.

Taking the view that geographic names are public property starts with a determination that they are property, something that the law has been notably reticent to do at least in the context of their registrability as trademarks.¹⁰⁹⁰ Article 6*ter* of the Paris Convention is argued to have been

1085. See for example, *L.E.S.K. v. the Netherlands*, U.N. Human Rights Committee, Communication No. 381/1989 U.N. Doc. CCPR/C/45/D381/1989 (1992); *K.J.L. v. Finland*, U.N. Human Rights Committee, Communication No. 544/193 U.N. Doc. CCPR/C/49/D/544/1993 (views adopted by the Human Rights Committee 3 Nov. 1993); *Koné v. Senegal*, U.N. Human Rights Committee, Communication No. 386/1989 U.N. Doc. CCPR/C/52/D/386/1989 (views adopted by the Human Rights Committee 21 Oct. 1994), as cited in Forrest Martin et al., *International Human Rights Law and Practice*, 875.

1086. See Goebel, 7.

1087. See Carol M. Rose, *Romans, Roads, and Romantic Creators: Traditions of public property in the information age*, 66 L. & Contemp. Probs. 89 (2003).

1088. *Ibid.*, 97.

1089. *Ibid.*, 99.

1090. See discussion of geographical names' protectability as a trademark in Part III, Chapter 5, section 5.1.1 above.

motivated by national emblems' incapability of propertization.¹⁰⁹¹ Debates surrounding the protection of cultural expressions, traditional knowledge and biological resources centre on the appropriateness of propertization.¹⁰⁹² It is also said that '[f]rom an indigenous perspective, a song or story is not a commodity or a form of property but "one of the manifestations of an ancient and continuing relationship between people and their territory".'¹⁰⁹³ Nor are plants and animals, healing methods, or ways of life easily characterized as property.

Characterizations of the internet and its DNS as *res publicae*¹⁰⁹⁴ should be scrutinized. It would be difficult if not impossible to maintain a *res publicae* space in the current environment of natural monopoly that results from the technical rule of absolute name uniqueness. The proviso that the public must be willing to 'behave in an orderly fashion'¹⁰⁹⁵ in a *res publicae* space requires an absolute willingness on the part of unsuccessful gTLD applicants to relinquish aspirations of extending offline rights into the online environment.

Even if the communications network underpinning the internet is deemed public property, this does not mean that all of the traffic and content upon it is also public property. Reference can be made back to physical *res publicae* spaces: the use of a public highway or port by privately owned vehicles and ships does not transform those vehicles and ships into public property. Likewise, if the internet is considered public property, its use to communicate information does not transform that information into public property. The information may be public property, but if so, this is irrespective of its transmission via the internet. That said, the line between 'lanes and means of communication... [and] the content of communication'¹⁰⁹⁶ is difficult to draw. This is certainly an issue for domain names because they have a tendency to connote content while also identifying the source of information and its location in the internet.

1091. See Antony Taubman, *The public domain and international intellectual property law treaties*, in *Intellectual Property: The Many Faces of the Public Domain* 82 (Hector Macqueen & Charlotte Waelde eds., Edward Elgar 2007).

1092. Anupam Chander & Madhavi Sunder, *The Romance of the Public Domain*, 92 Cal. L. Rev. 1331, 1368 (2004).

1093. Wend B. Wendland, *'It's a small world (after all)': some reflections on intellectual property and traditional cultural expressions*, in *Intellectual Property and Traditional Cultural Expressions in a Digital Environment* 150 (Christoph Beat Graber & Mira Burri-Nenova eds., Edward Elgar 2008), quoting Erica-Irene Daes, Special Rapporteur of the (then) Sub-Commission on Prevention of Discrimination and Protection of Minorities and Chair of the Working Group on Indigenous Populations, *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, E/CN.4/ Sub.2/1993/28, 28 Jul. 1993, para. 22.

1094. Rose, 100 (identifying the internet as 'the most obvious example of *res publicae* Intellectual Space').

1095. *Ibid.*, 99.

1096. *Ibid.*, 104.

Just as '[p]ublic roads and open systems of transportation make *private* property more valuable'¹⁰⁹⁷ (emphasis in original), the internet and other modern communications mediums make privately owned names and symbols more valuable, encouraging their commoditization despite the incongruity in some cases of that approach with the beliefs of their creators. As has been shown in earlier sections of this chapter, recent trends in the proprietization of cultural expressions and traditional knowledge tend to follow existing property regimes. In the DNS context, this is consistent with the broad understanding of domain names as property or something conceptually comparable. The existence of these other potential sources of legal rights in geographic names renders it even more remote that they might be considered generally, or in the specific context of the DNS, public property.

9.2.5.2.2 *Geographic Names as Part of the Public Domain*

It is a widely accepted premise of intellectual property law that new creation depends upon the existence of a stock of ideas and expressions that is open and available to all; in some legal systems, this philosophy justifies the very existence of intellectual property laws as temporary means of private proprietization.¹⁰⁹⁸ The things falling outside of private property rights, whether at the expiry of protection or not protectable in the first place, are considered to be in the 'public domain'. There are three ways of characterizing the public domain: as property belonging to all – the notion of public property just discussed,¹⁰⁹⁹ as 'res nullius' – the 'property of no one',¹¹⁰⁰ or as the 'opposite of property' – something not falling within the characterization of property.¹¹⁰¹

There is no agreed definition of 'public domain', but there is consistency in terms of its focus on access rather than ownership, as this definition illustrates: 'Resources for which legal rights to access and use for free (or for nominal sums) are held broadly.'¹¹⁰² Articulated in this way in terms of access and use, the notion of the public domain is inconsistent with property rights, which confer 'control in the form of an ability to alienate, exploit and exclude others'.¹¹⁰³ Nevertheless, even access and use can give rise to

1097. Chander & Sunder, 1345.

1098. Hughes, *The Philosophy of Intellectual Property*, 323-325.

1099. See for example, Rose, 100.

1100. See for example, Indigenous World Association and Indigenous Media Network, Joint Statement, *Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Indigenous Populations* (18–22 Jul. 2005).

1101. See for example, James Boyle, *Foreword: The Opposite of Property?*, 66 L. & Contemp. Probs. 1 (2003).

1102. Chander & Sunder, 1338.

1103. Last (ed.), *The Resolution of Cultural Property Disputes*, 55.

feelings that might be mistaken for property, particularly property owned by the State as:

a form of domain defined not merely by the absence of exclusive private rights but by a positive sense of public ownership or collective sovereignty. This is domain as *dominion*: the sense of 'domain' recalled in the concept of 'eminent domain', the sovereign's residual entitlement to assume use of private property for public use, based on a superior form of sovereign dominion over property.¹¹⁰⁴

Intellectual property laws traditionally make a distinction between property and the public domain, subject matter falling into the former category being protected and subject matter falling into the latter category not protected.¹¹⁰⁵ This is helpful to achieving a foundational understanding of what the public domain comprises, but it has been argued that it is not appropriate to conclude from this simplified explanation that intellectual property and the public domain are somehow opposed, as if 'the public domain is a bulwark against propertization and an alternative to intellectual property.'¹¹⁰⁶ Rather, there is a cyclic symbiosis between property rights and the public domain, an idea which has as its roots in Lockean 'labour theory': energies are exerted upon ideas and information in the public domain and thus take on the status of private property, which status they relinquish when the term of protection ends.¹¹⁰⁷ Falling into the public domain, they become available to others for use in creating new intellectual property. In this way, the public domain is a driver of propertization 'because it offers a sphere of free works upon which capitalists can draw without either seeking consent or drawing liability.'¹¹⁰⁸

The subject matter in the public domain is not itself appropriable, but can be used to create appropriable subject matter that ultimately joins the stock of non-appropriable subject matter. This is precisely what concerns indigenous communities if cultural heritage is to be considered public domain:

Placing our knowledge into the public domain turns it into a freely available resource for commercial utilization. Thus, it also creates the pre-condition for using non-indigenous Intellectual Property Rights (IPR) regimes to patent 'inventions' based upon our knowledge. ... We therefore strongly reject the application of the public domain concept to

1104. Taubman, *The public domain and international intellectual property law treaties*, 60-61, citing Grotius, *In Hugonis Grotii Jus Belli Et Pacis Commentatio. De Jure Belli*, Book I, iii. §6.

1105. See generally, Jessica Litman, *The Public Domain*, 39 Emory L.J. 965 (1990).

1106. Chander & Sunder, 1343.

1107. On Locke's labour theory and its application in justifying intellectual property rights, see Hughes, *The Philosophy of Intellectual Property*, 296-329.

1108. Chander & Sunder, 1343.

Chapter 9: Human Rights in Geographic Names

any aspect that relates to our cultures and identities, including human and other genetic information originating from our lands and waters.¹¹⁰⁹

On the other hand, the non-appropriable nature of the public domain aligns it with the Roman law concept of *res communes*, which ‘encapsulates what might be called the Impossibility Argument against private property: The character of some resources makes them incapable of “capture” or any other act of exclusive appropriation.’¹¹¹⁰ Classic examples of *res communes* are oceans and water; they are needed and used by all, but it is physically impossible to exert exclusive control over them.¹¹¹¹

In the non-physical world, languages, alphabets, facts and laws of nature all fit the description of being needed by all and incapable of possession or propertization by individuals.¹¹¹² The symbols protected by Article 6ter have also been considered to fit this description.¹¹¹³ These examples highlight the distinction made in Roman law between *res publicae* and *res communes*: *res publicae* are contained spaces over which some degree of control is possible. This distinction has since blurred, and intellectual property law appears to have played a role in that process.¹¹¹⁴

A characterization of geographic names as falling in the public domain¹¹¹⁵ does not necessarily equate to a ‘right’ of the public to them, however. On the contrary, claims to rights in the public domain lack support because of the very notion of the commons as a non-proprietary environment:

Rather, we all have the *privilege* or *liberty* to do what we like with these works (for example, stage a Shakespeare play); the only corollary is that other persons have *no right* to prevent us from so doing (for example, the direct descendant of William Shakespeare has no right to prevent me staging *Macbeth*).¹¹¹⁶

Applying this thinking to geographic names, the public may not so much have a right to use a geographic name (suggesting a corresponding duty on the part of others, including the State, not to interfere in that interest) but rather a ‘privilege or liberty’ to use them – as domain names or otherwise –

1109. Indigenous World Association and Indigenous Media Network, *Joint Statement*.

1110. Rose, 93.

1111. *Ibid.*, citing William A. Hunter, *Introduction to Roman Law* 59-60 (9th ed. revised, Oxford University Press 1934).

1112. On traditional knowledge and the public domain, see Cottier & Panizzon, *Legal Perspectives on Traditional Knowledge*, 374-376.

1113. See Taubman, *The public domain and international intellectual property law treaties*, 82.

1114. See Rose, 94-95.

1115. See Rimmer, 131.

1116. Cahir, 39-40.

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within the bounds of other norms surrounding their use such as those established by unfair competition law.¹¹¹⁷

If they do form part of the public domain, geographic names should be made available for domain name registration by any member of the public. This is not because each member of the public has a legal right to have such a space delegated to their control by ICANN: no one member of the public has a greater claim than another. The 'first come, first served' approach to domain name registration reflects this view perfectly, but the perfect application of the public domain to the DNS ends there. In the offline world, things in the public domain are available to all, and their transformative use by one does not prevent transformative use by another. In the online world, multiple simultaneous users of a domain name cannot exist: the technical requirement of absolute name uniqueness means that domain names start out as available to all, but they lose that status once they are delegated (top-level) or registered (second- and lower levels). The plot (e.g., boy meets girl, they fall in love, their love is forbidden by family relations) remains in the public domain for others to use even after *Romeo and Juliet* is written, but a geographic name is effectively removed from the pool of available names when it is delegated to a registry operator or registered by a domain name registrant. There can only be one .africa, one .switzerland, one .paris, and only one kenya.africa, berne.switzerland and one montmartre.paris

In conclusion, although the law does not recognize a right of the public to subject matter in the public domain, when the use at issue takes the form of a domain name, the practical outcome is difficult to distinguish from a legal right. While there is no right to prevent another person from making an application for a geographic gTLD string or domain name comprised of a term falling within the public domain, there is a technological impediment to doing so that gives rise to an exclusive, property-type right once the name has been captured in that way.

9.3 GEOGRAPHIC NAMES AS THE COMMON HERITAGE OF MANKIND

The final basis of rights considered in this study is a concept that has its roots in natural resources law, but also has clear links to cultural rights.¹¹¹⁸ It is

1117. See Taubman, *The public domain and international intellectual property law treaties*, 58-59.

1118. See for example, Liu Lina, *Ownership of Underwater Cultural Heritage in the Area*, 1 Creighton Int'l & Comp. L.J. 60 (2011); Derek Fincham, *The Distinctiveness of Property and Heritage*, 115 Penn St. L. Rev. 641 (2011); Joseph P. Fishman, *Locating the International Interest in Intranational Cultural Property Disputes*, 35 Yale J. Int'l L. 3347 (2010); Siegfried Wiessner, *Re-enchanting the world: Indigenous peoples' rights as essential parts of a holistic human rights regime*, 15 UCLA J. Int'l L. & Foreign Aff. 239 (2010).

acknowledged from the outset that this discussion could sit apart from human rights in this book, but it has been purposefully placed here in order to highlight the conceptual connections between cultural rights, the public domain and common heritage. This is broadly consistent with the doctrine of common heritage of mankind coming to be embraced within human rights law, for example, as a tenet recognized in the preamble of the United Nations Declaration on the Rights of Indigenous Peoples.¹¹¹⁹

The principle of common heritage of mankind has as its starting point a concept similar to that of the public domain, but to this is added a social responsibility framework. Common heritage of mankind proposes that 'all people would be expected to share in the management of a common space area' and economic benefits from the exploitation of that space 'would be shared internationally.'¹¹²⁰ Its traditional application in the context of natural resources also gives rise to two further aspects, namely that the use of the area 'must be limited exclusively to peaceful purposes' and that scientific research conducted therein 'would be freely and openly permissible, so long as the environment of the common space area was in no way physically threatened or ecologically impaired.'¹¹²¹ The deep sea bed is the most commonly identified common heritage of mankind space.¹¹²²

There are not obvious reasons for treating geographic names, like the deep sea bed, as a common resource managed and accessible by all, with the profits of any economic exploitation to be divided globally and equally. On the contrary, several compelling bases of private legal rights in geographic names have been identified in this study and the existence of these rights weighs against treating geographic names as a communal resource. Private rights also underpin domain names, the fundamental building blocks of the DNS. Some argue that this is not the most appropriate model, that the internet should 'be exploited for the benefit of the people of the world'¹¹²³ and that its governance by a corporation is inappropriate to achieve that aim.

For the internet to be managed as a common resource, its fundamental components must all be shared internationally and decisions respecting its development must be geared to achieving total equality of access. These notions are not *prima facie* inconsistent with the object of ICANN, the California non-profit public benefit corporation established to oversee

1119. United Nations Declaration on the Rights of Indigenous Peoples (2 Oct. 2007) G.A. Res. A/RES/61/295.

1120. Christopher C. Joyner, *Legal Implications of the Concept of the Common Heritage of Mankind*, 35(1) *Int'l & Comp. L. Q.* 190, 191-192 (1986) (internal citations omitted).

1121. *Ibid.*, 192.

1122. See Dolliver M. Nelson, *Reflections on the 1982 Convention on the Law of the Sea*, in *The Law of the Sea: Progress and Prospects* 33-34 (Richard Barnes & David Ong eds., Oxford University Press 2006). Antarctica is also put forward as a potential common heritage space. See J.M. Spectar, *Saving the Ice Princess: NGOs, Antarctica & International Law in the New Millennium*, 23 *Suffolk Transnational L. Rev.* 57 (1999).

1123. Chander, *The New, New Property*, 750.

domain name system policy, as articulated in the 'Core Values' in section 2 of its Bylaws. Yet as ICANN continues its struggle for legitimacy in the eyes of the global internet community, a struggle which has been reinvigorated by recent decisions respecting the addition of new top-level domains to the root, calls for shifting operational and policy control over the DNS to an international intergovernmental organization have intensified.¹¹²⁴

Shifting the internet and its DNS out of the private environment championed by ICANN and into shared global management (e.g., to the International Telecommunications Union) would have the effect of quashing any claims to their 'ownership' by any sovereign or even by all mankind. This would turn the focus unambiguously towards access and the motivation in policy decision-making conclusively towards the long-term greater good.¹¹²⁵

This is in many ways a desirable path for the internet to take, but would unquestionably be fraught with practical and legal difficulties too numerous to list here. These difficulties do not make treating the internet as the common heritage of mankind impossible, but this is not an outcome to be taken lightly or assumed to be inevitable. Additionally, while it is conceptually not difficult to apply such thinking to the governance model, the same is not true for the domain names that are the primary components of the system being governed. These have (if unintentionally) come to be viewed if not as property, then something analogous – a sort of 'third generation' or 'virtual property'.¹¹²⁶ If treating the internet as we treat the deep sea bed requires treating domain names as belonging to all mankind, any property or related proprietary rights in domain names, the most fundamental components of the DNS, should arguably be extinguished. Such an outcome is entirely antithetical to the way the DNS currently operates and also raises issues of takings of property as discussed earlier in this chapter in the context of the human right to property. At this point in time it is difficult to imagine the occurrence of such a massive shift in thinking.

Sharing the proceeds of exploiting common heritage resources internationally – this is, after all, the social conscience component upon which the principle of common heritage of mankind is based – is also antithetical to the way we presently view and use the privatized internet. In the face of ICANN's non-profit status, questions have notably been raised about its use of the 'approximately USD 350 million'¹¹²⁷ generated by new gTLD

1124. See Patrick S. Ryan, *The ITU and the Internet's Titanic Moment*, Stanford Tech. L. Rev. 8 (2012); Brito, *ICANN vs. the World*.

1125. See Joyner, 194.

1126. David Nelmark, *Virtual Property: The Challenges of Regulating Intangible, Exclusionary Property Interests Such as Domain Names*, 3(1) Northwestern J. Tech. & Intell. Prop. 1 (2004). See also Chik, *Lord of Your Domain, But Master of None*.

1127. ICANN, *TAS Interruption: Update (4 May 2012)*, <http://newgtlds.icann.org/en/announcements-and-media/latest> (accessed 15 Oct. 2012).

applications.¹¹²⁸ ICANN's response, that 'the community will be consulted as to how that excess should be used',¹¹²⁹ while supportive of the multi-stakeholder governance model, does not equate to sharing the proceeds of exploiting common heritage resources internationally.

In summary, the current model of internet governance leverages the spirit of the doctrine of the common heritage of mankind without embracing it fully. To do so would require fundamental changes, not just to the governance model itself but to the now firmly established and jealously defended private rights in the domain names so fundamental to the domain name system. Treating the internet, the DNS, and names used in that context as the common heritage of mankind thus reveals itself to be an interesting theory but implausible in practice at this point in time.

9.4 CONCLUSIONS ON HUMAN RIGHTS ENCOMPASSING RIGHTS TO GEOGRAPHIC NAMES

It is human nature to identify with the communities in which one lives. Modern multi-layered societies give rise to the likelihood that each person makes multiple associations, linking him or herself to a family, a local community, a professional community, a linguistic community, a sub-national region, a nation, a supra-national region. One association is no less important than the other to generating a complete picture of who a person is as a human being and how the person perceives his or her place in this world and wishes others to perceive him or her. To limit a person's ability to articulate this sense of belonging is arguably to limit his or her freedom and therefore violate the most fundamental aspects of his or her humanity. There are thus clear links between human rights and human beings' innate habit of self-identification.

This chapter has considered the most prominent links between human rights and geographic self-identification by analysing the rights to national identity and self-determination, freedom of expression, culture, language and property, as well as the doctrines of the public domain, public property, and common heritage of mankind. Of these, the right to freedom of expression and cultural rights have in particular been shown to offer clear bases for a

1128. See for example R. Shawn Gunnarson, *Modest Proposals for gTLD Profits*, CircleID (27 Oct. 2011) (available at http://www.circleid.com/posts/modest_proposals_for_gtld_profits) (accessed 15 Oct. 2012); Michael Berkens, *Beckstrom: 'I Took ICANN From \$57 Million Under Management To \$444 Million'*, The Domains (25 Jun. 2012) (available at <http://www.thedomains.com/2012/06/25/beckstrom-i-took-icann-from-57-million-under-management-to-444-million/>).

1129. ICANN, *Frequently Asked Questions: 1.7 Is ICANN initiating the New gTLD Program to make money?*, <http://newgtlds.icann.org/en/applicants/customer-service/faqs/faqs-en> (accessed 15 Oct. 2012).

person's right to use a geographic name. These rights are not absolute, but they do require consideration by States in reacting and responding to applications for geographic new gTLDs. New gTLD registries should also consider the issues noted in this chapter when developing supplemental policies that restrict the registration of geographic names as domain names in the newly created gTLDs.

The human right to freedom of expression as protected under international law recognizes a person's right not to have access to a geographic name prevented unless this poses a rationally articulated threat to national security or public order. Geographic names are not inherently threatening to national security or public order. Although the contexts in which they are used could give rise to such an interpretation, the existence of threats can only be determined on a case-by-case basis, so a universal rule restricting the use of geographic names on this basis is inappropriate. States' objections to geographic domain names or strings should be scrutinized to ensure that they 'specify the precise nature of the threat allegedly posed by'¹¹³⁰ the applicant's registration of that name in the DNS.

The human right to culture has also been shown to recognize a person's right to use a geographic name; this right is limited in terms of who may claim it (members of an identifiable cultural group) and when it may be claimed (where the name is integral and there is a risk of direct harm to the culture as a result of the State's action). Analogous arguments have been successfully made linking non-interference with land to the existence, practice and preservation of culture. In the context of the DNS and given the integral role played by the internet in creating, preserving and communicating culture, preventing a cultural group from possessing an online identity and a space in which to freely express and practice its culture could be seen to impinge upon free participation in online cultural life.

It is therefore a principal conclusion of this study that the human right to freedom of expression and the human right to culture stand in the way of a policy of recognizing exclusive rights of States in geographic names' use in the DNS. It is inappropriate to assume that only States have rights in geographic names, or that these rights necessarily always trump the rights of non-State others. Going forward, changes to new gTLD policy respecting geographic names are warranted to acknowledge the existence of these rights. In the interim, States should consider the impact of these rights upon their decision-making as respects new gTLDs.

Although the other rights examined in this chapter offer only scant support for the existence of rights in geographic names, some nevertheless serve to limit State action and should therefore also be borne in mind going forward in DNS policy-making. The human right of self-determination gives to 'peoples' a right to be involved in decision-making respecting geographic names and their use in the DNS. The human right of nationality ensures that

1130. *Keun-Tae Kim v. Republic of Korea*, para. 12.5.

State decisions regarding geographic names do not put a person's possession of a (though not a *specific*) nationality at risk. The human right to language prevents State actions respecting geographic names and their use in the DNS that discriminate on the basis of language.

This is the current and most visible protection available under international human rights law to geographic names, bearing in mind that this area is involved in an ongoing state of development and additional rights may be recognized even in the not-too-distant future. An agreement on the protection of cultural expressions is in progress, as is an agreement on the protection of traditional knowledge. Custom may also develop out of the provision in the Declaration of the Rights of Indigenous Peoples for indigenous peoples to 'retain their own names for communities, [and] places'.

Notwithstanding the existence of human rights encompassing a right to geographic names, there remains the practical problem in the context of the DNS of exclusivity; even if persons or peoples have these rights, it is practically impossible for more than one claimant or group of claimants to exercise such rights by registering them as domain names given the technological requirement of absolute name uniqueness. The law has not yet provided a means of prioritizing these interests. ICANN's approach in new gTLD allocation is to resolve by auction conflicts that are unable otherwise to be resolved.¹¹³¹ While this avoids ICANN having to make overt value judgments on specific gTLD applications, it embeds in the New gTLD Program as a whole a value judgment of prioritizing exceptionally funded applicants.

As ICANN gTLD policy matures, due consideration to cultural diversity may require ICANN to make different, overt value judgments. Having taken on the responsibility of ensuring that new gTLD policy is consistent with rights recognized in international law, ICANN has as its disposal the full complement of laws and soft law instruments to assist it in this process. Of particular value is the guidance offered by the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

1131. ICANN, *gTLD Applicant Guidebook*, section 4.2.2.

APPENDIX B

AMAZON DOMAIN NAME AND TRADEMARK PORTFOLIO IN SOUTH AMERICA

PRIVATE & CONFIDENTIAL

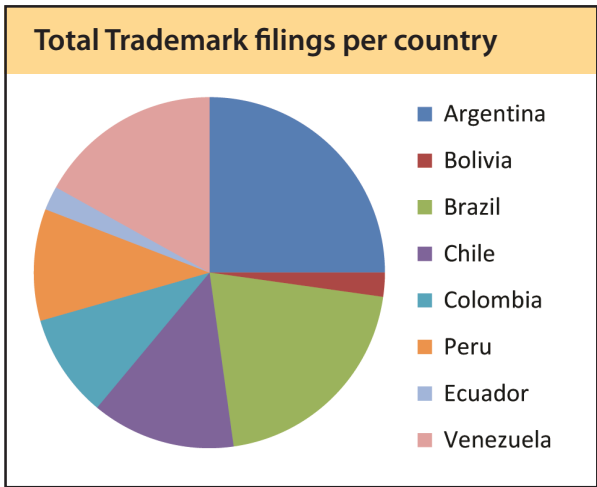
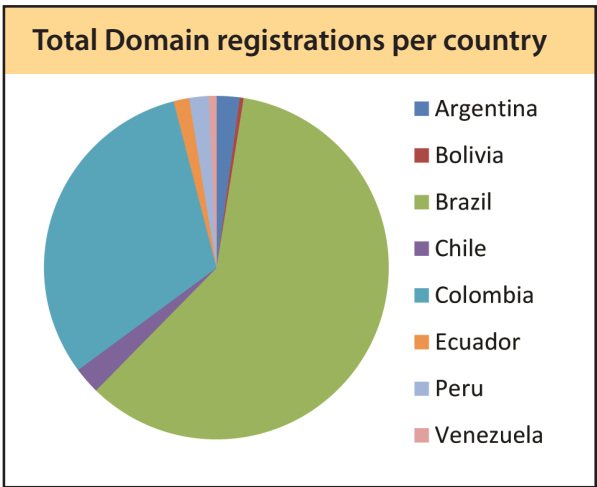
27th March 2013

This summary only includes Domain Names and Trademarks with the "Amazon" name in the eight countries listed. It is not an exhaustive list. Amazon has many more Domains and Trademarks registered in South America (including, for example, the "KINDLE" Trademark). Amazon also owns Domain names in Guyana (AMAZON.GF) and Surinam (AMAZON.SR) but the data is not currently available at the registry level. Some of the Domain Names listed in this report have been acquired from Third Parties and Infringers.

OVERALL SUMMARY

Domain Registrations	
Country	Total
Argentina	6
Bolivia	1
Brazil	165
Chile	7
Colombia	86
Ecuador	4
Peru	5
Venezuela	2
Grand Total	276

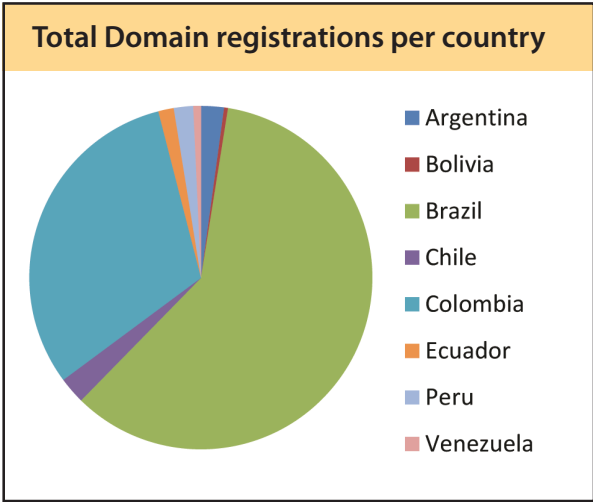
Trademark Filings	
Country	Total
Argentina	34
Bolivia	3
Brazil	28
Chile	18
Colombia	13
Ecuador	3
Peru	14
Venezuela	23
Grand Total	136



Summary

- Second-level domains are not available to anyone in Argentina, Brazil and Venezuela
- Argentina only allows registrations under .com.ar
- Brazil only allows registrations under restricted hierarchies (e.g., .com.br, .org.br)
- Aside from local presence requirements, there is no formal review process for most of these hierarchies
 - The exceptions are .org.br, .srv.br and .tv.br, which are completely “closed”

Domain Registrations	
Country	Total
Argentina	6
Bolivia	1
Brazil	165
Chile	7
Colombia	86
Ecuador	4
Peru	5
Venezuela	2
Grand Total	276



ARGENTINA

i. .AR Domain Registrations

Domain Name	Acquisition Date
AMAZON.COM.AR	9/18/1998
AMAZONKINDLEFIRE.COM.AR	9/29/2011
AMAZONCLOUD.COM.AR	9/29/2011
AMAZONSILK.COM.AR	9/29/2011
AMAZONFREETIME.COM.AR	9/6/2012
AMAZONKINDLE.COM.AR	11/30/2007

ii. Domain registrations with the country name "Argentina"

Domain Name	Acquisition Date
AMAZONARGENTINA.COM	6/25/2004

BOLIVIA

i. .BO Domain Registrations

Domain Name	Acquisition Date
AMAZON.COM.BO	12/23/1999

ii. Domain registrations with the country name "Bolivia"

Domain Name	Acquisition Date
AMAZONBOLIVIA.COM	5/11/2007

BRAZIL

i. .BR Domain Registrations

Domain Name	Acquisition Date
AMAZON.COM.BR	7/20/2012
AMAZONKINDLEKDK.COM.BR	1/21/2010
AMAZONKINDLEDEVELOPMENTKIT.COM.BR	1/21/2010
AMAZONKINDLEACTIVECONTENT.COM.BR	1/21/2010
AMAZONGAMESERVICES.COM.BR	1/10/2013
AMAZONSQS.COM.BR	12/16/2011
AMAZONCLOUDWATCH.COM.BR	12/16/2011

Domain Name	Acquisition Date
AMAZONELASTICCOMPUTECLLOUD.COM.BR	12/16/2011
AMAZONSIMPLEDB.COM.BR	12/16/2011
AMAZONSNS.COM.BR	12/16/2011
AMAZONCLOUDFRONT.COM.BR	12/16/2011
AMAZONRDS.COM.BR	12/16/2011
AMAZONS3.COM.BR	12/16/2011
AMAZONCLOUDFORMATION.COM.BR	12/16/2011
AMAZONLOJAVIRTUAL.COM.BR	12/12/2012
AMAZONLOCKER.COM.BR	12/10/2012
WAMAZON.COM.BR	12/7/2012
AMAZONM.COM.BR	12/7/2012
AMAZONL.COM.BR	12/7/2012
EVERYTHINGINAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONFREETIMEUNLIMITED.COM.BR	12/5/2012
SUAMAZONBRASIL.NET.BR	12/5/2012
TUDONAMAZONBRASIL.NET.BR	12/5/2012
SUAMAZONBRASIL.COM.BR	12/5/2012
TUDONAMAZONBRASIL.COM.BR	12/5/2012
YOURAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRASILAQUI.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.COM.BR	12/3/2012
AMAZONCLICKBUY.COM.BR	12/3/2012
KINDLEBOOKSAMAZON.COM.BR	12/3/2012
YOURAMAZON.COM.BR	12/3/2012
AMAZONMOVIES.COM.BR	12/3/2012
COMPRASNAMAZON.NET.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.COM.BR	12/3/2012
AMAZONAGORANOBASIL.COM.BR	12/3/2012
AMAZONBRASILAQUI.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.NET.BR	12/3/2012
SEUAMAZON.COM.BR	12/3/2012
AMAZONCINEMA.COM.BR	12/3/2012
AMAZONFILME.COM.BR	12/3/2012
COMPRASNAMAZON.COM.BR	12/3/2012
AMAZONAGORANOBASIL.NET.BR	12/3/2012
AMAZONMUSICA.COM.BR	12/3/2012
KINDLEBOOKSAMAZON.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.NET.BR	12/3/2012
AMAZONBRAZILHERE.COM.BR	12/3/2012
AMAZONTELEVISION.COM.BR	12/3/2012

Domain Name	Acquisition Date
AMAZONTELEVISION.COM.BR	12/3/2012
AMAZONAUDIO.COM.BR	12/3/2012
AMAZONTELEVISAO.COM.BR	12/3/2012
AMAZONBUYSINBRAZIL.COM.BR	12/3/2012
AMAZONCLICKBUY.NET.BR	12/3/2012
AMAZONINSTANTVIDEO.COM.BR	11/17/2011
AMAZONDEVPAY.COM.BR	11/5/2012
AMAZONMONEY.COM.BR	11/13/2012
AMAZONMONEYACCOUNT.COM.BR	11/13/2012
AMAZONCLOUDDRIVEPHOTOS.COM.BR	11/1/2012
AMAZONDATA.COM.BR	10/23/2011
AMAZONTABLET.COM.BR	10/23/2011
AMAZONBUSCA.COM.BR	10/23/2011
AMAZONTECNOLOGIA.COM.BR	10/23/2011
AMAZONPRESS.COM.BR	10/23/2011
AMAZONIA TECH.COM.BR	10/23/2011
AMAZONSHOPPING.COM.BR	10/23/2011
AMAZONTRAINING.COM.BR	10/23/2011
AMAZONOFERTA.COM.BR	10/23/2011
THEAMAZONS.COM.BR	10/23/2011
AMAZONPLAYER.COM.BR	10/23/2011
AMAZONTABLETS.COM.BR	10/23/2011
FASHIONAMAZON.COM.BR	10/23/2011
SUPERAMAZON.COM.BR	10/23/2011
AMAZONOFERTAS.COM.BR	10/23/2011
AMAZONSITES.COM.BR	10/23/2011
AMAZONKINDLE.COM.BR	10/23/2011
AMAZONCASA.COM.BR	10/23/2011
GREENAMAZON.COM.BR	10/23/2011
AMAZONVOIP.COM.BR	10/23/2011
STUDIOAMAZON.COM.BR	10/23/2011
AMAZONSEXSHOP.COM.BR	10/23/2011
CLOUDAMAZON.COM.BR	10/21/2012
AMAZONKIDS.COM.BR	10/21/2012
AMAZONLIFE.COM.BR	10/21/2012
AMAZONGAME.COM.BR	10/21/2012
AMAZONMEGASTORE.COM.BR	10/21/2012
AMAZONMOBILE.ECO.BR	10/21/2012
AMAZONN.COM.BR	10/21/2012
AMAZONPRIME.COM.BR	10/21/2012

Domain Name	Acquisition Date
AMAZONMOBILE.COM.BR	10/21/2012
AMAZONDUO.COM.BR	10/8/2012
AMAZONCLOUDPLAYER.COM.BR	9/28/2011
AMAZONCLOUDSTORAGE.COM.BR	9/28/2011
AMAZONKINDLETOUCH.COM.BR	9/28/2011
AMAZONSILKBROWSER.COM.BR	9/28/2011
AMAZONCLOUDDRIVE.COM.BR	9/28/2011
AMAZONKINDLEFIRE.COM.BR	9/28/2011
AMAZONSILK.COM.BR	9/21/2011
AMAZON-FAMILY.COM.BR	9/20/2012
AMAZONFAMILY.COM.BR	9/20/2012
AMAZONUSA.COM.BR	9/16/2011
AAMAZON.COM.BR	9/16/2011
AMAZONPREMIUM.COM.BR	9/11/2012
AMAZONBASICS.COM.BR	9/9/2009
AMAZONPOWERFAST.COM.BR	9/6/2012
AMAZONTIMETOREAD.COM.BR	9/6/2012
AMAZONFREETIME.COM.BR	9/6/2012
AMAZONPAPERWHITE.COM.BR	9/6/2012
AMAZONVPC.COM.BR	8/26/2009
AMAZONCLOUDREADER.COM.BR	8/17/2011
AWSAMAZON.COM.BR	8/17/2011
AMAZONEC2.COM.BR	8/17/2011
AMAZONKINDLECLOUDREADER.COM.BR	8/17/2011
AMAZONROUTE53.COM.BR	8/17/2011
AMAZONVIDEOSHORTS.COM.BR	7/24/2012
AMAZONE.COM.BR	7/20/2000
AMAZONVIDEOSHORT.COM.BR	7/20/2012
AMAZONWEB.COM.BR	6/20/2010
AMAZONVIP.COM.BR	6/20/2010
AMAZONSTUDIOS.COM.BR	6/17/2012
AMAZONCOMPRAS.COM.BR	6/17/2012
AMAZONSTORE.NET.BR	6/17/2012
AMAZONKINDLEBOOKS.COM.BR	6/17/2012
AMAZONDOWNPLAYER.COM.BR	6/1/2012
AMAZONMP3PLAYER.COM.BR	6/1/2012
AMAZONDOWNLOADS.COM.BR	6/1/2012
AMAZONMUSICDOWNLOAD.COM.BR	6/1/2012
AMAZONDOWN.COM.BR	6/1/2012

Domain Name	Acquisition Date
AMAZONMUSICDOWNLOADS.COM.BR	6/1/2012
AMAZONGAMECIRCLE.COM.BR	5/25/2012
AMAZONB2B.COM.BR	3/29/2012
AMAZON.EMP.BR	3/26/2012
AMAZONCURSOS.COM.BR	2/26/2012
AMAZONMUSIC.COM.BR	2/26/2012
AMAZONBOOKS.COM.BR	2/26/2012
AMAZONCOZINHA.COM.BR	2/26/2012
AMAZONIAINFORMATICA.COM.BR	2/26/2012
LOJAAMAZON.COM.BR	2/26/2012
AMAZONGLOBAL.COM.BR	2/26/2012
AMAZONMEDIAGROUP.COM.BR	2/26/2012
AMAZONFRESH.COM.BR	2/26/2012
AMAZONNETWORKBRASIL.COM.BR	2/26/2012
AMAZONSEX.COM.BR	2/26/2012
AMAZONLAND.COM.BR	2/26/2012
AMAZONASPRODUCOES.COM.BR	2/26/2012
AMAZONASAUTOS.COM.BR	2/26/2012
AMAZONEXPRESS.COM.BR	2/26/2012
SHOPAMAZON.COM.BR	2/26/2012
AMAZONNETWORK.COM.BR	7/20/2012
AMAZONPRODUCOES.COM.BR	2/17/2012
AMAZON1.COM.BR	2/17/2012
AMAZON.ATO.BR	2/16/2012
AMAZON.SRV.BR	2/16/2012
AMAZON.FLOG.BR	2/16/2012
AMAZON.PPG.BR	2/16/2012
AMAZON.TMP.BR	2/16/2012
AMAZON.RADIO.BR	2/16/2012
AMAZON.VLOG.BR	2/16/2012
AMAZON.IND.BR	2/16/2012
AMAZON.CNG.BR	2/16/2012
AMAZON.REC.BR	2/16/2012
AMAZON.ETI.BR	2/16/2012
AMAZON.INF.BR	2/16/2012
AMAZON.ETC.BR	2/16/2012
AMAZON.WIKI.BR	2/16/2012
AMAZONAPPS.COM.BR	1/9/2012
EAMAZON.COM.BR	2/25/2000

ii. Subset of the above list plus gTLD registrations with the name "Brazil"

Domain Name	Acquisition Date
AMAZONBRAZIL.ORG	7/28/2009
AMAZONFASHIONBRAZIL.COM	12/5/2012
YOURAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRAZILHERE.COM.BR	12/3/2012
AMAZONBUYSINBRAZIL.COM.BR	12/3/2012
AMAZONBRAZILCOMPANY.COM	9/27/2012
EVERYTHINGINAMAZONBRAZIL.COM.BR	12/5/2012
AMAZONBRAZIL.MOBI	7/28/2009
AMAZONBRAZIL.COM	7/20/2007
BRAZILAMAZON.COM	4/12/2005
AMAZONBRAZIL.BIZ	7/4/2012
AMAZONBRAZIL.INFO	7/2/2009
AMAZONBRAZIL.NET	6/4/2007
BRAZIL-AMAZON.COM	1/15/2008

ii. Subset of the above list plus gTLD registrations with the name "Brasil"

Domain Name	Acquisition Date
AMAZONBRASIL.COM	5/29/2012
AMAZONBRASILSHOPPING.COM	3/25/2012
AMAZONFASHIONBRASIL.COM	12/5/2012
SUAMAZONBRASIL.NET.BR	12/5/2012
TUDONAMAZONBRASIL.NET.BR	12/5/2012
SUAMAZONBRASIL.COM.BR	12/5/2012
TUDONAMAZONBRASIL.COM.BR	12/5/2012
AMAZONBRASILAQUI.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.COM.BR	12/3/2012
AMAZONAGORANBRASIL.COM.BR	12/3/2012
AMAZONBRASILAQUI.COM.BR	12/3/2012
AMAZONCOMPRASNOBRASIL.NET.BR	12/3/2012
AMAZONAGORANBRASIL.NET.BR	12/3/2012
AMAZONSHOPPINGBRASIL.NET.BR	12/3/2012
BRASILAMAZON.COM	5/26/2012
AMAZONBRASIL.ORG	5/9/2012
AMAZONBRASIL.NET	3/26/2012
AMAZONNETWORKBRASIL.COM.BR	2/26/2012

iii. Domain registrations under .br.com

Domain Name	Acquisition Date
AMAZON.BR.COM	6/21/2000

CHILE

i. .CL Domain Registrations

Domain Name	Acquisition Date
AMAZON.CL	8/25/1999
AMAZONKINDLE.CL	8/26/2010
AMAZONKINDLEFIRE.CL	9/28/2011
AMAZONSILK.CL	9/28/2011
AMAZONCLOUD.CL	9/28/2011
AMAZONFREETIME.CL	9/6/2012
AMAZONITA.CL	3/21/2011

ii. Domain registrations with the country name "Chile"

Domain Name	Acquisition Date
AMAZONCHILE.COM	6/25/2003

COLOMBIA

i. .CO Domain Registrations

Domain Name	Acquisition Date
AMAZON.CO	2/24/2010
AMAZON.COM.CO	1/21/2000
AAMAZON.CO	7/21/2010
AMAZON.NET.CO	2/8/2010
AMAZON.NOM.CO	2/8/2010
AMAZONADMASH.CO	4/11/2011
AMAZONAPP.CO	10/15/2010
AMAZONAPPS.CO	10/15/2010
AMAZONAPPSTORE.CO	10/23/2012
AMAZONAUTORIP.CO	1/7/2013
AMAZONAWS.CO	7/21/2010
AMAZONAWSGLACIER.CO	8/20/2012
AMAZONBASICS.CO	7/21/2010
AMAZONBOOKS.CO	7/21/2010
AMAZONCLOUDDRIVE.CO	3/28/2011
AMAZONCLOUDFRONT.CO	3/5/2013
AMAZONCLOUDPLAYER.CO	3/28/2011
AMAZONCLOUDREADER.CO	8/9/2011
AMAZONCLOUDSTORAGE.CO	9/28/2011
AMAZONCO.CO	4/20/2011
AMAZONEC2.CO	7/21/2010

Domain Name	Acquisition Date
AMAZONELASTICTRANSCODER.CO	1/28/2013
AMAZONFREETIME.CO	9/6/2012
AMAZONFREETIMEUNLIMITED.CO	12/5/2012
AMAZONFRESH.CO	6/29/2010
AMAZONGAMESERVICES.CO	1/9/2013
AMAZONGLACIER.CO	8/20/2012
AMAZONINSTANTVIDEO.CO	2/22/2011
AMAZONINSTANTVIDEOS.CO	2/22/2011
AMAZONKINDLE.CO	6/29/2010
AMAZONKINDLE.COM.CO	2/8/2010
AMAZONKINDLE.NET.CO	2/8/2010
AMAZONKINDLECLOUDREADER.CO	8/9/2011
AMAZONKINDLEDX.COM.CO	2/8/2010
AMAZONKINDLEFIRE.CO	9/28/2011
AMAZON-KINDLE-FIRE.CO	9/28/2011
AMAZONKINDLETOUCH.CO	9/28/2011
AMAZONL.CO	1/26/2011
AMAZONLOCAL.CO	3/23/2011
AMAZONLOCKER.CO	12/10/2012
AMAZONM.CO	1/26/2011
AMAZONMOBILE.CO	4/29/2011
AMAZONMP3.CO	6/29/2010
AMAZONN.CO	4/20/2011
AMAZONPAYMENTS.CO	7/21/2010
AMAZONPOWERFAST.CO	9/6/2012
AMAZONPRIME.CO	6/29/2010
AMAZONREDSHIFT.CO	11/26/2012
AMAZONS.CO	4/20/2011
AMAZONS3.CO	7/21/2010
AMAZONSELLERCENTRAL.CO	4/5/2011
AMAZON-SELLERCENTRAL.CO	4/5/2011
AMAZONSERVICES.CO	7/21/2010
AMAZONSES.CO	1/25/2011
AMAZONSILK.CO	9/28/2011
AMAZON-SILK.CO	9/28/2011
AMAZONSILKBROWSER.CO	9/28/2011
AMAZON-SILK-BROWSER.CO	9/28/2011
AMAZONSIMPLEEMAILSERVICE.CO	1/25/2011
AMAZONSTUDIOS.CO	11/15/2010
AMAZONSUPPLIES.CO	3/29/2012

Domain Name	Acquisition Date
AMAZONSUPPLY.CO	3/29/2012
AMAZONTICKETS.CO	1/23/2012
AMAZONTIMETOREAD.CO	9/6/2012
AMAZONWEBSERVICES.CO	6/29/2010
AMAZONWEBSTORE.CO	7/21/2010
AMAZONWHISPERCAST.CO	6/20/2012
AMAZONWHISPERNET.CO	7/21/2010
AMAZONWHISPERSYNC.CO	7/21/2010
AMAZONWINE.CO	9/27/2012
AMAZONWORLD.CO	7/21/2010
AWSAMAZON.CO	7/21/2010
EAMAZON.CO	1/26/2011
FULFILLMENTBYAMAZON.CO	7/21/2010
PAYWITHAMAZON.CO	4/11/2012
PAY-WITH-AMAZON.CO	4/11/2012
QAMAZON.CO	4/20/2011
SELLERCENTRALAMAZON.CO	4/5/2011
SELLERCENTRAL-AMAZON.CO	4/5/2011
SSL-IMAGES-AMAZON.CO	7/21/2010
WAMAZON.CO	1/26/2011
WWAMAZON.CO	7/21/2010
WWWAMAZON.CO	7/21/2010
WWW-AMAZON.CO	1/26/2011
WWWAMAZONCO.CO	4/20/2011
WWWLAMAZON.CO	7/21/2010

ii. Domain registrations with the country name "Colombia"

Domain Name	Acquisition Date
AMAZONCOLOMBIA.COM	6/25/2003

ECUADOR

i. .EC Domain Registrations

Domain Name	Acquisition Date
AMAZON.EC	10/22/2003
AMAZON.COM.EC	1/28/1998
EAMAZON.EC	10/22/2003
EAMAZON.COM.EC	6/16/2000

ii. Domain registrations with the country name "Ecuador"

Domain Name	Acquisition Date
AMAZONECUADOR.COM	11/7/2012
AMAZONENECUADOR.COM	9/12/2012
ECUADORAMAZON.COM	10/8/2007

PERU

i. .PE Domain Registrations

Domain Name	Acquisition Date
AMAZON.PE	12/8/2007
AMAZON.COM.PE	3/16/1998
AMAZONKINDLE.PE	2/21/2008
AMAZONKINDLE.COM.PE	2/21/2008
EAMAZON.COM.PE	5/8/2000

ii. Domain registrations with the country name "Peru"

Domain Name	Acquisition Date
AMAZON-PERU.COM	7/3/2005

VENEZUELA

i. .VE Domain Registrations

Domain Name	Acquisition Date
AMAZON.COM.VE	4/5/2000
AMAZON.CO.VE	4/5/2000

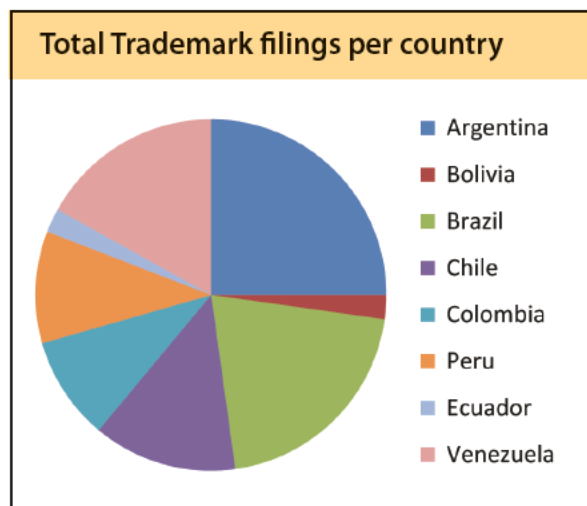
ii. Domain registrations with the country name "Venezuela"

Domain Name	Acquisition Date
AMAZONVENEZUELA.COM	6/25/2003
AMAZONVENEZUELA.NET	5/21/2011

EXTRACT FROM AMAZON TRADEMARK PORTFOLIO IN SOUTH AMERICA

Summary

Trademark Filings	
Country	Total
Argentina	34
Bolivia	3
Brazil	28
Chile	18
Colombia	13
Ecuador	3
Peru	14
Venezuela	23
Grand Total	136



ARGENTINA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003
AMAZON (28)	Registered	2.278.422	4/3/2000	1.841.859	8/28/2001
AMAZON (45)	Registered		4/3/2000	1.841.855	8/28/2001
AMAZON.COM (38)	Registered	2.241.592	9/16/1999	1.816.575	1/19/2001
AMAZON.COM (43)	Registered	1816578	9/16/1999	3063134	1/19/2001
AMAZON (22)	Registered	2.278.419	4/3/2000	1.841.856	8/28/2001
AMAZON (35)	Registered	2.278.423	4/3/2000	1.841.860	8/28/2001
AMAZON.COM (44)	Registered	1816578	9/16/1999	3063136	1/19/2001
AMAZON (20)	Registered	2.278.417	4/3/2000	1.841.865	8/28/2001
AMAZON.COM (39)	Registered	2.241.593	9/16/1999	1.816.576	1/19/2001
AMAZON (15)	Registered	2.278.413	4/3/2000	1.843.616	9/14/2001
AMAZON (38)	Registered	2.278.425	4/3/2000	1.841.852	8/28/2011
AMAZON (24)	Registered	2.278.420	4/3/2000	1.841.857	8/28/2001
AMAZON (25)	Registered	2.278.421	4/3/2000	1.841.858	8/28/2001
AMAZON (39)	Registered	2.278.426	4/3/2000	1.841.853	8/28/2001
AMAZON.COM (42)	Registered	2.241.595	9/16/1999	1.816.578	1/19/2001
AMAZON.COM (41)	Registered	2.241.594	9/16/1999	1.816.577	1/19/2001
AMAZON.COM (Design) (41)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON (07)	Registered	2679845	6/22/2006	2.235.755	6/24/2008
AMAZON (11)	Registered	2.278.410	4/3/2000	1.916.903	3/6/2003

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON (19)	Registered	2.278.416	4/3/2000	1.841.864	8/28/2001
AMAZON.COM (Design) (45)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON (09)	Registered	2.278.409	4/3/2000	1.843.614	9/14/2001
AMAZON (06)	Registered	2.278.406	4/3/2000	1.852.192	11/19/2001
AMAZON (41)	Registered	2.278.427	4/3/2000	1.841.854	8/28/2001
AMAZON.COM (Design) (42)	Registered	2.295.175	7/4/2000	1.853.698	11/29/2001
AMAZON.COM (45)	Registered	1816578	9/16/1999	3063138	1/19/2001
AMAZON.COM (35)	Registered	2145224	4/22/1998	1779480	3/17/2000
AMAZON.COM (Design) (35)	Registered	2.679.846	6/22/2006	2.371.391	5/28/2010
AMAZON (12)	Registered	2.278.411	4/3/2000	1.843.615	9/14/2001
AMAZON.COM (35)	Registered	2977762	2/9/2010	2418099	
AMAZON (08)	Registered	2679844	6/22/2006	2.235.754	6/24/2008
AMAZON (21)	Registered	2.492.843	2/3/2004	2049762	10/31/2005
AMAZON (42)	Registered	2278428	03/04/2000	1841855	28/08/2001
AMAZON (11)	Registered	2278410	03/04/2000	1916903	06/03/2003

BOLIVIA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003

BRAZIL

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	12186	9/16/1999	89500-C	3/20/2003
AMAZON.COM (38)	Registered	12187	9/16/1999	89501-C	3/20/2003
AMAZON.COM (35)	Registered	12188	9/16/1999	89499-C	3/20/2003
AMAZON.COM (35)	Registered	819841978	3/11/1997	819841978	06/08/2002
EAMAZON (35)	Registered	823149196	9/14/2000	823149196	29/01/2008
EAMAZON (41)	Published	823149170	9/14/2000		
AMAZON.COM (40, 35, 34, 15, 40, 40)	Opposed	822027178	9/17/1999		
AMAZON BASICS (Design) (9)	Opposed	902.170.791	12/4/2009		
AMAZON BASICS (Design) (2)	Opposed	902.170.759	12/4/2009		
AMAZON.COM (38)	Opposed	822027186	9/17/1999		
AMAZON BASICS (Design) (16)	Published	902.170.970	12/4/2009		
AMAZON WEB SERVICES (Design) (42)	Published	830958193	3/14/2011		
AMAZON BASICS (Design) (18)	Published	902.171.038	12/4/2009		
AMAZON BASICS (Design) (20)	Published	902.171.054	12/4/2009		
AMAZON BASICS (Design) (28)	Published	902.171.089	12/4/2009		

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON ROUTE 53 (35)	Published	831237465	10/6/2011		
AMAZON ROUTE 53 (42)	Published	831237481	10/6/2011		
AMAZON 1-CLICK (35)	Published	831284420	12/19/2011		
AMAZON ROUTE 53 (45)	Published	831237490	10/6/2011		
AMAZON.COM (Design) (39)	Published	901764167	7/3/2009		
AMAZON PRIME (35)	Filed	901.961.566	9/17/2009		
AMAZON BASICS (Design) (11)	Filed	902.171.160	12/4/2009		
AMAZON FLOW (41)	Filed	840101309	4/24/2012		
AMAZON FLOW (38)	Filed	840101295	4/24/2012		
AMAZON FLOW (9)	Filed	840101279	4/24/2012		
AMAZON FLOW (42)	Filed	840101260	4/24/2012		
AMAZON FLOW (35)	Filed	840101287	4/24/2012		
EAMAZON (42)	Filed	823149188	9/14/2000		
AMAZON.COM (Design) (35)	Filed	822962683	7/12/2000		
AMAZON SILK	Filed	840278829	9/26/2012		
AMAZON SILK	Filed	840278802	9/26/2012		

CHILE

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (Design) (35, 42)	Registered	493.083	7/13/2000	587.362	1/10/2001
AMAZON.COM (35, 42)	Registered	419.597	7/6/1998	532.142	1/14/1999
AMAZON (19)	Registered	482.675	4/14/2000	917.781	10/30/2000
AMAZON (09)	Registered	482.668	4/14/2000	917.795	10/30/2000
AMAZON (42)	Registered	482.687	4/14/2000	905.356	10/30/2000
AMAZON (11)	Registered	482.669	4/14/2000	917.794	10/30/2000
AMAZON (38)	Registered	482.684	4/14/2000	905.355	10/30/2000
AMAZON (24)	Registered	482.679	4/14/2000	917.778	10/30/2000
AMAZON (16)	Registered	482.673	4/14/2000	917.783	10/30/2000
AMAZON (35)	Registered	482.682	4/14/2000	916.919	3/15/2001
AMAZON (20)	Registered	482.676	4/14/2000	917.780	10/30/2000
AMAZON (18)	Registered	482.674	4/14/2000	917.782	10/30/2000
AMAZON (08)	Registered	482.667	4/14/2000	917.852	10/30/2000
AMAZON (21)	Registered	482.677	4/14/2000	917.779	10/30/2000
AMAZON (06)	Registered	482.665	4/14/2000	917.853	10/30/2000
AMAZON (15)	Registered	482.672	4/14/2000	917.784	10/30/2000
AMAZON (22)	Registered	482.678	4/14/2000	917.777	10/30/2000
AMAZON (41)	Registered	482.686	4/14/2000	905.357	11/23/2000

COLOMBIA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (35 Exp.)	Registered	9/9/1999	99 057177	228783	8/24/2000
AMAZON.COM (39)	Registered	9/3/1999	99 055879	227347	5/19/2000
AMAZON.COM (35)	Registered	9/9/1999	99 057176	227353	5/19/2000
AMAZON.COM (35)	Registered	1/17/1998	98021304	214594	11/30/1998
AMAZON (42)	Registered	4/17/2000	28290	232563	1/18/2001
AMAZON (28)	Registered	4/14/2000	27869	232928	1/18/2001
AMAZON (36)	Registered	4/14/2000	27867	232929	1/18/2001
AMAZON (35)	Registered	4/17/2000	28289	232564	1/18/2001
AMAZON (16)	Registered	4/14/2000	27870	232927	1/18/2001
AMAZON (41)	Maintenance	4/14/2000	27863	233711	4/17/2001
AMAZON (09)	Registered	4/14/2000	27862	232931	1/18/2001
AMAZON (38)	Registered	4/14/2000	27865	232930	1/18/2001
AMAZON (39)	Registered	4/14/2000	27860	231398	12/5/2000

ECUADOR

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (42)	Registered	100673	12/7/1999	3939-01	2/15/2001
AMAZON.COM (38)	Registered	100672	12/7/1999	3938-01	2/15/2001
AMAZON.COM (35 Exp.)	Registered	100671	12/7/1999	3937-01	2/15/2001

PERU

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON.COM (09)	Registered	91641	9/17/1999	60814	1/31/2000
AMAZON (42)	Registered	104374	4/14/2000	27088	9/18/2001
AMAZON.COM (39)	Registered	91643	9/16/1999	20329	2/10/2000
AMAZON (09)	Registered	104382	4/14/2000	67013	10/19/2000
AMAZON (28)	Registered	104380	4/14/2000	64833	7/19/2000
AMAZON.COM (38)	Registered	91640	9/17/1999	20199	1/31/2000
AMAZON (16)	Registered	471193	4/14/2000	3649	11/30/2001
AMAZON (39)	Registered	104378	4/14/2000	26129	6/21/2001
AMAZON.COM (35)	Registered	91639	9/17/1999	22001	7/11/2000
AMAZON (38)	Registered	104379	4/14/2000	23429	10/27/2000
AMAZON (35)	Registered	104778	4/19/2000	26185	6/28/2001
AMAZON.COM (16)	Registered	405372	11/13/2009	164233	6/17/2010
AMAZON.COM (42)	Registered	91642	9/17/1999	20241	1/31/2000
AMAZON (41)	Registered	06/10/2185	14/04/2000	26648	08/08/2001

VENEZUELA

Title	Status	Application #	Application Date	Registration #	Registration Date
AMAZON (01, 02, 29, 30, 33)	Registered	4/6/2000	2000-005735	P-228432	11/22/2000
AMAZON (21, 23, 24, 26)	Registered	4/6/2000	2000-005737	P-228434	11/22/2000
AMAZON (18, 21)	Registered	4/6/2000	2000-005731	P-228428	11/22/2000
AMAZON (08, 19)	Registered	4/6/2000	2000-005734	P-228431	11/22/2000
AMAZON (13, 14)	Registered	4/6/2000	2000-005729	P-228427	11/22/2000
AMAZON (21, 31)	Registered	4/6/2000	2000-005726	P-228424	11/22/2000
AMAZON (27, 28)	Registered	4/6/2000	2000-005733	P-228430	11/22/2000
AMAZON (03, 41)	Registered	4/6/2000	2000-005732	P-228429	11/22/2000
AMAZON (41)	Maintenance	4/11/2000	2000-006094	S-016674	6/1/2001
AMAZON.COM (38)	Maintenance	9/17/1999	16.203-99	S-017924	8/27/2001
AMAZON (36)	Registered	4/6/2000	2000-005725	P-228423	11/22/2000
AMAZON (23)	Registered	4/6/2000	2000-005728	P-228426	11/22/2000
AMAZON (39)	Maintenance	4/11/2000	2000-006090	S-016673	6/1/2001
AMAZON (32)	Registered	4/6/2000	2000-005738	P-228435	11/22/2000
AMAZON (28)	Maintenance	4/11/2000	2000-006093	P-233100	8/27/2001
AMAZON (42)	Registered	4/6/2000	2000-005724	P-228422	11/22/2000
AMAZON.COM (35)	Maintenance	9/17/1999	16.205-99	S-017926	8/27/2001
AMAZON (16)	Maintenance	4/11/2000	2000-006091	P-233099	8/27/2001
AMAZON (07)	Registered	4/6/2000	2000-005727	P-228425	11/22/2000
AMAZON (12)	Registered	4/6/2000	2000-005736	P-228433	11/22/2000
AMAZON.COM (42)	Maintenance	9/17/1999	16.204-99	S-017925	8/27/2001
AMAZON (50)	Registered	4/6/2000	2000-005739	S-015775	11/22/2000
AMAZON (05)	Opposed	4/6/2000	2000-005730		

APPENDIX C

DURBAN – GAC Plenary 2
Saturday, July 13, 2013 – 16:00 to 17:00
ICANN – Durban, South Africa

CHAIR DRYDEN:

Good afternoon again, everyone. If we could begin to take our seats, please, we will begin.

Okay. Let's get started on our next session.

So we now have about 45 minutes to deal with our next agenda item regarding the GAC Beijing communique and where we stand regarding the responses from the Board or the New gTLD Program Committee on that communique.

And then at 5:00 we have, as you I think are aware, we have canceled the Board/GAC Recommendation Implementation Working Group session as we will talk about GAC early engagement in the policy development process when we meet with the GNSO. And I understand that Board colleagues from the Board/GAC working group will aim to be in attendance when we discuss that in the GNSO. So we will still have the benefit of their involvement in those discussions. And so in light of having this additional time and a late request from a group that wishes to establish a constituency for geo registries, that the vice chairs were very supportive of including in our agenda. They were able to agree to come and brief us at 5:00 on that. So we've allotted 30 minutes to receive a briefing from them. And I expect it will be along the same lines as the briefing we received in Beijing from the group wanting to set up the Brand Registry Group, which I understand has now been set up.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So that will happen at 5:00. So in the meantime, here's what I would like us to accomplish.

We have a few documents that we can refer to for these next discussions, and I think probably the one that's most clear and summarizes everything nicely is the NGPC consideration of GAC Beijing advice dated 3rd July 2013, which is the full scorecard. So you will note that between Beijing and now, we have been getting scorecards coming from the New gTLD Program Committee, and based on their most recent meeting and resolutions and decisions coming out about the GAC's advice, they have now formulated a complete scorecard. So this is the state of play in terms of their responses on the entire Beijing communique including annex 1. And so this is a useful tool for us to see at a quick glance the state of play regarding the policy program committee's consideration of the GAC's advice. As well, recently circulated was a paper coming from the New gTLD Program Committee of the Board and that is titled "Questions and Concerns Regarding Portions of the GAC's Safeguard Advice." And this is focused on the category 1, which also relates to what is being called category 2.1 of the annex to the Beijing communique, where the committee has identified outstanding questions or concerns for the GAC.

And so this paper is meant to give us further information, further guidance for when we meet with them tomorrow morning, I think at 10:00, to look at these main outstanding issues that come from our Beijing communique.

The other issue is regarding the issue of implementation of acronyms of the intergovernmental organizations, and how to be responsive to the

concerns that have been raised by the IGOs in light of the questions coming from the Board there as well. And we can find some guidance from the New gTLD Committee in the covering letter from the 3rd of July that was sent to us and signed by the chair of the Board, and in the first section there entitled "Initial Protections for IGO Protections," and that is to update the GAC on some of the decisions they have made and some of the questions or concerns that they are now raising with us and the IGO coalition on that.

So I think these are the key outstanding issues, but I do expect that colleagues here will identify others if they think there are other parts of the scorecard where they would like the GAC to comment further or provide further guidance.

So at this point, can we take any initial comments from colleagues about where we are and their thoughts about the agenda that we have identified for tomorrow morning for our exchange with the New gTLD Program Committee?

China, please.

I'm sorry, I can't see who is raising their hand. But, please, go ahead.

CHINA: I have no question.

PERU: This is Peru, Chair.

CHAIR DRYDEN: Please, go ahead, Peru.

PERU: Okay. Thank you so much, Madam Chair. Peru is taking the floor on behalf of a sizable number of countries concerned about the application of geographic names and in general with the application of dot Amazon in particular, concerns that we would like to request the GAC members to endorse. However, personally, allow me just to salute our fellow colleagues here and to express our appreciation to the government of South Africa for hosting us.

This statement is submitted by Argentina, Brazil, Chile, Peru, and Uruguay with the full support of the Amazon region countries.

And it reads as follows: We acknowledge that the GAC principles regarding new gTLDs adopted in 2007 clearly establish that the principles shall not prejudice the application of the principle of national sovereignty. Besides, we understand that highlighting the importance of public interest is a relevant element that gives stability, sustaining the multistakeholder model, and ultimately the legitimacy of ICANN's administration.

In this sense, this model should contemplate adequate mechanisms before the GAC to guarantee a proper representation of the governments and their communities regarding the public policy issues within the ICANN framework. It is fundamental that governments have the adequate instance where their opinions can be effectively considered, particularly in a content of unprecedented wide-open call for application that has brought uncertainty for both governments and

applicants and has created conflicts with system rules and will establish precedents and benchmarking for future operations.

In the context of the last applications for new gTLD process, various strings have generated concerns from different countries. This is the case of Brazil, Peru, and the Amazonic countries with the application for dot Amazon by the company Amazon, Inc. and, until very recently, was the case for Argentina and Chile with the application of dot Patagonia.

From the beginning of the process, our countries have expressed their concerns with the aforementioned applications presenting various documents to the GAC, referring to the context and basis of the national and regional concerns, including early warning and GAC advice requests.

Various facts recorded in several historiographical, literary and official documents throughout history, including the recent official regional declarations, have been submitted and explained by each country directly to the GAC and to the applicants through the established procedures and through an active engagement process with the interested parties that has allowed us to explain our position for requesting the withdrawal of the applications.

This is the position adopted, for example, by the fourth Latin American and Caribbean Ministerial Conference on Information Society, the Amazon Cooperation Treaty Organization, the Brazilian Internet Steering Committee, the Brazilian Congress, and the Brazilian civil society, the Peruvian Congress Commission on Indigenous Peoples, local governments of the Peruvian Amazon region, and several representatives of the Peruvian civil society.

The 2007 principle states that ICANN's core values indicate that the organization, while remaining rooted in the private sector, recognizes that governments and public authorities are responsible for public policy and should take into account governments and public authorities' recommendations.

They also make reference to the provision of the Universal Declaration of Human Rights and the obligation that the new gTLDs should respect the sensitivities regarding terms with national, cultural, geographic, and religious significance.

They clearly add that ICANN should abide country, territory or place names and country, territory or regional language or people descriptions unless in agreement with the relevant governments or public authorities. Therefore, within the context of the approved principles, there is clear basis that supports our position as governments.

We understand that the introduction, delegation, and operation of new gTLDs is an ongoing process, and, therefore, it is subject to constant evaluation, evolution, and change in order to improve the program.

Being the first applications to be analyzed, the decision that will be taken are going to be relevant for future cases and will have effects in future applications which might potentially affect every country. In relation with this application, involved governments have expressed serious concerns related to the public interest. In particular, dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own

culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.

During our last meeting in Beijing, the great majority of the governments represented in the GAC understood the legitimate concerns we have raised related to the use of geographic names in new gTLDs. We believe that this new GAC meeting is again an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for dot Amazon address to the ICANN Board in order to reject this application.

We stand by the commitment to the GAC principles regarding new gTLDs adopted in 2007 which require countries' prior approval for the filing of geographic names and encourage ICANN to formulate clear criteria limiting the utilization of geographic names as top-level domain names in the next round of the program.

Thank you, chair.

CHAIR DRYDEN:

Thank you for those comments, Peru.

The GAC will discuss this agenda item on Tuesday at 10:30, I believe. So I consider your comments relevant to that particular agenda item.

All right. Peru, you have further comments.

PERU:

Yes, just very briefly. Just we will come back in the next opportunity on this, but just to let our colleagues know that this statement has already been provided by the secretariat and you must have it all in your -- in the Internet in your mail accounts.

Thank you.

CHAIR DRYDEN:

Thank you for that clarification about the materials.

So for that agenda item regarding the strings for further consideration that we outlined in the Beijing communique, we do have materials that we have posted and circulated and that are available to GAC colleagues, and that includes statements and reports from GAC members.

So if we look at the state of play with the overall scorecard and views regarding the agenda specifically identified for exchange with the new gTLD policy committee tomorrow, are there thoughts on -- for example, do we have agreement that those are the key items that we have a need to exchange with the committee tomorrow on. Is there anything further that colleagues would like to flag that the GAC may need to look at this week in terms of the response?

As I say, most of the advice was accepted by the New gTLD Committee of the Board. And then as I say, there are these outstanding items that we will have a discussion about with the New gTLD Committee tomorrow.

So I see Switzerland and Australia.

Thank you.

SWITZERLAND:

Thank you, Madam Chair.

There's one other issue I would -- wanted to bring to the attention. In the GAC communique of Beijing, we had -- not in the safeguard part but in the general advice on new gTLDs, we had a text about community support for applications which basically says that in cases where a community has expressed a collective and clear opinion, positive or negative, on an application, that ICANN should take this into account. And ICANN basically just responded referring to the community evaluation and objection process.

And the idea of this text is that this should be done also in cases where there has been no community application or no community objection, but because some of the communities were not aware of these procedures or have been advised not to use them for reasons because they were too complicated or others things. There's lots of feedback that we have got in the past months that many communities, although they would -- they are clearly community, did not use these procedures and the idea of this text in the communique was to raise the awareness about this to ICANN and to the Board. And I think we should clarify this in the meeting with the gTLD committee; that we did not intend just to refer to the existing structures but that (indiscernible) is more fundamental than this.

Thank you.

CHAIR DRYDEN:

Thank you for that, Switzerland.

My quick reaction is in terms of the understanding around what was intended by the GAC's advice, I remember there was some back and forth about that. And I think what we would need to do is, as a GAC, have a discussion about whether there's agreement that we would clarify along the lines you're proposing.

It's not clear to me at this point that we could do that, so let's create time for us to have that discussion, and then we can also raise it in the exchange with the Board on Tuesday, and then focus on the current agenda of the New gTLD Committee.

So we will take note of the need for a follow-up discussion in the GAC about what was intended in providing this advice, which was accepted by the Board gTLD committee, and identify what, if anything further, we would want to comment on or advise on. And we can also make use of the meeting that we have at the end of Tuesday with the Board.

So let's take careful note of that item and deal with it this way.

Okay. So next I have Australia, then United States, then Germany.

So Australia, please.

AUSTRALIA:

Thank you, Chair.

So I have a number of comments about the agenda. The first one is on the questions which the Board has sent through to the GAC to help structure our discussion, or the New gTLD Program Committee has sent through.

For those who have had a chance to read them, as they only came through today, I think, they're quite detailed. And one thing which I think would be interesting to focus on in our discussion with the committee is if there are any areas of potential agreement. It seems where -- they've focused in great detail on the wording of a particular phrase and various questions, and they've gone into quite a lot of detail. The sense that I don't have from the feedback that we've got is areas where there may not be questions or where there is potentially some sort of provisional agreement. And it might be interesting to draw out areas where there aren't issues and see if we can build on those rather than diving into detailed areas where we may sort of get lost, so to speak.

The second one is I think we may -- although I don't think it's been flagged directly by the committee, we may be in a discussion with them about the closed generic issue. I also think the response from the Board indicates that they've accepted in part, there's a dialogue in the remainder. And in the dialogue it's mentioned they will seek clarification on our advice with respect to exclusive registry access.

And from the way it's phrased, I'm not exactly sure which bits they're going to seek clarification on. So I think it might be something for us to be prepared for.

There's a number of component parts to that GAC advice in terms of generic strings, what the public interest may be and so on.

So I'm not sure where the Board will focus, but their scorecard response does flag that they will want to talk with us about that at some stage.

And a potential third thing to consider is another one that the Board accepted the advice, but potentially where there may be still further questions is on the question of singles and plurals where we asked the Board to reconsider this. The Board did and considered that their initial response, reaction was okay.

I'm interested in whether any other GAC colleagues are as convinced as the Board is.

I think from my perspective, it still seems to raise questions from a very simple common-sense perspective.

I understand that there is an expert group that has provided advice here about confusability and so on. And -- But from a user perspective, I still find it very difficult to believe that this will not be confusing; that there will be a string and a plural of a string with an "S" at the end and that users will understand the difference.

There's a number of other aspects to this, potential gaming behaviors. In the second round, if it seemed to be okay to apply for plurals, what's to stop applicants from applying for plurals of very successful gTLDs in this round just to leverage off of that marketing and success and so on.

But I am concerned about consumer confusion with singles and plurals, and I'm interested to see whether anyone else shares that concern.

CHAIR DRYDEN:

Thank you very much for those comments, Australia.

So your first proposal to try and give some focus to our discussions and approach regarding the issues raised in the paper that we've just

received I think is a practical one. So I'm happy for us to try to identify areas where we do agree with them as a way to help us move through consideration of these outstanding issues and touching upon closed generics and precisely how that will be handled. What the process is around that I think will be of interest to us to understand as well. So I have taken note of that.

Regarding singular and plurals, I will put them in the same pile, put that issue in the same pile as that raised by Switzerland regarding community support. So that allows us, again, to have GAC discussion following our exchange with the committee tomorrow morning. And then if we wish to raise that in the meeting with the Board, we can do so. And having done so, after hearing from colleagues in the GAC and having a more full discussion. And again, this allows us to focus on the outstanding category safeguard advice for tomorrow morning and the IGOs issue.

Okay. So we have a second agenda forming that we will find time to discuss as a GAC later on.

Okay. So next I have United States, please.

UNITED STATES OF AMERICA: Thank you, Madam Chair.

First, I did think it's useful to throw this out there, and I trust that colleagues will share our view, I hope. I think the Board, the New gTLD Committee has been amazingly responsive to the GAC, and I think this approach that is being followed of following the scorecard kind of

methodology and coming back to the GAC after succeeding meetings is extremely helpful so that we know what their thinking is.

And I think I'd like to -- hopefully we will also say this to the Board when we meet in public with the whole community. I think we also owe a great deal of gratitude to the entire community for being so responsive to the GAC's Beijing advice. And I think all of the applicants clearly stepped up and responded to the Beijing communique in a very short window, and every other interested member of the community did as well.

So I think it's worthy of note that the community was incredibly responsive to the Beijing communique.

So I just wanted to put that out as sort of a threshold statement.

We have been tracking all of the Board messages back to the GAC. Unfortunately, and with apologies to them, but this latest communication just came to us today, and I had very similar questions as Peter did from Australia. In some cases it's not entirely clear to me what the Board is actually asking of the GAC. So -- And maybe they think turn about is fair play, perhaps. Maybe we weren't as clear, they thought, as we needed to be in our Beijing communique. But, for example, when they have that side-by-side list of some generic words and highly regulated sectors, I'm not entirely clear I understand what they're asking us to do. To verify whether a sector -- a string represents a regulated sector or not.

So we might want to try to frame some questions -- I don't know whether colleagues share the hesitation I have or the questions I have. I'm just not entirely clear what they're asking us to do with them.

They also point out -- Apologies, colleagues. I have managed to attract germs from several airplane rides, so I hope it doesn't get worse.

They also talk about we didn't have a principled basis for distinguishing between certain categories and certain strings. So I'm not taking issue necessarily with what they're raising with us. I'm just not entirely sure I know what they're asking us to help them do as a next step.

So I would certainly welcome thoughts from colleagues as to how we tackle these questions, because I assume we have, all of us, a shared goal as to moving the ball further down the field. We'd like to take as many of these things off the list as we possibly can.

And I did want to make just a comment, since we haven't yet met with the New gTLD Committee. But on the IGO issue, just to sort of confirm that it might take away from the most recent conference call that we held with the board members, which I thought was extremely helpful. So appreciation to you, Chair, as well for setting that up and managing to that have held before we came.

I understand the Board's statement to be they have accepted our advice in theory, and they've accepted it concretely for IGO names, but where we remain sort of -- where more work remains to be done is vis-a-vis IGO acronyms.

So I did not hear them say that they would not protect acronyms, but that they need to engage with us further. So I took that as a good sign.

And my understanding, and I hope that colleagues will share their impression, those of you who were on the call, that the primary question I think they want to work with us on is exactly what process we will be following to review those acronyms that actually have -- are in use and can be legitimately used by third parties.

So as we will all recall our IGO coalition, they worked very hard. They developed a proposed approach, and that was circulated around the GAC list and sent to the Board. And I'm going to put words in the Board's mouth, and I think I'm correct but the Board can obviously correct me if I'm wrong, and certainly colleagues can as well. My take-away from the July 3rd call was that the hesitation on the Board's part about the proposed process was that it put the IGOs themselves in a position of being judge and jury as to whether a third entity has a legitimate right to use that acronym. And I think that's the crux of the problem. Having said that, I think there should also be a solution; that we remove the IGOs from being judge and jury and rely on a more neutral approach, whether it's some variation of the trademark clearinghouse notification function. Something along those lines that would actually provide a different platforms so that -- and I'll use the World Health Organization, if I may -- the World Health Organization could get a notification if a legitimate third-party use of the word "who" in the English language for any TLD that had nothing to do with the health sector. And presumably the World Health Organization would consider that legitimate. I'm just throwing that out as an example. They're not here to speak but it strikes me that would be legitimate.

We need to find, I think, a more streamlined, cleaner way, more neutral approach where the IGOs are not somehow -- and I think they put

themselves forward actually in an attempt to be helpful. So I'm looking at my IGO colleagues. I know that was probably their intention. But I think we have to appreciate there is some sensitivity on this issue.

So I just wanted to throw that out, and I trust that others have the same perspective. If you do not, then we should probably talk about this before we meet with the Board.

So thank you.

CHAIR DRYDEN:

Thank you for that, United States.

So I think you've helpfully identified a couple of issues for us from the paper that it would be useful for us to raise when we meet with the gTLD committee.

And regarding IGO acronyms, WIPO is ready to comment as well as part of our discussions this afternoon. So I will turn over to them shortly to provide some inputs to us.

But I'm thinking that the crux of the issue as you present it is my understanding as well of where we are.

So hopefully, then, we can turn to the gTLD committee and have them confirm that or clarify for us what is the precise nature of the issue.

So I have Germany next in the speaking order. And unless I have other requests from GAC members -- I have U.K. Okay. And then I will ask EU Commission, and then I will ask WIPO to comment on the IGO acronyms points.

Germany, please, go ahead.

GERMANY:

Thank you. I just want to comment on some of the positions of my colleagues.

First of all, I would like to support U.S. position in respect of the questioning what expect the Board as answer for their questions in respect of our safeguard advice.

I have also some doubt. And maybe in general, the question is what expects ICANN to be the role of the GAC in this respect? And it would be interesting to hear more about this. And maybe we need to discuss it in depth.

Second issue is community support, which was raised by Switzerland. I would like to support this idea, and I think we had an advice in this respect.

I also have the feeling that it was not answered adequately, and I, therefore, see a need for maybe refining our questions or reiterating it, making sure that the answer we received wasn't exactly the one we expected, but this is fine for me to discuss further in the GAC.

The same issue is on string similarity, which is connection to plural and singular issues. I would like to ask the ICANN Board whether they used the same system for identifying string similarities for the ccTLDs, IDN ccTLDs, and for this new gTLD process. And if it was not the same system they used, I think it would be difficult because, frankly, from -- it's more an impression and not a concrete notion, but I have the

impression that the rules in respect of IDN ccTLDs were rather strict, not allowing any changes without infringing string similarity tests. And for the gTLDs, it's the contrary. There seem to be quite a lot of possibilities, even if they seem to be similar. One example is singular plurals. And, for example, I would like to know whether they used the same algorithm. And if not, I think it would be some issue that the GAC could raise and ask questions.

Thank you.

CHAIR DRYDEN:

Thank you very much for that, Germany. That's helping confirm, I think, where we're headed and how to prepare our agendas and discussions for our meetings this week.

Okay. Great.

So next I have United Kingdom, please.

UNITED KINGDOM:

Thank you, Chair. Just two anxieties. Firstly, as maybe several colleagues here have done I did a consultation with our supervisory authorities and regulators last week. And it's a pity we didn't have these questions in time for that. And if there are issues that are in this document that require us to go back to our regulators and supervisory authorities, that's going to take some time. So I hope the Board will appreciate that. We've made this point on previous occasions, I'm sure.

My second anxiety is that I think there's a risk here that we are getting sucked into detailed implementation of safeguards, and I think we do,

as Germany has indicated, need to be mindful of our role in terms of providing high level advice and saying to ICANN really it's your job to implement and you take, you know, advice as you see fit but don't come to the GAC to help you on implementation.

In addition, I just want to say, I support Switzerland on the community applications issue as we discussed in Beijing. This was not about community applicants. It's about those applications that have proved themselves to be representative of communities. And that was the point of the advice. And I -- I fear the GAC has -- sorry, the board has misunderstood the advice. So we can talk this through in our discussion as you suggested.

On IGO acronyms, I think the proposal from the U.S. is a good one. This is a very tricky issue. Over 200 IGOs, some of them have very, you know, popular acronyms -- I mean, popular in the sense they're acronyms used by other wide-ranging commercial and private interests and some are even words and names. So some kind of neutral approach to sorting this out, which I believe the IGO's would be sympathetic to, is -- sounds to me like the way forward. Thank you.

CHAIR DRYDEN:

Thank you for that, U.K. Next I have EU Commission.

EUROPEAN COMMISSION:

Thank you, Chair. The U.K. GAC representative has actually passed on part of the messages I wanted to communicate with this intervention. But we would like to reiterate that the fact that the board gave its reply only on the 2nd of July has given very little time for the European

Commission to run internal consultation since are a big institution, as you know. And hence, for the time we have to engage in discussions with the board, there are some issues that might be still under discussion and we would like to defer big decisions for Buenos Aires. And we've also noticed that the response from the new gTLD community and the questions that are posed to the GAC actually force us to go beyond giving high-level response and force us to go down the road of implementation. Thank you.

CHAIR DRYDEN:

Thank you. Okay. So next we have WIPO to provide us with some comments on the issue of acronyms, I believe. So over to you, please.

WIPO:

Thank you, Madam Chair. Good afternoon, GAC members. My name is Gerry Tang from WIPO, and I am here with my colleague Sam Paltridge from the OECD to my left. We greatly appreciate being given the opportunity to be here speaking on behalf of the IGO coalition. This coalition consists of over 40 IGOs plus another 15 U.N. agencies such as UNICEF and all of us representing a wide range of essential public interests and who are created by and accountable to the states we represent.

The two GAC communiques from Toronto and Beijing recognize and endorse a strong public interest in protecting both IGO names and acronyms at the top and second level of the Domain Name System. On this basis the GAC and IGO's actively work together to identify a contained list of IGO's whose names and acronyms are to be protected.

Since then the ICANN board has recognized that the remaining issue is the implementation of this protection. In relation to this implementation the board identified three points. First, the languages in which IGO names and acronyms are to be protected. Second, the process for future review of the list. And third, how to handle acronyms for which there may be several claims. IGOs have now provided answers and proposals to each of these points. IGOs have agreed that the names and acronyms will only be protected in up to two languages, rather than the U.N. six languages. IGO's have agreed that the list of names and acronyms would be regularly reviewed, either prior to delegation of any domains in a new gTLD round or every three years, whichever is earlier.

Finally IGOs have agreed that whoever wishes to register a domain name that matches an IGO name or acronym that IGO cannot stand in the way of such registration where the registration is for a bona fide purpose, as opposed to something unlawful or dishonest that would harm the public by pretending some kind of connection with the IGO. Should an IGO and user come into dispute over a proposed domain name registration, that dispute would certainly be able to be reviewed.

The mechanism proposed by the IGOs is workable, efficient, and vitally - - considering that IGOs are publicly funded by your states -- cost effective. That being said, IGOs remain as always flexible and open to engage in good faith discussions with the GAC and the board on the operation of such mechanism. It should, however, be kept in mind that the purpose of these discussions is to implement a system that protects IGO names and acronyms, particularly acronyms which, given that IGO names are a bit of a mouthful, are the identifiers by which IGOs are far

better known, from abuse in a vastly expanded domain name system. And I thank you very much for letting us speak here today.

CHAIR DRYDEN: Thank you very much for those comments. Okay. So I don't see further requests at this time. Okay. Netherlands.

NETHERLANDS: Thank you, Heather. As you -- you asked for topics which could be discussed also in the safeguards and the other sections we have, I want to make the statement on behalf of registry dot Amsterdam which basically says that they will not be able to sign a registry contract because it's in violation of data protection legislation. And there are remediation possibilities, and I think as the geo group will come back to this because it's not only a problem for dot Amsterdam. While they have -- let's say many registries have a problem with signing the current and agreed registry agreement, however, there are remediation and exemptions possible, but this procedure and registry agreement doesn't fit the -- is not, let's say, something which is fit for dot Amsterdam as a public authority. They will all -- they will even be in breach of national legislation, even signing the contract itself and then afterwards remediating it. So I would raise this -- would like to raise this point not now in content but I would raise it in -- also in -- during our talks tomorrow. Thank you.

CHAIR DRYDEN: Thank you for raising this further issue. We will have a briefing from the geo TLD group. I don't know whether they will raise this issue, I suppose

they could. Okay. You seem to think they might. So this will give us some opportunity to hear from them and reflect on this issue further, and then in terms of whether we raise it tomorrow or whether we raise it as part of this other set of issues, list of issues that we are creating to come back to as a GAC, we can think about how to -- how to treat this. But I understand this as being an RAA issue, is that correct? Or am I -- could you clarify?

NETHERLANDS: It is a registry agreement problem.

CHAIR DRYDEN: Ah, registry agreement. Right. Okay. So that helps. Thank you. So I can put the right title to this, registry agreement.

All right. So next I have a request from Belgium, and then I will move to close the speaking list so that we can receive our briefing from the geo TLD group. So Belgium, please.

BELGIUM: Thank you, Madam Chair. I just wanted to take the floor to express our support to Germany's and Switzerland's positions regarding this community applications. We have the support of the communities in this regard, even when they have not been approved. We also support the U.K.'s position regarding the need to define more accurately what advice is expected from the GAC with regard to the fact that we are not in a position to control the implementation of safeguards.

And finally, we would like to discuss the importance of having the support of the political authorities within the framework of geographical names applications, the importance of having the local authority's support when it comes to applications regarding geographical domain name. Thank you.

CHAIR DRYDEN:

A quick last look around.

Okay. So we will continue these exchanges tomorrow morning at 9:00. So what I'm hearing is confirmation that we have a discussion planned and an agenda agreed with the gTLD committee for our exchange tomorrow to talk about category 1 safeguards as well as it relates to closed generics and plans around that. And as well the issue of protecting IGO acronyms. And then in addition, we have additional issues identified where we might need further GAC discussion. If we can do that tomorrow morning, then let's make use of that time. If not, we will find time to further discuss the issue of the advice we gave on community applications and what we intended, in fact, with that advice. And as well, the issue of singular and plurals of the same string, and again, our advice was accepted there where we asked the board to look at this issue and they did, and just to be clear, they -- they made a decision. There was a resolution saying that they would not do anything particular or make changes to the guidebook to deal particularly with this issue. So now it's being proposed that the GAC may want to look at this again and provide further comments and advice, so I also have that on the list. And as well the issue of registry agreements, and particularly a circumstance where an applicant would have a conflict or

potential conflict with national laws and how that would be treated based on how the -- the registry agreements are currently formulated. So that's where we are today.

We will continue in this manner when we continue at 9:00 tomorrow and before we meet with the gTLD committee. So I'll just check that our presenters are here from the geo TLD group. Perfect. Okay. So we'll move to have that briefing now. And just take one moment. Okay. All right. So we have a deck, and to my right is Dirk who will be giving us the briefing today. So please, go ahead.

DIRK KRISCHENOWSKI:

Yeah, my name is Dirk Krischenowski. I'm managing director and founder of dot Berlin, the initiative for the Berlin top-level domain name, and I'm speaking here now on behalf of our geo TLD interest group. We have so far, and I would like to thank Heather and the GAC members to invite us to speak to you and talk to you. And we much appreciate this opportunity to discuss some points with you. Some have been already addressed in the afternoon, and we would give some more briefing and input on the points in the following slides. Next slide, please.

The slides are who we are, the concerns with the registry agreement, our PM requirements and the formation of our geo top-level domain name constituency. Next slide, please. Who we are. Next slide. Yeah, this is quite small, but it gives an overview over all the top-level domain applications we have seen in this round. And you see where are many from, but I think we're from all ICANN regions. We have geo top-level domain applications there. And I would go next slide in more details.

So as the group of geo top-level domain names we thought we should define geo top-level domain names a little bit closer so that everybody knows who we are. And we said geo top-level domain names are those who are geographic names like dot London, dot Paris, or dot Berlin, some geographic identifiers or abbreviations like dot Rio or dot NYC, or geographic indications like dot (indiscernible) or dot Irish or dot Catalonia and some others. And geo top-level domain names absolutely need to have documented support of their local or relevant government and authorities. This is essential as well. And a third point which would make up a geo TLD is -- the purpose of the geo TLD is to indicate and identify domain names with a geographic origin. This is somehow important because there are some geo TLDs which recently became geo TLDs by the geo TLD panel. And we -- our group consists at the moment of 50 applicants for geo TLDs out of 76 total geo top-level domain names. That's our group. Next slide, please.

The concerns with the registry agreement. Next slide, please. A short slide, but I think this reflects the discussion in the afternoon. We think potentially most of us as geo top-level domain names think that the registry agreement really overrides the national legislation, especially in the privacy and data retention policies, like the EU Article 29, and we see some potential problems facing us with the consistency of the UDRP and local dispute resolution policies which several geo top-level domain names have. And I mean with local dispute resolution policies are not only those implemented by the national legislation but implemented by the geo top-level domain itself. We have this already in some ccTLDs, these local dispute resolution systems, and we would be happy to discuss this with you and we would like to -- like you to address this

topic, especially at the GAC board -- at the ICANN board and the ICANN staff so that we have a solution when we go into the contract negotiation phase and sign the contracts with ICANN. There's one slide, please.

The RPM discussion. It's a little built complicated. Please next slide. ICANN has said oh, this is not -- not very good to see, but ICANN has said there should be no registration phase prior to the trademark house clearing -- clearinghouse phase and these are the most models ICANN has. On the top you have the trademark clearinghouse phase and then trademark clearing -- trademark claim service. Afterwards general availability comes, and if a geo top-level domain name, a city or a local government wants to have its local face, ICANN says you can have this limited registration phase in number 2 and 3 before it comes to general availability. And what does this mean for cities? We like to have an example on that. Please next slide. Let's say -- a hypothetical example but could fit, we have the city of Paris having -- want to have a local governmental face where the city of Paris registers Metro dot Paris and police dot Paris. These names would then go in this phase to the city of Paris. Then there would be the TMCH phase and the general availability. Everybody's happy. City has its names. And the other phases can run properly. But this is a proposal of Paris, and if we have on the next slide, please.

>> [Speaker is off microphone]

DIRK KRISCHENOWSKI:

Ah, yeah. On the next slide, the proposal of ICANN says the TMCH phase should be first and that would mean that Metro dot Paris would go to a big company like Metro AG, a very big GAC concern and let's say the police dot Paris would go to the very well-known Police band which you probably all know. And both names would be gone even before the local government phase would start. And there's probably no chance to avoid this. This is an example where our problems raised from. On the next slide we have summarized these topics. It's first prioritization phase and we would like to have -- or ask for that governmental reserved names should trump the TMCH phase. So the government should have -- the local government and probably national governments should have the ability to reserve their names or register them actually in -- before the trademark clearinghouse sunrise phase starts. And priority should be given to those registrants that have a nexus with a geo top-level domain name, let's say to Paris, to Berlin, to Barcelona or to other cities. That's what we are asking for. And second is, at the moment the RPM requirements say there can't be any names online before the trademark clearinghouse phase has been finished. And we think it's essential for the cities and regions, that key partners in these geo top-level domain names and by this I mean the city marketing or the zoo or some other public institutions as well as well-known organizations in the city should have the ability to launch their name before the trademark clearinghouse phase. This is essential for marketing the TLD. Imagine you want to launch a TLD with a trademark clearinghouse phase and you can't even do proper marketing with some good key partners projects which are already there and show the public what you can do with the TLD. And secondly, the launch phases could be different or should be different to illegible registrants. Next slide,

please. Yeah. Then we have the geo top-level domain constituency which is the third point we would like to address. Next slide, please. We are -- at the moment here's the picture from the GNSO and we are going to ask for a constituency within the registry stakeholder group. Next slide, please. And this group consists today of 22 gTLDs like dot com, info, org, info, travel, jobs, Asia, cat and others, and the new gTLD applicants interest group. And what we ask for -- next slide, please -- is to have, along with the brand constituency which has been proposed by many brands, gTLD applicants in Beijing along with those guys who want to ask for geo top-level domain constituency which represents our view and the intake group should still exist as a group of interested parties. And on the last slide, we have a brief mission statement of the geo top-level domain constituency, should as other constituencies represent interests of the geographic top-level domain names, promote cooperation, networking, and other sharing among its members, stakeholders, and within ICANN, ensure that policies are consistent with geographic and local communities, vital interests, and should give guidance to future applicants for geographical top-level domain names. These were the topics I'd like to address with you, and I would be happy if we, as I have two -- two other members of our group with me from Paris and from Africa and Cape Town, Joburg, and Durban, to discuss these points with you.

CHAIR DRYDEN:

Many thanks for that presentation. So are there any questions that GAC members have about the concerns identified by the geo applicants? So I see Paraguay and Portugal, please.

PARAGUAY: Thank you, Madam Chair. I just want to know if we can have a copy of this presentation sometime? Thank you.

DIRK KRISCHENOWSKI: Yes, for sure.

CHAIR DRYDEN: Okay. Portugal, please.

PORTUGAL: Thank you. Well, I shall talk in Portuguese because we have translation but I don't know -- (audio problem). Or not. Or I can wait. Or I can speak in English because it's late.

[Laughter]

Well, I'd like to thank you for this -- this presentation. That for me was the most important part of this afternoon. So thank you very much. I'd like to better understand why you set up this constituency, what was the reason behind? So what did you make to see that you -- you would need to be together? And if you -- it has this -- something to do with the fact that ICANN is not really supporting your interests. Thank you.

DIRK KRISCHENOWSKI: Okay. The reasons why we are doing this, I think we are -- we are quite different from the rest of all new gTLD applicants due to our nature. We all have support from the relevant local and presumably also the

national government in this case. And if you have seen, we have local topics which are really just not affecting the rest of the world but this local community that has applied for its name and with the local community there's -- there's always local government. And this local government has certain interests to use its name and to have its name as good in the root as the ccTLDs. Let's say they have their particular interests as well. And I think the geo TLDs are much closer to the ccTLDs like to the geo TLDs in a certain way, but potentially fits still in the registry stakeholder group because they have a contract with ICANN. Yep.

CHAIR DRYDEN:

Thank you. Netherlands, please.

NETHERLANDS:

Yes, thank you, Heather. And thank you, Dirk. I think it's very, let's say, we cannot plot this new constituency because I think many of you geo TLD applicants went -- applicants in the geo group were one of the first movers, let's say, in the gTLD process. I think you also from Berlin, I recall that you had many years of moving things around, trying to push things in the good direction in ICANN and I think it certainly helps the process.

One thing I would like to expand maybe more on your side is this, let's say, registry agreement problems which I have heard from two of my applicants from our country which is dot police and dot Amsterdam. I'm a little searching about what -- what's this problem means for you in

practice. You mentioned (indiscernible) and privacy as being a potential problem in the RA agreement. Thank you.

DIRK KRISCHENOWSKI:

Yeah, I think as absolutely a practical compound, when it comes to WHOIS, the ICANN contract asks us to publish all the WHOIS data including fax, telephone, and e-mail address, and this is not in line or in conflict with legislation in the European Union or in Germany or in Netherlands or the member states. There they have all different systems, but no one has, I think, the full ICANN -- all the details published for the registrant. I think some -- some ccTLDs might even have near too close a WHOIS system and that brings us to the first where we started to the first lawsuit immediately when we start by publishing all these data. That is I think not what we want to be dragged into lawsuits the day after we have signed or brought the first WHOIS entry online.

CHAIR DRYDEN:

Thank you.

Do you have in mind a particular solution to that issue in terms of the registry agreements?

We covered, I think, a similar issue when we talked about the Registrar Accreditation Agreement earlier because we have had to acknowledge that there are conflicts that can arise with national legislation, and it's not a new issue, as such. So if you could elaborate on that.

DIRK KRISCHENOWSKI: Yeah, but it is an issue which is still very important and the first geo top-level domain names are going -- could go potentially online in the a couple of, let's say, two or three months from now onwards. And we would like you, as a GAC, to address this topic, and we'll also discuss this with ICANN, but we want to have a solution where we can live with in our particular situation and with national and -- yeah, national legislation or EU, or other legislation which is there.

CHAIR DRYDEN: Okay. Thank you.

So I don't see any further requests. Well, Switzerland, perhaps, and then Italy. Okay.

SWITZERLAND: Thank you, Chair. I'll be brief.

Just to support what the Netherlands and others have said. We think this is a useful thing, and I will not recall, like I did not recall in the brand registry meeting that we had the idea of categories some years ago. And it obviously makes sense because they are very different.

Just one point about the sunrise phase and the need for local constituencies or local specific needs that should reasonably come before the sunrise. I think this is a key point that is very important for many of the geo TLDs, and I want to support this issue that a solution should be found and that ICANN should be flexible in finding a solution that makes sense for geo TLDs.

Thank you.

CHAIR DRYDEN: Thank you, Switzerland.

Italy, please.

ITALY: So you say that 50 of the 76 geo names are associated with the new constituency. And my question is, first of all, do you have any information about the withdrawal of some of them? I'm asking this because dot roma is one of these 76, and I can assure that they never, the top-level domain, limited, received the support from the City of Rome. And I'm surprised that the name is still there and they didn't renounce or withdraw the application.

So, but in any case, I would like to know if you contacted all the 76 just to share the problems with your organization.

DIRK KRISCHENOWSKI: Yes, we have contacted all geo top-level domain applicants to join our group, and we have, at the moment, 90 -- some 92 persons on our mailing list, which is running since I think the meeting in Toronto. So a pretty long time. And we have been organized and held meetings in between. The last meeting was hosted by the City of London in London two weeks ago, with over 40 participants from all over the world.

And so we have good contact, and informed them also about constituency formation request and all these things which come up with geo top-level domain names. So we try to have a very fair, transparent and open process in this matter.

Regarding to some of the geo top-level domain names which might have no support letter, at the moment I'm not the right person to talk to. They are still in the list of applicants and they are not withdrawn, so I can't say anything else as reflecting on this list which is published by ICANN.

CHAIR DRYDEN:

Thank you. Okay. So at this point I would just note -- Germany, did you have comments? Please.

GERMANY:

Yes, thank you. It is a simple question in this respect. I just wanted to know how you make sure on this protection of city-specific names, you want to establish a list on this, how you want to make sure that you avoid some legal challenges maybe imposed by trademark infringements. Because, on the other hand, you have trademarks that you probably may infringe and that may be also have legal consequences. And in this respect, it will be the registry who now takes over the responsibility for this -- for developing a list that contains maybe also trademarks from other regions and jurisdictions.

DIRK KRISCHENOWSKI:

I think lawsuits in this matter can't be -- can't be avoided. And these examples here come from the real world. The metro company, the big German one, they sued the Paris metro on the metro.com -- or help me. Yeah, metro.com and metro.FR and other names, and such lawsuits or legal things can't be avoided.

This will happen, but I think we have a very clear legislation in the countries how to work with these names. And I think when a city asks for metro.paris or police.paris, I don't see any company or other party getting into this name or getting this name.

Yeah.

CHAIR DRYDEN:

Your colleague from the geo TLDs would like to speak.

NEIL DUNDAS:

Thank you. I'm Neil Dundas from the dotAfrica applicant as well as three South African cities.

I think just to answer that specific question, the trademark holders have always got alternative dispute resolution. There are mechanisms designed to address trademark issues post delegation.

So if there is a domain that is allocated to a local government authority, such as metro, and the person that holds the trademark for metro believes that their marks -- their trademark rights have been infringed, they can always use the UDRP or some process like that where they would have to prove the name is abusive, essentially. And that would be very difficult to do against a legitimate use such as metro for the City of Paris.

So I think there are catch nets for the protection of trademark rights post the sunrise process.

But from our perspective, if you are looking at a localized instance, the development of reserved name lists not only for our cities but for our continent is a very time-intensive and very lengthy process. We're going to have to approach many, many governments in Africa, we're going to have to coordinate those efforts, filter down, build up this list. It might be quite an extensive list ultimately. And I'm sure the same would apply for some of the city names.

But I think what we're asking for is that we sensitize ICANN to be flexible when we approach them on these issues because, at the moment, the issues are still in a gray area. We cannot go ahead and invest all our time and resources on developing these lists to only find out in the next few months that the sunrise process, the trademark clearinghouse process trumps them.

So we need to start sensitizing ICANN to the fact that geos are developing these lists and these lists have the support of local governments and authorities and that they should be given due respect and due regard when they are published, and certainly should have priority above trademark rights.

And of course there's an element of reasonableness there. The geo TL applicants will employ reasonable measures to ensure sure that the lists are within reasonable bounds.

From our perspective, just a last point is on the rights protection mechanisms. For a continent like Africa, which is a developing region of the world, concepts such as the trademark clearinghouse are exceptionally difficult processes to create awareness and educate the local businesses and trademark holders on.

So we would like to see applicants have the flexibility to introduce their own localized systems to address trademark validations and verifications so that local participants can more effectively participate in the sunrise process.

This is an effective request. We want you to direct ICANN to say the trademark clearinghouse is fantastic for general protection across all gTLDs, but if we really want to promote and make our geo TLDs successful, allow the applicant some flexibility to implement their own processes, with the trademark clearinghouse as the fall-back position. But let us do something that we know can cater for the local communities we are trying to serve. And I think that's another issue we need to sensitize ICANN on, is when it comes time to negotiating these agreements, we're going to want them to see that flexibility is needed when they approach the geo TLDs.

We have local stakeholders such as governments involved, and there's a lot of thought and deliberation that has gone into this process, and ICANN must respect that and not simply push us to the back of the queue and then negotiate the agreements with us.

Thank you.

CHAIR DRYDEN:

Thank you.

So one final -- two final speakers, Netherlands and Norway, and then we need to conclude.

NETHERLANDS:

Yes, thank you, Heather. This last remark I think is very essential, what you made. And it proves for me that although there is -- let's say there is advantage of having a one size fits all, in this case I think one size fits all doesn't do justice to all the different kind of applications. And would also even make one extra example. I think your examples are very valid.

For example, we have national police applied for, polizei, dot polizei. It would be, to be honest, very ridiculous to them to have a clearinghouse mechanism to have commercial entities reserve names under polizei. So it completely doesn't make any sense.

So we have -- I think ICANN should really have, I should say, the flexibility to have certain applications, and I think the geo group is a very specific category to have an exemption to this rule, an adapted clearinghouse mechanism.

Thank you.

CHAIR DRYDEN:

Thank you. Norway, please.

NORWAY:

Thank you. This is just out of curiosity. Do you have any knowledge on relevant governments' involvement in the running of the geo TLDs? Like do you have like a new member list? Have you got many high demands from governments or are most of the members just got an approval, a letter of approval without any terms and conditions?

Thank you.

FABIAN:

Hi. My name is Fabian (saying name). I am working for the dot Paris project. As an example, the City of Paris is itself the applicant. So it has applied itself as the City of Paris, the city government for the TLD. And as far as running the TLD, it will be very closely involved in policy definition. So for instance, the TLD's launch policy has been designed with the City of Paris, and it's today put into question by those rules that ICANN has published.

But to answer your question more generally, I think there is a balance of the situation within the geo TLD community. There are those applications where the local government's involved. For instance, in France, out of the five geo TLDs, we have three of them that are the actual local government and two of them, two others, that are actually - - sorry, it's one of the four that is not-for-profit which has support from the relevant authority.

So in our group we have a balance. We could get back to you with numbers, and to be precise. But we do have relevant government involved directly in applying and in running the TLDs.

And, for instance, to come back to the example of the City of Paris, it will be the one -- it's envisioning to be the one signing the contract with ICANN.

DIRK KRISCHENOWSKI:

And we have a roster of our group where it's -- where we can put on, if it's a local government who is applicant or private entity or association or something like this, we can provide you with this list, certainly.

But it's like -- it's a colorful mix, like the ccTLDs are, with every kind of legal entity running a TLD. It's the same with geo top-level domain names.

CHAIR DRYDEN:

Okay. Thank you.

So I would note that we have the issue of registry agreements and geos on our discussion agenda in the GAC so we will be coming back to this issue. And I wonder whether it would be useful for us to ask for some sort of briefing about the registry agreements and, in particular, these issues from staff, if we can manage to schedule it to further inform the GAC returning to this topic.

So thank you for coming to present to us today. And as I say, we will be looking at this further at our meetings here.

So for the GAC, we will conclude here and reconvene at 9:00 a.m. tomorrow. So have a good evening, everyone.

Thank you.

[END OF AUDIO]

DURBAN – GAC Open Plenary 4
Tuesday, July 16, 2013 – 10:30 to 11:30
ICANN – Durban, South Africa

CHAIR DRYDEN:

Okay, everyone. If you could take your seats, let's get started again. Okay. All right. So welcome back, everyone. Just a few organizational points to keep in mind. We're circulating an attendance sheet. So if you can please fill in the attendance sheet to help us track who is here. Usually Jeannie's very good at being on top of everyone that has joined the meeting a bit later than when we started on Saturday, but she's not here, so let's do the attendance sheet to make sure we can keep a good record of who is here in attendance and participating in our meetings.

Also, a reminder that at the end of today there is a cocktail with the board, so a Board-GAC cocktail that we're all invited to join. And this is a very good informal opportunity to talk to some of our board colleagues and have an exchange with them. So I would really encourage you to come as well. The ccNSO is having its tenth anniversary and we've really come to have good working relations with our colleagues in the Country Code Name Supporting Organization so I know they would really appreciate us joining them to celebrate this event on their tenth anniversary. And so that we are able to attend the cocktail with the board, there will be special buses arranged to take us to the ccNSO anniversary event so that this can be made as smooth a process as possible for us. So again, I encourage all of you to take advantage of these opportunities to socialize and join in the celebrations with our country code colleagues.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So with that out of the way, just some notes on the agenda. As you know, we were planning to address the outstanding strings discussion in this session, but more time is needed for consultations with some GAC members, and so we have notified you via the GAC list that we have moved this to Wednesday, I think it's at 11:30 a.m. when we will have that meeting. But I do think that if we can continue this process of consultations, if I can talk to a few more colleagues and some that I have committed to come back to, then it will allow that session to go more smoothly and for us to understand how that will be conducted in advance, and I think that is in everyone's interest, given that there are some sensitivities associated, in particular with discussing those issues and those remaining strings, in that session.

So as an alternative -- Brazil, please.

BRAZIL:

Good morning, Chair. Thank you. Just related to the shift of the agenda that you just announced and sent us yesterday evening, or afternoon, sorry, I would like to ask the Chair to review this proposal because in our case we brought the vice minister today to the GAC meeting just because of this discussion. And he's leaving tomorrow early. So I would like to ask the Chair and our colleagues to review this proposal to bring the issue to the same agenda that we have received in the beginning of our work some weeks ago because we have planned our delegation and the trips based on that agenda. If you could review it and if we could have the support of our colleagues, the Brazilian delegation would appreciate it.

CHAIR DRYDEN: Thank you, Brazil. So we did not receive any objections via the GAC list about this change, but I did consult with the vice chairs about this before making the change to the agenda and as I say, it's going to help us to have more time. Frankly, I just don't think we're all ready for the discussion today. However, if you are prepared to make a statement, then perhaps we can receive the statement now and then address these issues tomorrow as proposed. Brazil.

BRAZIL: Madam Chair, I made -- I'm making a statement. I would like to propose to the plenary to review this decision. If you could put today the decision of the plenary.

CHAIR DRYDEN: Thank you, Brazil. And (audio problem) I have proposed to move it to tomorrow. I do not believe we are ready for discussion of all the strings that are on the list. Consultations have been ongoing, my consultations have been ongoing, and we need more time for that. However, if you wish to make a statement about a string that is on that list, then we can hear that statement now. I think that would be a way to proceed. Okay. So I see Peru, Argentina, and the EU Commission.

PERU: Good morning, Chair, good morning, everybody. We would like to support the request from Brazil. Any GAC member has the right to ask for the review of a Chair decision, with all due respect. In our case we haven't been consulted, being main -- a country mainly interested in the discussion of dot Amazon, among other strings, and we are concerned

about the fact that this shift in the agenda may not allow enough time to have a thorough discussion of what is the main business of the GAC. So we would like to endorse what Brazil has requested and, of course, join the plea for all GAC members to review this decision of the Chair. Thank you.

CHAIR DRYDEN:

Thank you, Peru. It's unfortunate that I was not aware of your views before we sat down to have this session. It would have been preferable to understand your concerns and to look at a way forward before we sat down in the plenary. So you may feel that you were not consulted, but neither have I been consulted in terms of your concerns. And of course, I -- I am happy to take note of them. Okay. So Argentina, you are next, please.

ARGENTINA:

Thank you, Madam Chair. Argentina shares the same concerns as Brazil has expressed and also Peru and would like to remind you that we did a statement in the name of several of our countries of the region that we were worried about specific strings in that list of strings that have to be reviewed. Also, I would like to remind you that in Beijing the agenda was changed and was shifted to Thursday, some work that has to be done, and some of us were already scheduled to leave that day. So we would like to have more time to discuss some issues that we think are substantive important for our region. Thank you.

CHAIR DRYDEN: So as I understand it, the concern is that we won't have enough time. I believe we will. And I think the question that you are particularly interested in, the governments that have spoken so far, will be addressed very quickly. And if we can discuss it outside of this session, then I think that would be useful so that you know how it's going to be handled and what you can expect. And this is what I mean by wanting to make sure that all of the consultations in the corridors are complete so that that session can actually go very quickly and smoothly, in fact. So next I have EU Commission.

EUROPEAN COMMISSION: Thank you, Chair. I understand your concern of moving on quickly and I think it might not be the right moment to come to definitive conclusion, but I think one of the words that was also mentioned in the opening session is "empathy," far apart from efficiency and effectiveness. And I think if the delegates feel strongly about having some discussion at this stage, I would like to support the Brazilian proposal to have at least first discussion at this stage of the meeting. Thank you.

CHAIR DRYDEN: Thank you, EU Commission. Okay. Iran, you're next.

IRAN: Thank you, Madam Chairman. Yes, we understand that you have consulted some colleagues. May not be -- you may have not been able to consult others. However, we have the distinguished -- the deputy minister of Brazil here. He wants to follow the questions. We have full respect to all of our colleagues and we have to work together. I suggest

that instead of discussing an hour what to do with the agenda, you continue your consultation this morning and the provision that this afternoon you provide opportunity, at least strings that Brazil and some other countries are interested to be discussed while the deputy minister is here. So we should, I think, work collectively and friendly and leave a little bit of time, maybe afternoon you can do that. Perhaps at least you consider the possibility that give priority to these strings while our distinguished colleague from Brazil is here. We don't want to disappoint anybody and we would like -- because he might have very heavy agenda, have to leave here, and that is all. So we also support the proposals of other colleagues that have made that. We need to continue that and take into account of the concern expressed our -- by our colleagues. That is point one.

Point number two, Madam Chairman, not ask for the floor again, we have sent you a letter and we would like that tomorrow when you discuss you provide us opportunity to briefly present the thrust of our letter. Thank you.

CHAIR DRYDEN: Thank you, Iran. Chile, please.

CHILE: Thank you, Chair. Well, we circulated a document, a few of the countries of our region, the first day of this meeting and we were ex -- what you expressed regarding that statement was that you -- that was going to be discussed today. So I think that we could -- if that's good for everyone, we could at some point talk about those topics because we --

there are relevant countries here that have concerns, so I think it would be important to hear in this session what's going on and where we're standing at this point. Thank you.

CHAIR DRYDEN:

Thank you, Chile. Okay. So we have some time now before we break. So for those here present that would like to comment on the outstanding strings, let's do that now. I would like to keep the time in the agenda for Wednesday as well. But as has been proposed, this is an opportunity for at least some initial discussion, taking advantage of those that are present and giving them an opportunity to make their comments today. All right. Brazil, please.

BRAZIL:

Thank you, Madam Chair. I would like also to thank our colleagues that support our request. And I would like to emphasize the importance of having this discussion today as well as were planned a few months ago. So I would like to propose that we follow the suggestion of the Iran representative in having this discussion today after whom I believe at 2:30 today.

CHAIR DRYDEN:

Okay. We're looking at the schedule, and we have a session planned with the ccNSO at 2:00. So depending on whether we can make changes to that, we may or may not be able to have the discussion at 2:30, as you describe. But we do have the time now, if you did want to make comments, as I say, before we break for lunchtime. So India, please.

INDIA:

Thank you, Chair. Let me introduce myself. This is my first intervention at the GAC. I'm Ajay Kumar, representing government of India, and I would request the indulgence of the GAC plenary to consider a request which India has with respect to a couple of strings. These strings we had actually issued our early warning way back as per the time schedule and we had also engaged in the process of dialogue and interaction with the applicants with respect to these strings. And we were happy to work with them and to come out at an amicable solution. Unfortunately, however, while the discussions were going on and we were under the impression that we would be able to achieve a resolution, things have reached a situation where I don't think we have been able to reach a situation where we can agree to these gTLDs. I know this is beyond the deadline, but the request that I have for GAC's consideration is these two gTLDs, one is dot Indians which is very close to the ccTLD for India and the other one dot Ram which is the biggest Hindu deity in India for the biggest chunk of population in the country. Both of them have very serious concerns within the country. This matter has been considered in our government both with various stakeholders as well as with various ministries of the government and we realize that it is difficult for us to agree to these gTLDs. I understand that we are actually behind time and GAC has been proceeding and we greatly appreciate the great work which GAC has been doing, but the fact of the matter is that if we were to ignore the objections that we have today, we actually have a situation which will need to be addressed and, therefore, I think considering the large number of people who are expressing the concerns with respect to these

application, the GAC may deliberate and find out a way to resolve these objections.

We cannot have a process really which would lead to a situation which creates -- leads to a problem. I mean the whole process through which the GAC has been going on over the last so many months has been to find out a way by which the gTLD process can proceed smoothly as well as we are able to find -- address the genuine concerns of the governments. And here we are in a situation, despite our best efforts, despite the interactions we have had at different times with the applicants, we have not been able to resolve.

So I think given the magnitude of the problem and the sensitivities conveyed at the highest levels from the government of India, we would request the GAC to kindly consider taking this matter and raising it along with the rest of 14 strings that have been included in the short list, the Beijing communique.

Thank you.

CHAIR DRYDEN:

Thank you, India. Iran, please.

IRAN:

Thank you, Madam Chairman.

I fully respect all distinguished colleagues in GAC to make every statement, but perhaps for the sake of time, perhaps possibly we just limit this period of time, one hour and so, to the Amazon discussions because our distinguished colleagues have difficulty for tomorrow.

While we fully respect all colleagues to make every point, at a later time we will come to the discussion of the strings. So this is exceptional case of Brazil because they cannot stay here tomorrow. So if all distinguished colleagues agree, you limit the discussions to that.

Thank you.

CHAIR DRYDEN:

Thank you, Iran. I'm happy to hear initial comments and discussion from any of those governments that are interested in doing so in terms of the outstanding strings that we have identified, but certainly Brazil and others may wish to comment specifically on Amazon. But I like this proposal to have an initial discussion now to make use of the time we have.

Okay. Peru, please.

PERU:

Thank you, Chair.

So as we understand, and our thanks to our GAC member of Iran, we are to start the discussion on dot amazon at this moment.

In that sense, let us remind that we have already distributed a statement on what the position, not only of the countries but of the whole region is in this regard. And if you allow us, I would like to ask our colleagues from Brazil to make the first presentation, and then we come -- we'll come back to complement what they are going to say.

CHAIR DRYDEN:

Thank you very much, Peru.

Brazil, are you requesting the floor? Please, Brazil.

BRAZIL:

Thank you, Madam Chair.

So we would like to, first of all, thank you, the GAC and the Chair, to accept our request to start this conversation today, to take advantage of the presence of our vice minister here, whose presence here expresses the wide and deep concern of the Brazilian society with the solicitation of the registration of dot amazon.

As you may know, we had a very deep, long and good discussion in the Brazilian Congress about this. Our Congressmen expressed their concern about the risk to have the registration of a very important cultural, traditional, regional and geographical name related to the Brazilian culture.

We share this opinion with all of the countries in the region, so Peru, Colombia, Venezuela, Ecuador, Suriname. All of them in a meeting in the Amazon Treaty Organization last April produced a document, a declaration related to the dot amazon, also expressing their concern to the registration of this very important name to the Brazilian society.

Afterwards, we had a meeting in the ALAC which comprised the Latin American and Caribbean countries in May. The same as well, all the countries supported the Brazilian, and the Amazon countries demand to the GAC, to our fellow countries to send an advice to the Board to reject the registration of dot amazon for the same reasons.

As you may know, the Amazon region only in Brazil comprises 50% of our territory. More than 30 million people live in this region in Brazil.

We have one of the most important bio systems in the world with a very huge sort of fauna and flora. And this concern is also shared by all the Amazon countries.

Besides the Latin American, Caribbean countries, besides the Amazon countries, within the society we had a very meaningful reaction against the registration of dot amazon. We have a declaration issued by the Internet Steering Committee, the Brazilian Internet Steering Committee, which is a very democratic and multistakeholder platform which takes care of the Brazilian policy on Internet. We had a very huge reaction from the civil society which is organizing a document signed by thousands of people to be sent to the GAC board -- to the ICANN Board reacting against this solicitation.

So in a certain way, we fulfill the requirement, which was posed by the Beijing communique. I would like to read the exact text that we have approved -- or, sorry, because I was not here, you have approved in Beijing four months ago, which says, "The GAC advise the Board," so it's already a decision from the GAC, "that in those case where a community, which is clearly impacted by a set of new gTLD applications in contention has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account together with all relevant information."

As you may remember, on Saturday or Sunday -- Sunday, Peru, Brazil, Argentina, Chile and Uruguay sent you a letter where we explained all this reaction from the society, from the Brazilian society, from the

Peruvian society, from the Brazilian Congress, from the Brazilian Internet Steering Committee. And we would like to come here again to ask the GAC members to support a GAC advice to the Board in the same -- in the same terms as we have approved last meeting in Beijing about dotAfrica.

Besides that, we think that the principles approved in 2007 by the GAC as well comprise our demand on this issue.

I would like to inform all of you that we have very good conversations with the Amazon, Inc. We understand their business plan.

All of our conversations, we have met at least three times, were carried out with a very faithful willing from both sides. Nobody thinks that each of the other side has bad faith on this.

We understand their business plan. We understand they're willing to make a good job. But for a matter of principle, we cannot accept this registration. And we have expressed to them this position very clearly, very politely, and very frankly.

So I would like to ask my vice minister to complement these initial words. But I would just ask you again, reinforce the Brazilian demand to the GAC members to approve a rejection on the registration of dot amazon by a private company in name of the public interest.

If the chair allows me, I would like to ask my vice minister to talk.

BRAZIL:

Thank you all for this support to our request. I would like to add two points to the comments made by my colleague. The first one is that this

domain string dot amazon, it affects a large number of communities in the Amazon, which is based on -- which covers eight different countries in South America.

I would like to recall what was said yesterday in the opening speech by the commissioner of the African Union where she said the importance of protecting geographical and cultural names in the Internet.

So I would like to ask the support of the members of GAC to reject this proposal of registering dot amazon.

CHAIR DRYDEN: Thank you, Brazil.

I see Peru.

PERU: Yes, Chair. Thank you. With your indulgence, just to highlight three or four points that we think are crucial for the understanding of our request.

And first, in terms of legal grounds for our request, we believe there is enough legal grounds in ICANN bylaws, in prior GAC advice, and also in the applicant's guide.

So our plea is very well grounded in the legal framework of the ICANN. That would be the first remark.

The second remark is that there is no doubt that this is a geographic name. Amazon is -- pertains to four departments of the Amazon countries. It is the department, for those that probably do not know

our political division, is the second, the second division for our countries. It is larger than provinces in our political division. And so it pertains to Venezuela, to Colombia, to Peru, and to Brazil.

Amazon, in Spanish, also belongs to cities of our countries, and Amazon in English is also a city in Guyana.

It has been allotted the three-digit code number. So it is in that 3166-2 list. So there is no doubt whatsoever that this is a geographic name. This would be the second remark.

And the third remark is that, indeed, this is a public interest issue, and that is why we are discussing this in the GAC.

There are several populations that have been involved in this, and I want to stress the fact that, unanimously, all Amazon countries and all Amazon provinces, departments, and local governments have expressed, in writing, their rejection to dot amazon.

So there is a unanimous claim, a unanimous understanding of the community concern against this registration.

So for the time being, those are the three remarks I would like to make. And of course I will be keen to come back in the discussion of any concern or any question that the members of the GAC may have.

CHAIR DRYDEN:

Thank you, Peru.

Okay. Are there any other requests at this time?

At the end of the table. Is that South Africa?

SOUTH AFRICA: South Africa, yes, chairperson.

CHAIR DRYDEN: Please.

SOUTH AFRICA: We would just like to state we support the contributions that have been made by the Brazilian delegation and the delegation from Peru.

We have similar strong concerns about the need to protect public interest and communities and cultural and geographic indicators.

Thank you, Chair.

CHAIR DRYDEN: Thank you, South Africa.

Next I have Gabon, then Sri Lanka.

Gabon? Do I have the right GAC member?

GABON: Yes.

Thank you, Madam Chair.

Gabon also needs to comment on this issue from -- it has received the comments from the Brazilian delegation on this issue, and we believe

that if this zone was validated by ICANN, this could go against the new gTLD principles developed by the GAC council in 2007.

The new gTLDs should observe the sensitivities and those terms that have a national, cultural, geographical, regional or traditional meaning.

Therefore, ICANN should reject any application related to geographical, cultural strings that have these -- that pose these kind of problems.

SRI LANKA:

My intervention will be very short. This issue of dot amazon has reached our foreign ministry and has gone to the highest level of attention between discussions with Brazilian government on a lot of bilateral trade related issues. And in view of the comments made by the Brazilian as well as the Peruvian delegate, I wish to record a highest and the strongest support for what has been stated by our Brazilian, Peruvian delegates at this session.

Thank you.

CHAIR DRYDEN:

Thank you, Sri Lanka.

Next I have Trinidad and Tobago and then Russia.

TRINIDAD AND TOBAGO:

Yes, thank you, Madam Chair. Trinidad and Tobago supports the position of Brazil on the dot amazon issue.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Russia.

RUSSIA: Thank you, Madam Chairman. I will speak in Russian, so please use headphones.

The Russian delegation would like to express its support, its complete support to the claims that were given by our colleagues from Brazil and Peru. We also share their concerns in using geographical terms when registering -- when registering domains by special companies. And of course we consider that the point of view of governments has to be taken into account in these terms.

Thank you for your attention.

CHAIR DRYDEN: Spasibo, Russia.

Uruguay, you are next, please.

URUGUAY: Just a very short speech.

I want to speak as chair of the ministerial meeting of the Latin American, Caribbean countries. The support for Patagonia and Amazon claims were in the strong words we could make in this event. It was a ministerial one. And we find there's no more for us to say. That's our opinion on the item.

Thank you very much.

CHAIR DRYDEN: Thank you. Next I have Uganda.

UGANDA: Thank you, Madam Chairperson. I want to thank you in supporting the statements made by the Brazil and other countries who are affected by Amazon like all of us. And I wanted also to ask you, Madam Chairperson, many of us are from developing countries. We're going through a process of generating similar strings which may be of concern to us.

So I'm wondering should we always have to come here and make statements like this, or there's going to be a general way of protecting those strings that we think are sensitive to us. Just a secondary request to hear from you. I'm not a regular participant in this meeting, but I follow. And I thought that the GAC advice there that was given would be enough to protect. But I just want to hear again whether this is going to be a procedure that, if we feel strongly that there's something that we need to protect, we have to come here and talk about it. Thank you.

CHAIR DRYDEN: Thank you, Uganda. I have Australia next.

AUSTRALIA: Thank you, Chair. And thank you to all colleagues who have spoken already on this very important and, obviously, very sensitive issue for

the GAC to consider. And thank you. It's good to be followed by our colleague from Uganda. So thank you very much for raising the question about a broad process. Many of you will have seen that I've put some suggestions to the GAC list on this issue. So, first of all, I want to be very clear that the Australian government supports countries in advancing their national interest with regard to geographic names. This has obviously been an area of longstanding interest to the GAC, and there is a substantial amount of existing GAC advice on this issue.

The situation that we face today is that some governments consider geographic names that are not on ICANN's lists or picked up under ICANN's framework in the applicant guidebook.

And I think this is why we are here today discussing this, because there is an apparent gap in ICANN's processes and policy framework.

So, for me, my proposal and the Australian government's proposal has been to fix this gap. It appears that there are many applications in the current round that governments clearly consider to be geographic names and of considerable significance. And what we face is that there is no clear process. We have, in the GAC here, these conversations. But, in terms of ICANN's policy framework, we -- there is -- there is something missing. There is no process whereby governments and applicants can put their cases and have them heard and their criteria for resolution and so on.

So the Australian government, while not commenting on any of the applications that are before us today, broadly would like to advance the idea that the GAC suggests two ICANN that it establish a clear process to deal with this issue that would apply in this round and in future rounds

as well. I expect that many applicants in this round and people who pay attention will be sensitized in future rounds to the GAC's interest in this. But this situation may come up again. And I think we'll do ourselves a great service if we were to recommend to ICANN to put in place a clear process to reconsider the issue of geographic names and deal with it so that we do have a very clear process going forward. Thank you.

CHAIR DRYDEN: Thank you, Australia. Argentina.

ARGENTINA: Thank you, Madam Chair. And thank you, Australia, for bringing this comment and your contribution. Our delegation and your country had a meeting that we think it was very constructive, and we replied to your proposal.

I would like to stress a part of the applicant guidebook which is a paragraph that should be considered by companies. And I think it has been taken kind of lightly from the applicant perspective. The applicant guidebook says, in the section that talks about geographic names, "In the event of any doubt, it's in the applicant's interest to consult with the relevant governments and public authorities and enlist their support or non-objection prior to the submission of the application in order to preclude possible objections and preaddress any ambiguities concerning the string and applicable requirements."

Argentina thinks that, if this paragraph would be more reinforced or mandated by the applicant guidebook, all these problems that we're having now wouldn't happen. Because, if we had some communication

or contact from the company before, maybe we could have found a way out, which is something that could have been negotiated among countries and the company.

But that didn't happen. Just the companies went on with the application. So the applicant guidebook contemplates this event, but it has not been respected by the applicants. So we think that the GAC should stress this. And also we think that everything is written already in 2007 when the GAC, in the Lisbon meeting -- some of us were there that day -- we issued the new GAC principles for new gTLDs. And this is where all our ideas are expressed. Thank you.

CHAIR DRYDEN:

Thank you for that, Argentina. Next, I have Brazil and then Portugal. Thank you, Madam Chair. I'd like just to comment three things very quick. I would agree with Peter. I think we need to have an action in the GAC to try to cover this gap. But I don't think the gap is as serious as we think. First, because of some arguments that the representative from Argentina just raised. Because the, let's say, the obligation to search for a previous negotiations is from the applicant. The countries, they have the right to discuss in this fora, in this forum, the case is one thing. The second -- it doesn't mean that we don't need to cover the gap. I think it's useful to make an effort to cover this gap. But try to reach the question by Uganda I think, in our point of view, yes, sometimes you need to come here. Because the list, the previous list is not an exhaustive one. For example, now we have dot amazon. But in the future, maybe you can have dot sahara, dot sahel, dot Nile, dot Danube. I don't know if the names are there. I don't have the list by

heart. But maybe the names are not there. But it doesn't mean they're not important for national culture and traditional concerns in your countries.

So it's true there's a gap. But also it's true that the procedure is a little bit different. But it's also true that the list is incomplete.

And, just to finish my argument, I'd like to say that it is possible that some geographical names solicitation can find a negotiated solution. Maybe -- and it's the case -- we know some case where the city name, the state name, the province name has been subject of solicitation of registration. And they are -- the government is negotiating with the company or the companies responsible for the solicitation. And it's okay. But in the dot amazon, it was not possible. And it's out of negotiation.

So it's still there, the possibility of some geographical names registrations can be negotiated. We don't -- we don't put it in -- at risk. But in this specific case -- and I'm quite sure that there will be some other case. Dot africa has been a case in the past. And, in this case, dot amazon was not possible to be negotiated.

Thank you.

CHAIR DRYDEN:

Thank you, Brazil. I have Portugal and then Peru, please.

PORTUGAL:

Thank you very much.

I think it's too serious the issue we are dealing here with.

And I would like to make mine on behalf of the Portuguese government, the comments made five minutes ago by Australia and Argentina. Thank you.

CHAIR DRYDEN: Thank you, Portugal. Peru, please.

PERU: Thank you. I would like to go along with the proposal for working on any eventual gap that could be in the list or in criteria for geographic names that are not in the list of ICANN. In this case, however, I would like to stress the difference with dot amazon in particular and focus on this case in particular. There is no ambiguity in this case.

For the company that has submitted its application and it was very clear and they knew beforehand that it was there, a very vast region that was shared by several countries that the name was a geographic name as well. That was very well known by the company from the beginning. So, in this case, there was no doubt that they were dealing with a geographic name. There was also no doubt that it was a codified name because it got the three-digit code. So I would like to -- and we are ready to collaborate in this process of striking new criteria or clearer criteria, but it would work for other cases. We can -- I think that we can deal with separately. In the near future there is need to equate the situation of those names that are in the realm of the national patrimony of countries and that have cultural geographic significance. It is striking for us to see that there is a prior search on trademarks during the

sunrise period. But there is no list or no searching mechanisms for geographic names. So we shall work on that. But, again, this is not the case for dot amazon. It was recognized by the company from the very beginning that they were dealing with governments and they were dealing with a region, a very vast one.

CHAIR DRYDEN: Thank you, Peru. Chile, please.

CHILE: Thank you, Chair. We supported -- a declaration was circulated at the beginning of this meeting. We reiterate what we expressed there. We had similar concerns recently with other applications. And this can be a case for any other country, too. So we recognize that there are procedures in place and provisions in the different -- the guidebook and bylaws. And, even though they could be clarified, we were also open to define new criteria for the other cases, definitely. But we see in this case that there is factual data that's been expressed. And, even though that, that's the same their position, they've engaged in conversations with the applicant. And no solution was achieved directly in those conversations. So we believe that we need to address the specific situation now and think seriously in what we have proposed regarding the GAC advice in spite of other conversations that we could put forward regarding the improvement or clarification for further cases. Thank you.

CHAIR DRYDEN: Thank you, Chile. I have South Africa and then Iran.

SOUTH AFRICA:

Thank you, Chair. During the Beijing meeting, I think there was only one dissenting voice regarding the GAC giving advice to the board to reject the dot amazon application. And, when you look at GAC principles with regard to geo names, it is a requirement that, if you apply for a geographic name, you have to have government support, which was not the case in this nature. Also taking into account that Amazon is a trademark. But, for me, the fundamental question is: What was there first? The region or the trademark? Because I think that's very important to consider. To say that you might find -- also find that what actually informed the company's name was the region Amazon. So from that premise, I think, really, as a GAC, our job is easy to say that we should actually give this advice to ICANN to say that they need to reject this dot amazon application. And also the other thing is that we need to actually make a decision in this meeting. We cannot defer the decision to when we go to Argentina. It might be too late. So I think that, you know, for us as a GAC, we really need to apply our minds and do the right thing. Because we are here representing governments and public policy. That's what we're here to do, advise ICANN on public policy that deals with the Internet. Thank you, Chair.

CHAIR DRYDEN:

Thank you, South Africa.

Iran, please?

IRAN:

Merci madam.

[Speaking foreign language]

This is specific issue about dot amazon. The only reason is that our distinguished colleague -- we have addressed this issue of dot amazon because our colleague from Brazil was not able to attend this meeting tomorrow. What I'm asking is that we shouldn't make this issue too general, too comprehensive. It is not applicable to everyone. We need to discuss. We need to debate. But we shouldn't rush to get to something that might create difficulties for us in the future. That is why, Madam Chair, that I kindly asked you, with all due respect, to limit our discussion to dot amazon only. And for other more general cases there would be other times to discuss them. There are specific cases. And we have to resort to international conventions and act on a case-by-case basis so as not to be generalizing and create something that in the future will prevent us from discussing and making decisions. This is the request that we are specifically making to you, Madam Chair.

CHAIR DRYDEN: China and Nepal. China, please.

CHINA: I just want to say China supports the statement of Brazil and Peru, Argentina.

CHAIR DRYDEN: Thank you, China. NEPAL.

NEPAL: Thank you, Chair. I just wanted to comment on the conjecture from South Africa that Amazon, the company, may have got its name from the region. I recall in Beijing that the Brazilian delegation did read to us statements from the Amazon Web site confirming that, indeed, they did get the name from the region.

CHAIR DRYDEN: Thank you. Next I have Thailand.

THAILAND: Yes, thank you, Madam Chair. And I'd like to join my previous delegation to support the statement made by Brazil. I also would like to add that in -- when we talk about geographical names, in fact, ICANN also has another process that conduct in IDN which refers to the extensive knowledge of United Nations geographic names, expert on geographic names, which also recognize a Romanized country on how they define the long-term country and territory process. It's there. But in the fast track IDN and IDN consideration which is not adopted in the application guidebooks. So there is some process already there, which is sufficient, if you could have a look on the details of how they defined geographical names. And I think most of the country also support this UNG, GN. Thank you.

CHAIR DRYDEN: Thank you very much, Thailand. Okay. So at this point, I think we can pause. Iran. Would you like to --

IRAN: There is consensus on this issue. We do know that there are different viewpoints. However, we believe it is the right time to conclude. If you have the same impression I have on this situation.

CHAIR DRYDEN: At this point I think we can sum up for the moment. And this has been a very good exchange that we've had, I think, and we have successfully outlined, I think, what are some of the key issues in considering these names and there is, I think, a lot of clarity for us in terms of the concerns expressed about some of the strings that have been mentioned in this discussion. And it may be the case that we can acknowledge as well as the GAC at our meetings here -- in addition to addressing directly the question of those strings remaining on the list of outstanding strings -- that we acknowledge that in some cases there may be gaps or additional considerations, and we may want to point that out to the board when we put together our communique.

So I would, at this point, like to have us break for lunch, and we know that we have our session tomorrow where we will go through all the strings. And I do believe this has been, as I say, a useful exchange that we have had. I'm glad that we have had it. So I can see Brazil and Peru and Iran.

BRAZIL: Madam Chair, I think that we -- we have the opinions and the position of the countries here that clearly express their support to the Brazilian request to reject the dot Amazon registration, and I think that -- I don't see any reason to postpone this decision to tomorrow because we -- we

have all the opinions here today. So I would like to ask you to consider that.

CHAIR DRYDEN: Thank you, Brazil. Okay. I can see from the requests we're getting I'm pretty sure I know what you're going to say. Peru and Argentina.

PERU: Risking being predictable at this point, Chair --

CHAIR DRYDEN: Perhaps I can continue. I think we can settle this. So what I propose to do is put the question regarding dot Amazon, and then we will conclude this session. So are there any objections to a GAC consensus objection to the application for dot Amazon? Recognizing that there are IDN equivalents, this would apply to those equivalents. So I am now asking you in the committee whether there are any objections to a GAC consensus objection on the applications for dot Amazon, which would include their IDN equivalents. I see none. Would anyone like to make any comments on the string dot Amazon. I see none. Okay. So it is decided, and now we will break for lunch. Please be back here at 2:00.

[Applause]

[END OF AUDIO]

APPENDIX D

APPENDIX D

The following quotes are extracted from the attached original documents, as found on the ICANN website.

2009:

The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. [...]

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "...revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition . . . continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. . . . It is felt that the sovereign rights of governments continue to be adequately protected as the definition [of geographic names] is based on a list developed and maintained by an international organization.

Source: Letter from ICANN (Dengate-Thrush) to GAC (Karklins), September 22, 2009.

2010:

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. [...]

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. [...]

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protection.

The definition is objectively based on the ISO list, which is developed and maintained by a recognized international organization.

[...]

[T]he Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. . . . The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

[...]

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during the call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), August 5, 2010.

Sub-national place names: Geographic names protection for ISO 3166-2 names should not be expanded to include translations. Translations of ISO 3166-2 list entries can be protected through community objection process rather than as geographic labels appearing on an authoritative list.

Source: Adopted Board Resolutions – Trondheim, Norway, September 25, 2010

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards of the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board’s objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC’s concerns.

[...]

Objection Process

The criteria for community objections were created with the possible objections to place names in mind and as such the objection process “appropriately enables governments to use this”.

[...]

[T]he new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are

potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

[...]

Importantly, in addition to the Morality and Public Order objection and dispute resolution process, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

[...]

I understand that some GAC members have expressed dissatisfaction with this process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. [...] The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of a recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.

Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), November 23, 2010.

2011:

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for

geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for "commonly used" interpretations of these names would multiply the number of names and the complexity of the process many-fold.

[...]

Use and protection of geographical names

- The inclusion of geographic names, as defined in the Guidebook, was developed in response to GAC principle 2.2.
- The protection of government interests in geographic names is accounted for by the requirement that no application for a geographic name (as defined in the Guidebook) can be approved without documentation of the support or non-objection from the relevant government or public authority.
- Country and territory names, as defined in the Applicant Guidebook, have been excluded from the first application round of the gTLD process based on GAC advice.

[...]

- The capacity for an objection to be filed on community grounds, where there is substantial opposition to an application from a community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not defined in the Applicant Guidebook.

Source: ICANN Board – GAC Consultation: Geographic Names, February 21, 2011.

The GAC states that the current objection procedures do not effectively address strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. . . .

Under the Guidebook, protections for these types of names are provided by a series of objections and processes: The requirement for government approval of

certain geographic names, Community-based objections (Rec 20), and Limited Public Interest (or Morality & Public Order Rec 6) objections. The last provides that a string will be excluded if it [...] is a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law. . . . It is recognized that principles from international treaties are incorporated into national laws in a range of ways and a panel would need to consider the relevant text in national laws.

Source: ICANN Board – GAC Consultation: Objections, February 21, 2011.

[The GAC, in its Scorecard of February 23, 2011, requested a mechanism to protect their interests and define names they consider geographic. ICANN’s Board responded as follows.]

ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances...

The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.

[The GAC then requested clarification that such a mechanism “implies that ICANN will exclude an applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.” ICANN’s Board responded as follows.]

ICANN will continue to rely on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties.

Source: Letter from ICANN (Dengate-Thrush) to GAC (Dryden), March 5, 2011 (attaching the February 23, 2011 Scorecard).



The Internet Corporation for Assigned Names and Numbers

ICANN

22 September 2009

Janis Karklins
Chairman of the Governmental Advisory Committee
Ambassador of Latvia to France
via email: janis.karklins@icann.org

Dear Janis

Thank you for the GAC's letter of 18 August, containing the GAC's comments on version 2 of the Draft Applicant Guidebook. I appreciate the detailed consideration given by the GAC to the issue of new gTLDs. Outlined below is a detailed response to the GAC's comments, which I trust the GAC will find useful. I look forward to the Board continuing discussions with the GAC in Seoul, on version 3 of the Draft Applicant Guidebook which will be published by the end of September 2009.

I. ICANN'S PREPAREDNESS FOR NEW gTLD ROUND

1. Scalability of gTLD Expansion and Stability of the Internet

The GAC is aware that many root server operators have raised concerns about the effect that a major expansion of the gTLD space would have on the stability of the Internet. The GAC considers that a controlled and prudent expansion of the DNS space is of primary importance for safeguarding the stability, security and interoperability of the Internet on which the global economy and social welfare relies so much.

The GAC notes that the SSAC and RSSAC have been asked to prepare a report on the scalability of the root zone and the impact of the potential simultaneous introduction of new gTLDs, DNSSEC, IPv6 glue, and IDNs into the root zone, which will be published in August. The GAC will look to this report to provide reassurance that the scaling up of the root will not impair the stability of the Internet and that the technical safeguards are sufficient. The GAC is hopeful the report will stress the importance of developing an alert or warning system, as well as the need for a process for halting the adoption of new top level domains should the root zone begin to show signs of breach or weakness. It should be noted that although the GAC is encouraged this study is underway there is some concern as to why the proper analysis did not occur earlier.

RESPONSE

In February 2009, with Resolution 2009-02-03-04, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC),



public authorities, as representatives of the sovereign state or territory, cannot be limited as such by ICANN or by any procedures introduced by ICANN for new gTLDs.

The GAC is of the opinion that the DAG2 is a substantial improvement on its predecessor, but that it does not yet fully reflect the GAC position that governments and other public authorities, as representatives of citizens of a sovereign state, territory, province or city, have a legitimate interest in the use of geographical names as new TLDs.

The GAC therefore proposes the following amendments to be incorporated in version 3 of the Draft Applicant Guidebook (further in the text - DAG3):

i. Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space

These strings represent countries or territories and the principle of sovereignty must apply. TLDs in this category should therefore be treated in the same way as ccTLDs.

The use of exhaustive listings (e.g. ISO 3166-1) will not cover all the ccTLD-like applications envisaged by the GAC and ccNSO, in particular in the following categories:

'Commonly referred to as' type strings representing a country or territory but which are not official titles, e.g. .america, .ceylon, .holland;

Common or general names that are often applied to more than one country, e.g: .guinea

RESPONSE

While understanding the sentiment that a country name TLD should be treated as a ccTLD, ICANN policy constrains the way in which it is possible to provide country name TLDs to all countries and territories is under the new gTLD program at this time.¹ The treatment of country and territory names, in version 2 of the Draft Applicant Guidebook, was developed in the context of the points raised by the GAC, the ccNSO, and the GNSO policy recommendations and trying to find a balance among the somewhat contrary views. Applications for country and territory names will require evidence of support or non-objection from the relevant government or public authority which is consistent with GAC principle 2.2.², and that evidence must clearly indicate that the government or public authority understands the purpose of the TLD string and the process and obligations under which it is sought.

¹ Meaningful representations of country or territory names in non-Latin scripts will be available under the IDN Fast Track process but country and territory names in Latin scripts are available in the gTLD program only, until the ccTLD policy development is complete.

² ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities



Safeguards have been developed to ensure that the relevant government or public authority's sovereign rights are respected, and that the process is understood. It is ultimately the government or public authority's discretion whether to support, or not support, an application for a country name TLD, and the circumstances under which they would be willing to do so.

The Board raised concerns that the criteria for country and territory names, as it appeared in version 2 of the Draft Applicant Guidebook was ambiguous and could cause uncertainty for applicants. Subsequently, on 6 March 2009, the ICANN Board directed staff to, among other things, "... revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard".

The revised definition, provided in a Geographical Names excerpt of the guidebook posted on 30 May 2009, continues to be based on the ISO 3166-1 standard and fulfills the Board's requirement of providing greater clarity about what is considered a country or territory name in the context of new gTLDs. It also removes the ambiguity that resulted from the previous criteria that the term 'meaningful representation' created.

The Board's intent is, to the extent possible, to provide a bright line rule for applicants. While the revised criteria may have resulted in some changes to what names are afforded protection, it has not changed the original intent to protect all names listed on the ISO 3166-1 list, including the short or long form of the name. It is felt that the sovereign rights of governments continue to be adequately protected as the definition is based on a list developed and maintained by an international organisation.

In the context of the revised definition, the name America is afforded protection, while the names Ceylon and Holland are not. However, the objection process does provide a secondary avenue of recourse. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted. With regard to the names .Guinea and .Guinea-Bissau; only the relevant government or public authority for the respective countries can agree to support, or not-object, to the use of their respective names.

ii. gTLDs using strings with geographic names other than country names or territories (so called geoTLDs) should follow specific rules of procedure

The Draft Applicant Guidebook already provides for specific rules of procedure, such as the creation of a Geographic Names Panel or the requirement that an applicant for a geoTLD must document the government's or public authority's support for, or non-objection to, the applicant's application, and must demonstrate the government's or public authority's understanding of the string being requested and its intended use.



The evaluation fee was based on detailed analyses of specific tasks and steps needed to perform the evaluation. ICANN has taken a detailed and thorough approach to estimating program development costs, process and risk costs associated with this new program, and consistently used a set of principles in applying the estimation methodology. The results have been tested with sensitivity and other analysis, and appropriate expertise has been retained and applied.

The costs of the program have recently been re-evaluated and the results of the re-evaluation and the supporting data will be posted with the next version of the Applicant Guidebook.

Although the evaluation fee of \$185,000 may be burdensome for certain organizations that are considering applying for a new gTLD, the evaluation fee was developed based upon a policy of revenue-cost neutrality, conservatism, and a detailed cost estimating exercise. The impact on a specific applicant or a class of applicant, by policy, is not a factor in the development of the evaluation fee. While it is acknowledged that some applications may have lower processing costs than others, and the costs associated with evaluating applications may vary, it is difficult, if not impossible, to determine which applications will require more or less resources. The application fee is based upon the estimated average cost of all applications based upon principles of fairness and conservatism.

In the event that there is a surplus from the new gTLD application round, the excess funds will not be used for ICANN's general operations. They will be disposed of in a manner consistent with the community's feedback and the policy recommendations. ICANN's multi-stakeholder model for decision making will be employed to ensure that all decisions regarding the underlying guiding principles, amounts, recipients, timing and manner of disposition of surplus funds, if any, will be handled in accordance with the communities' wishes.

To conclude, I hope you found this information useful and clear. Please contact my office with follow-up that the GAC might have and I will ensure that those questions are addressed. We look forward to comments of the GAC to the Guidebook excerpts and associated material published at <http://www.icann.org/en/announcements/announcement-2-31may09-en.htm> and to the third version of the Guidebook that will be published prior to the Seoul meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Thrush", is written over a light blue horizontal line.

Peter Dengate Thrush
Chairman of the Board



The Internet Corporation for Assigned Names and Numbers

5 August 2010

Heather Dryden
Chair of the Governmental Advisory Committee
Senior Advisor to the Government of Canada

Dear Heather

GAC Comments on new gTLDs and Draft Applicant Guidebook version 3

Thank you for the GAC's letter of 10 March 2010, providing comments on new gTLDs and version 3 of the Draft Applicant Guidebook. I believe the Board and GAC share a similar viewpoint that it would be in the global public interest that "... the opening up of the gTLD space is undertaken in a way that does not compromise the resilience and integrity of the DNS and serves the global public interest". The Board is pleased with the way in which the various iterations of the guidebooks are evolving, and is particularly pleased by the mechanism whereby the overarching issues are being resolved through working groups comprised of members of the ICANN community and independent experts.

I respond below to each of the areas of concern raised by the GAC.

Root scaling implications

ICANN supports the principle that the scale and rate of changes must not negatively impact the resilience, security and stability of the DNS. In February 2009, the ICANN Board requested the Root Server System Advisory Committee (RSSAC), the Security and Stability Advisory Committee (SSAC), and the ICANN staff (including ICANN Staff members dealing with technical issues and the IANA functions) to study the potential issues regarding the addition of IDNs, IPv6 addresses, DNSSEC and substantial numbers of new TLDs to the root zone. This study was completed in August 2009 and posted for comment at <http://www.icann.org/en/committees/dns-root/root-scaling-study-report-31aug09-en.pdf>. A complementary report (<http://www.icann.org/en/committees/dns-root/root-scaling-model-description-29sep09-en.pdf>) describes the characteristics of the quantitative model developed by TNO for dynamic analysis of root scaling issues.

In addition, and as part of ongoing efforts to ensure the stability of the DNS, ICANN contracted with the DNS Operations, Analysis and Research Center (<https://www.dns-oarc.net/>) as independent and well-respected experts to provide an analysis of the impact of adding IPv6, DNSSEC, and additional top-level domains to the ICANN-operated L root server. This study, while independent of the Root Server System

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in a reconsideration of the treatment of country and territory names in the new gTLD process. This has resulted in a change of approach as reflected in the recently published draft version 4 of the Applicant Guidebook: namely, that country and territory names will not be available for delegation in the first round of the new gTLD application process.

With regard to the definition of country names, the Board has sought to ensure both clarity for applicants, and appropriate safeguards for governments and the broad community. A considerable amount of time has been invested in working through the treatment of country and territory names to ensure it meets these two objectives. Following discussion at the Mexico City meeting, the Board recommended that the Applicant Guidebook be revised in two areas regarding this subject: (1) provide greater specificity as to what should be regarded as a representation of a country or territory name in the generic space, and (2) provide greater specificity in defining the qualifying support requirements for continent names, with a revised position to be posted for public comment.

The resulting definition for country and territory names is based on ISO 3166-1 and other published lists to provide clarity for potential applicants and the community. It seeks to remove the ambiguity created by use of the term 'meaningful representation.' Therefore, the definition of country and territory names has not been amended in the recent Guidebook draft and remains consistent with the Board goals and resolution on this issue.

While the revised criteria may have resulted in some changes to what names are afforded protection, there is no change to the original intent to protect all names listed in ISO 3166-1 or a short or long form of those names (and, importantly, translations of them). This level of increased clarity is important to provide process certainty for potential TLD applicants, governments and ccTLD operators – so that it is known which names are provided protections.

The definition is objectively based on the ISO list, which is developed and maintained by a recognised international organisation.

It is acknowledged that ICANN has used the concept of 'meaningful representation' of a country or territory in the context of the IDN ccTLD Fast Track. This reflects the objective of rapid initial deployment of IDNs and the associated need to remove as many potential obstacles as possible. There have always been particular sensitivities about geographic names where non-Latin scripts and a range of languages are involved. It does not follow that these considerations should automatically apply to the broader ccTLD and gTLD spaces. It is reasonable that the criteria for including names (the Fast Track) could be different than the criteria for excluding names (gTLDs).

geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority."



The Internet Corporation for Assigned Names and Numbers

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The ccNSO will be undertaking policy discussions, which may result in a change in position on these two issues. In particular, defining the distinction between country code and generic names may warrant a broader cross-SO/AC policy discussion. Once policy is developed, it will be appropriate for the Board to reconsider these positions.

Definition of geographical strings insufficient and not in line with paragraphs 2.2 and 2.7 of the GAC principles regarding new gTLDs

As mentioned above, the Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) clarity for applicants, and 2) appropriate safeguards for the benefit of the broad community. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to meet the Board's objectives and are also considered to address to the extent possible the GAC principles. The current definitions, combined with the secondary avenue of recourse available by way of objections are considered adequate to address the GAC's concerns.

It should be noted that much of the treatment of geographic names in the Applicant Guidebook was developed around the GAC Principles regarding new gTLDs, and conversations and correspondence with the GAC on this issue going back to 2008.

On 2 October 2008, (<http://www.icann.org/correspondence/twomey-to-karklins-02oct08.pdf>) following a teleconference with the GAC on 8 September 2008, the then CEO & President, Paul Twomey, wrote to the GAC explaining proposed principles to guide a procedure for implementing elements of paragraph 2.2. Place names were split into two categories, as follows: 1) sub-national geographical identifiers such as countries, states, provinces; and, 2) city names. Regional language or people descriptions were considered difficult to develop an implementation plan for this element of paragraph 2.2, because it will be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognised established rights for such descriptions.

As described in the 2008 letter, city names were considered challenging because a city name can also be a generic term, or a brand name, and in many cases city names are not unique. Therefore, where it is clear that an applicant intends to use the gTLD for purposes associated with the city name evidence of support, or non-objection is necessary. However, provision is made in the Guidebook to protect sovereign rights by requiring government approval for capital city names in any language, of any country or territory listed in the ISO 3166-1 standard.



The Internet Corporation for Assigned Names and Numbers

During the teleconference of 8 September 2008, GAC members identified the ISO 3166-2 List, as an option for defining sub-national names. Accordingly, version 4 of the Applicant Guidebook provides protection for all the thousands of names on that list. Also during this call the idea of the GAC creating a list of geographic and geopolitical names was discussed, however, it is understood that the GAC moved away from this suggestion because it would be a resource intensive effort for all governments to undertake.

In relation to paragraph 2.7, at the Board's request, Paul Twomey (who was ICANN's CEO and President), wrote to the GAC on 17 March 2009 (<http://www.icann.org/correspondence/twomey-to-karklins-17mar09-en.pdf>), requesting the GAC's input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level. The end result of this request was a letter from the GAC to Paul Twomey, dated 26 May 2009 (<http://www.icann.org/correspondence/karklins-to-twomey-29may09-en.pdf>), which proposed a solution, that was accepted by the Board and ultimately reflected in the draft Registry Agreement developed for new gTLDs. On this basis, the Board considers that this matter has been dealt with to the satisfaction of the Board and the GAC.

Mechanisms for dealing with post-delegation deviation from conditions of government approval

The GAC's suggestion of including a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction has been adopted. The Registry Agreement has been amended accordingly.

In addition, the processes and remedies of the Registry Restrictions Dispute Resolution Procedure are available to governments in cases where the geographic name is applied for as a community-based TLD. The remedies that can be recommended to ICANN under this procedure include:

- remedial measures for the registry to employ to ensure against allowing future registrations that do not comply with community-based restrictions;
- suspension of accepting new domain name registrations in the gTLD until such time as violation(s) is cured; or, in extraordinary circumstances;
- providing for the termination of a registry agreement.



The Internet Corporation for Assigned Names and Numbers

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relating to the implementation of the new gTLD program. We will likely follow the Board Workshop with a Special Board Meeting focusing on the new gTLD topics.

I understand the GAC is preparing their comments on version 4 of the Draft Applicant Guidebook, and we very much look forward to the GAC's input for use in that Board Workshop.

Yours sincerely

Peter Dengate-Thrush

Peter Dengate-Thrush
Chair
ICANN Board of Directors

CC: Rod Beckstrom, CEO and President, ICANN

Internet Corporation for Assigned Names and Numbers

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Adopted Board Resolutions

25 September 2010

Trondheim, Norway

1. **New gTLD (generic Top Level Domain) Program Budget**
 2. **New gTLDs – Directions for Next Applicant Guidebook**
 - 2.1. Geographic Names
 - 2.2. New gTLD (generic Top Level Domain) Applicant Support
 - 2.3. Root Zone Scaling
 - 2.4. String Similarity
 - 2.5. Variant Management
 - 2.6. Trademark Protection
 - 2.7. Role of the Board
 - 2.8. Mitigating Malicious Conduct
 - 2.9. GNSO (Generic Names Supporting Organization) New gTLD (generic Top Level Domain) Recommendation 6 Objection Process
 - 2.10. Registry Agreement
 - 2.11. Vertical Integration
 3. **Data and Consumer Protection Working Group**
 4. **Board Global Relationships Committee**
 5. **Nominating Committee Chair**
 6. **March 2011 International Public Meeting**
 7. **Appointment of Akram Atallah as Chief Operating Officer**
-

1. New gTLD (generic Top Level Domain) Program Budget

Whereas, the Board Finance Committee considered the New gTLD (generic Top Level Domain) Deployment Budget at its meeting on 20 September 2010 and unanimously recommended that the Board adopt the Deployment Budget <<http://www.icann.org/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf> (/en/topics/new-gtlds/explanatory-memo-new-gtld-program-budget-22oct10-en.pdf)>.

Resolved (2010.09.25.03), the Board gives the CEO the following directions relating to the forthcoming version of the Applicant Guidebook for new gTLDs, which is intended to be posted for public comment before the ICANN (Internet Corporation for Assigned Names and Numbers) meeting in Cartagena in December 2010:

~~2.1 Geographic Names~~

~~Sub-national place names Geographic names protection for ISO (International Organization for Standardization), 3166-2 names should not be expanded to include translations. Translations of ISO (International Organization for Standardization) 3166-2 list entries can be protected through community objection process rather than as geographic labels appearing on an authoritative list.~~

Continents and UN Regions: The definition of Continent or UN Regions in the Guidebook should be expanded to include UNESCO's regional classification list which comprises: Africa, Arab States, Asia and the Pacific, Europe and North America, Latin America and the Caribbean.

Governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). Also, the Board notes that the GAC (Governmental Advisory Committee) proposal for free government objections is not specific as to particular objection grounds or particular government objectors (for example whether both national and local government objectors would be covered).

2.2 New gTLD (generic Top Level Domain) Applicant Support

Support to applicants will generally include outreach and education to encourage participation across all regions, but any direct financial support for applicant fees must come from sources outside of ICANN (Internet Corporation for Assigned Names and Numbers).

Staff will publish a list of organizations that request assistance and organizations that state an interest in assisting with additional program development, for example pro-bono consulting advice, pro-bono in-kind support, or financial assistance so that those needing assistance and those willing to provide assistance can identify each other and work together.

Owing to the level of uncertainty associated with the launch of new gTLDs, the fee levels currently in the Applicant Guidebook will be maintained for all applicants.

2.3 Root Zone Scaling

Real-world experience in root zone scaling has been gained as a result of the implementation of IPv6 (Internet Protocol version 6), DNSSEC (DNS Security Extensions) and IDNs (Internationalized Domain Names) and the hard work of RSSAC and SSAC (Security and Stability Advisory Committee) members in tackling the underlying stability question. Staff is directed to publish its analysis of the impact of IPv6 (Internet Protocol version 6), DNSSEC (DNS Security Extensions) and IDN deployment on the root zone so far.

Staff has also developed a model and a rationale for the maximum rate of applications that can be processed over the next few years. Staff is directed to publish this model and rationale and to seek Board support for the judgment embodied in this model, thereby providing a firm basis for limiting the rate of new delegations. Based on the discussions to date, this limit is expected to be in the range of 1,000 new delegations per year, with this number to be defined precisely in the publication.

The Board notes that an initial survey of root server operators' ability to support this rate of growth has been conducted successfully, and directs staff to revisit the estimate on a regular basis and consider whether a further survey should be repeated.

Further, ICANN (Internet Corporation for Assigned Names and Numbers) will periodically consult with root zone



The Internet Corporation for Assigned Names and Numbers

ICANN

23 November 2010

Heather Dryden
Interim Chairman of the Governmental Advisory Committee
Senior Advisor to the Government of Canada

GAC Comments on version 4 of the new gTLD Applicant Guidebook

Dear Heather

Thank you for your letter of 23 September 2010, providing GAC comments on version 4 of the Draft Applicant Guidebook. I also thank you for your letter of 4 August 2010, relating to procedures for addressing culturally objectionable and/or sensitive strings. I will respond to both letters in this communication.

As you know the Board met in Trondheim on 24 and 25 September 2010, and discussed outstanding issues relating to the implementation of the New gTLD program in order to identify potential ways forward. To the extent possible, the Board took into account the GAC's comments of 23 September 2010; however, as much of the preparation briefing had been provided to the Board well before the meeting, this was difficult to do. You will note, in the resolutions from Trondheim, that staff is directed to determine if the directions indicated by the Board are consistent with GAC comments, and recommend any appropriate further action in light of the GAC's comments.

The adopted Board resolutions from the Trondheim meeting are available at:

<http://www.icann.org/en/minutes/resolutions-25sep10-en.htm>

I would encourage the GAC to read these resolutions in conjunction with the response to the GAC letter.

As you will appreciate, the development of the Applicant Guidebook and the resolution of the overarching issues identified during the process, has been a challenging task. The multi-stakeholder model under which ICANN operates means that we are responsible to a diverse range of stakeholders, and I believe that the ICANN community has done an outstanding job of considering, in many cases, diverse views on issues and finding workable solutions. That said, we do recognize that the new gTLD process cannot be all things to all people, and that some issues can be better addressed in successive rounds.

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This detail is set out in the New gTLD Program Explanatory Memorandum—Withdrawal of Government Support for Registry – Post delegation options
<http://www.icann.org/en/topics/new-gtlds/withdrawal-government-support-28may10-en.pdf>

Use of geographical names

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is 1) a clear process for applicants, and 2) appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in version 4 of the Draft Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections for geographical names well beyond those approved in the GNSO policy recommendations. The current definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

A detailed account was provided in my letter of 5 August 2010, to the GAC.

Country and territory names

I understand that the issue of the use of country and territory names will not be part of the IDN ccPDP; however, the ccNSO is considering options available to consider this issue and the Board anticipates a policy process which provides direction on this issue. The Board will, after the first round of new gTLDs, reconsider the treatment of country and territory names in the new gTLD process.

As stated in previous communications, the Board sought to remove the ambiguity of the term 'meaningful representation' from the definition of country and territory names to provide greater clarity for applicants and appropriate safeguards for governments and the broad community. The current definition is objectively based on the ISO 3166-1 and other published lists to provide clarity for potential applicants and the community.

City names

It is acknowledged in the Guidebook (and in previous missives to the GAC) that city names present challenges because city names may also be generic terms or brand names, and in many cases no city name is unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names can not be afforded universal protection. However, the process does provide a means for cities and applicants to work together where desired.

Marina del Rey	4676 Admiralty Way, Suite 330	Marina del Rey, CA 90292	USA	T +1 310 823 9358	F +1 310 823 8649
Brussels	6 Rond Point Schuman, Bt. 5	B-1040 Brussels	BELGIUM	T +32 2 234 7870	F +32 2 234 7848
Sydney	Level 2, 48 Hunter Street	Sydney NSW 2000	AUSTRALIA	T +61 2 8236 7900	F +61 2 8236 7913
Washington, DC	1875 I Street, NW, 5th Floor	Washington, DC 20006	USA	T +1 202 429 2704	F +1 202 429 2714

Applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and conditions of submitting an application including confirming that all statements and representations contained in the application are true and accurate.

Objection process

The criteria for community objections was created with the possible objections to place names in mind and as such the objection process "appropriately enables governments to use this." The New gTLD Dispute Resolution Procedure is outlined in an Attachment to Module 3, pp P-1 to P-11 and was also developed so that it is equally accessible to those who wish to utilize the process.

The Board discussed the GAC's position that governments should not be required to pay a fee for raising objections to new gTLD applications, and does not agree with the GAC on this point. It is the Board's view that governments that file objections should be required to cover costs of the objection process just like any other objector; the objection process will be run on a cost-recovery and loser-pays basis (so the costs of objection processes in which governments prevail will be borne by applicants). How would the dispute resolution process be funded: a speculative increase in application fees or increased fees to gTLD registrants? Either of these cases or others seem difficult to implement and unfair.

Letter of support

While appreciating that governments need time to consult internally before deciding whether to support an application, obtaining government support or non-objection is the responsibility of the applicant and is stated in Module 2 of the Applicant Guidebook. While it has not been decided how long the application period will be open from the time of launching the new gTLD program, there is a requirement that a four month communications campaign be undertaken prior to launch.

Legal recourse for applicants

As stated earlier in this letter, one of the guiding principles in developing the Applicant Guidebook has been to address and mitigate risks and costs to ICANN and the global Internet community.

ICANN reaffirms its commitment to be accountable to the community for operating in a manner that is consistent with ICANN's Bylaws, including ICANN's Core Values such as "making decisions by applying documented policies neutrally and objectively, with integrity and fairness." The Board does not believe however that ICANN should expose itself to costly lawsuits any more than is appropriate.

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The Board welcomes the report from the Recommendation 6 Working Group and has requested staff to undertake analysis of the report to determine how recommendations could be incorporated into the Guidebook and conduct a consultation with the Working Group before the Cartagena meeting with the aim of finding additional areas of agreement for incorporation into the Applicant Guidebook.

I wish to make a few points regarding the GAC letter of 4 August on this topic. I do not consider this to be a stability issue per se but rather a policy issue where ICANN is implementing the consensus position developed by the GNSO. There are controversial names delegated and registered now at different levels of the domain name system that do not result in security or stability issues.

Additionally, the new gTLD implementation to date has addressed the issues described in the Affirmation of Commitments: competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The issues raised by the GAC are neither stability / security nor AoC issues – but they merit the full attention of the community.

The solution that appears in version 4 of the Applicant Guidebook was developed following extensive legal research that examined restrictions in a representative sample of countries, which included Brazil, Egypt, France, Hong Kong, Malaysia, South Africa, Switzerland and the United States of America. Various competing interests are potentially involved, for example the rights of freedom of expression versus sensitivities associated with terms of national, cultural, geographic and religious significance. While freedom of expression in gTLDs is not absolute, those claiming to be offended on national, cultural, geographic or religious grounds do not have an automatic veto over gTLDs. The standards summarized by Recommendation No. 6 indicate that a morality and public order objection should be based upon norms that are widely accepted in the international community.

In addition to the Draft Applicant Guidebook (Module 3), ICANN has published explanatory memoranda, dated 29 October 2008 <http://www.icann.org/en/announcements/announcement-29oct08-en.htm> and 30 May 2009 <http://www.icann.org/en/topics/new-gtlds/morality-public-order-30may09-en.pdf>, that set out the specific standards that have been adopted for such objections and the legal research upon which those standards is based.

Importantly, in addition to the Morality and Public Order objection and dispute resolution processes, the Community Objection standards were developed to address potential registration of names that have national, cultural, geographic and religious sensitivities.

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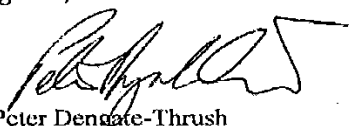
<http://icann.org>

I understand that some GAC members have expressed dissatisfaction with this process as it was first described in version 2 of the Guidebook. The treatment of this issue in the new gTLD context, was the result of a well-studied and documented process which involved consultations with internationally recognized experts in this area. Advice containing thoughtful proposals for amending the treatment of this issue that maintains the integrity of the policy recommendation would be welcomed. The expression of dissatisfaction without a substantive proposal, does not give the Board or staff a toehold for considering alternative solutions. While the report of the recently convened working group still does not constitute a policy statement as conceived in the ICANN bylaws, ICANN staff and Board are working to collaborate with the community to adopt many of the recommendations.

Once again, I appreciate the GAC's commitment to the new gTLD process and hope you find this letter responsive to GAC concerns.

The proposed final version of the Applicant Guidebook has now been posted and I look forward to discussing the introduction of new gTLDs in Cartagena.

Regards,



Peter Dengate-Thrush

Chairman of the Board of Directors, ICANN
Mobile: +64 21 499 888
Email: Peter.DengateThrush@icann.org

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<http://icann.org>

ICANN Board-GAC Consultation: Geographic Names

EXPLANATION OF ISSUE/HISTORY

The GAC Principles regarding New gTLDs contain two paragraphs addressing geographic names. Paragraph 2.2¹ relates to names at the top level and paragraph 2.7² relates to names at the second level. In its policy recommendations, the GNSO provided that no specific protections be put in place beyond those afforded in the objection and dispute resolution process:

- that community objection procedures provided protections the GAC sought at the top level, and
- protections at the second level should be left to individual registries.

There has been regular communication in the form of face-to-face meetings, communiqués and correspondence between the GAC, staff and the Board on the treatment of geographic names and other issues, since the Board approved the GNSO recommendations for the introduction of new gTLDs in Paris in June 2008.

Many amendments have been made to the Guidebook that incorporate GAC requests regarding the treatment of geographical names.

REMAINING AREAS OF DIFFERENCE:

1. The current Guidebook states that country and territory names will not be available in the first round. The GAC requests that Country and territory names not be available until the completion of the IDN ccPDP, and that it may be more appropriate to consider country and territory names outside the new gTLD program.
2. The current Guidebook protects country and territory names that appear on specific U.N. lists and their translations. The GAC requests that names by which countries, cities or regions are commonly known as, or abbreviations of, and which do not appear in the lists used to define geographic names in the Applicant Guidebook should also be given the same protection as names that do appear.

¹ 2.2 ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

² 2.7 Applicant registries for new gTLDs should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD

- **Names by which countries, cities or regions are commonly known as and which do not appear in the ISO lists should also be given the same protection as names that do appear.**

The Board has sought to ensure, throughout the process of developing a framework for new gTLDs, that there is a clear process for applicants, and appropriate safeguards for the benefit of the broad community including governments. The current criteria for defining geographic names as reflected in the Proposed Final Version of the Applicant Guidebook are considered to best meet the Board's objectives and are also considered to address to the extent possible the GAC principles. These compromises were developed after several consultations with the GAC – developing protections geographic names well beyond those approved in the GNSO policy recommendations. These definitions, combined with the secondary avenue of recourse available by way of objections were developed to address the GAC's concerns.

In developing the process for geographic names, ICANN has relied upon ISO or UN lists to assist with geographical definitions in the context of new gTLDs. The combined total of names currently protected in the new gTLD process is well in excess of 5000 names, and providing protection for "commonly used" interpretations of these names would multiply the number of names and the complexity of the process many-fold.

In correspondence to the GAC on 5 August 2010, the Board Chair indicated that the Board had sought to remove the ambiguity of the term 'meaningful representation' from the definition of country and territory names. The current definition is objectively based on the ISO 3166-1 and other published lists to provide greater clarity for applicants and appropriate safeguards for governments and the broad community.

Holland has been raised in this context as an example on a number of occasions by the GAC. However, while not appearing on the ISO 3166-1 list, Holland appears to be protected, as it the Danish translation of 'the Netherlands'.

Language has been added to the Guidebook indicating that governments may send notifications regarding national laws directly to applicants or via public comment forum (see Applicant Guidebook, Module 1, section 1.1.2.5 <http://www.icann.org/en/topics/new-gtlds/draft-rfp-clean-12nov10-en.pdf>) once the applications are publicly posted. Such notifications are not meant to serve as formal objections or be cause for a modification to an application. It was decided early in the process development that applicants should not be able to amend applications or applied for strings in order to prevent abuses.

SUMMARY OF ACTIONS TAKEN RESPONDING TO GAC AND PUBLIC COMMENTS

Use and protection of geographical names

- The inclusion of geographic names, as defined in the Guidebook, was developed in response to GAC principle 2.2.
- The protection of government interests in geographic names is accounted for by the requirement that no application for a geographic name (as defined in the Guidebook) can be approved without documentation of the support or non-objection from the relevant government or public authority.
- Country and territory names, as defined in the Applicant Guidebook, have been excluded from the first application round of the gTLD process based on GAC advice.
- A minimum list of reserved names was added to the Registry Agreement based on GAC principle 2.7 which called for protections at the second level. Similarly, all applicants are required to describe in the application their proposed measures for ensuring the protection of geographic names at the second and other levels in the TLD. This information is posted for public information and comment, in accordance with GAC advice.
- The capacity for an objection to be filed on community grounds, where there is substantial opposition to an application from a community that is targeted by the name also provides an avenue of protection for names of interest to a government which are not defined in the Applicant Guidebook.

ICANN Board-GAC Consultation:

- **Objection Procedures, including requirements for governments to pay fees**
- **Procedures for the Review of Sensitive Strings**
- **Early warning to applicants: whether a proposed string would be considered controversial or to raise sensitivities (including geographical names)**

EXPLANATION OF ISSUES/HISTORY

The GNSO and ICANN Board approved policy recommendations for new gTLDs included four major areas where a third party can raise an objection to the creation of a new gTLD. A new gTLD string should: (i) not be confusingly similar to an existing top-level domain or a Reserved Name (Rec. 2); (ii) not infringe the existing legal rights of others (Rec 3); (iii) not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law (Rec 6); and (iv) be rejected if there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted (Rec. 20). See http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm#_Toc43798015.

The GNSO also recommended that “[d]ispute resolution and challenge processes must be established prior to the start of the [new gTLD] process,” and “[e]xternal dispute providers will give decisions on objections.”

In Brussels in June 2010, and then in a letter to ICANN dated 4 August 2010 (<http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>), the GAC:

[R]ecommends that community-wide discussions be facilitated by ICANN in order to ensure that an effective objections procedure be developed that both recognizes the relevance of national laws and effectively addresses strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. These objection procedures should apply to all pending and future TLDs.

In response to the GAC’s recommendation, a cross-community working group was formed to deal specifically with Rec 6 objections (“Rec6 CWG”). The Rec6 CWG has since issued recommendations on both Morality & Public Order, and Community based objections.¹

(<http://gnso.icann.org/bitcache/27d221c45bd9d8c234246849d716202bacd6f3ee?vid=14699&disposition=attachment&op=download>).

¹ Suggesting the governments should be able to protect place names, and country, territory or regional language or people descriptions using the community based objection process

2. The GAC suggests that Governments should not have to pay the same costs as others to file an objection. See Letter from GAC to ICANN, dated 23 September 2010 at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-23sep10-en.pdf>. The GAC points to the fact that it has a Bylaws process whereby it can provide advice to the Board for consideration. See Letter from the GAC to ICANN, dated 18 August 2009 at <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf>

Since publication of the last version of the Applicant Guidebook, the Board has considered the Rec6 CWG recommendation that the GAC (and ALAC), as a group, should be able to file some or all objections at no or a reduced cost. Although the Board has not reached a formal decision, there is a sense of the Board that it will agree to allow the GAC (and the ALAC) to file objections as a group on behalf of its members so long as doing so is based on some type of consensus of the group members. Further, the Board also thinks that providing some level of funding for objections filed by the GAC (or the ALAC) as a group is an appropriate change to the process.

3. The GAC states that the current objection procedures do not effectively address strings that raise national, cultural, geographic, religious and/or linguistic sensitivities or objections that could result in intractable disputes. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>

Under the Guidebook, protections for these types of names are provided by a series of objections and processes: the requirement for government approval of certain geographical names, Community-based objections (Rec 20), and Limited Public Interest (or Morality & Public Order Rec 6) objections. The last provides that a string will be excluded if there is a determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law. See Applicant Guidebook, Module 3, section 3.3.4 at <http://www.icann.org/en/topics/new-gtlds/draft-dispute-resolution-procedures-clean-12nov10-en.pdf>. It is recognized that principles from international treaties are incorporated into national laws in a range of different ways, and a panel would need to consider the relevant text in national laws.

4. The GAC suggests that the objection procedures should apply to all pending and future TLDs. See Letter from GAC to ICANN dated 4 August 2010 at <http://www.icann.org/en/correspondence/gac-to-dengate-thrush-04aug10-en.pdf>. ICANN has been asked to note that both the UK and New Zealand take the position that the objection procedures should apply only to new gTLDs.

The Guidebook, and all of the procedures developed for processing applications for and objections to new gTLDs, apply only to new gTLDs and not to existing TLDs or other TLDs (e.g IDN-ccTLDs) that will not be evaluated under the New gTLD Program.

From: On Behalf Of Peter Dengate Thrush
Sent: Saturday, March 05, 2011 12:50 PM
To: Heather Dryden
Cc: ICANN Board of Directors
Subject: [icann-board] Documenting the Board/GAC Brussels consultation

Dear Heather,

On behalf of the Board of Directors of ICANN, I would like to formally thank the ICANN's Governmental Advisory Committee for participating in the first intersessional Board/GAC meetings, held in Brussels on 28 February and 1 March 2011, regarding ICANN's proposed implementation of the new gTLD program.

We appreciate the preparatory work and time commitment of the GAC Members in participating in these discussions. We also look forward to continuing to work with you on the best ways to evaluate and implement changes to the program resulting from your advice, in the consultation scheduled to be held at the Silicon Valley ICANN Meetings to be held in San Francisco later this month. We are still holding the 17 March consultation slot open and look forward to adding the other day to these consultations following on from your recent offer to be available for this additional time.

The Board looks forward to continuing to collaborate with the GAC in order to conclude the consultation process on the new gTLD program during the Silicon Valley/San Francisco Meeting.

The Board has made a good faith effort toward narrowing the outstanding issues as evidenced by the production of Board Papers, and the subsequent use of the GAC scorecard to frame and shape the issues. The clarity gained during these efforts has significantly reduced the amount of work that needs to be done in order to reach agreement on most issues.

We have included the ICANN Board's response to the GAC scorecard entitled 'Board Notes GAC Actionable Scorecard, attached. We have provided this response, to set out information regarding the Board's evaluation of the GAC advice, which has been summarized within your scorecard. We look forward to discussing this with you further as part of the evaluation. The issues that you have raised are responded to point-by-point.

While discussion in Brussels confirmed that we would work together to clarify implementation of the issues marked as "1(b)", a narrowed focus in San Francisco on the issues that are still in contention would be a best use of the Board and GAC's time during the two days of consultations, and should represent the final stages in our required consultation. Accordingly, we propose focusing there on those items marked with a "2", in the Board's response to the Scorecard attached. Those items marked 1(b) might result in follow on discussions with the GAC regarding implementation in the time leading up to the launch of the program, but do not appear that they will require the same consultation that we have triggered on the "2"'s since we are not in fundamental disagreement on those items categorized as 1(b)'s.

ICANN Board Notes on the GAC New gTLDs Scorecard

4 March 2011

This document contains the ICANN Board's notes on the "GAC indicative scorecard on new gTLD outstanding issues" of 23 February 2011. Each GAC scorecard item is noted with a "1A", "1B", or "2":

- "1A" indicates that the Board's position is consistent with GAC advice as described in the Scorecard.
- "1B" indicates that the Board's position is consistent with GAC advice as described in the Scorecard in principle, with some revisions to be made.
- "2" indicates that the Board's current position is not consistent with GAC advice as described in the Scorecard, and further discussion with the GAC in San Francisco is required.

Item #	GAC Scorecard Actionable Item	Position	Notes
1.	The objection procedures including the requirements for governments to pay fees		
1.	Delete the procedures related to "Limited Public Interest Objections" in Module 3.	1B	The GAC indicated in Brussels that its concern relates to requiring governments to use this objection process. The Board and GAC therefore agreed that it would be consistent with GAC advice to leave the provision for Limited Public Interest Objections in the Guidebook for general purposes, but the GAC (as a whole) would not be obligated to use the objection process in order to give advice.
2.	Procedures for the review of sensitive strings		
2.1.1	1. String Evaluation and Objections	1B	A procedure for GAC review will be

ICANN Board Notes on the GAC New gTLDs Scorecard

			be appropriate to implement a particular action based on one such decision.
8.	Use of geographic names:		
8.1.1.1	1. Definition of geographic names Implement a free of charge objection mechanism would allow governments to protect their interest	1B	ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other considerations).
8.1.1.2	and to define names that are to be considered geographic names.	2	The process relies on pre-existing lists of geographic names for determining which strings require the support or non-objection of a government. Governments and other representatives of communities will continue to be able to utilize the community objection process to address attempted misappropriation of community labels. ICANN will continue to explore the possibility of pre-identifying using additional authoritative lists of geographic identifiers that are published by recognized global organizations.
8.1.2	This implies that ICANN will exclude an	1B	ICANN will continue to rely on pre-

ICANN Board Notes on the GAC New gTLDs Scorecard

	<p>applied for string from entering the new gTLD process when the government formally states that this string is considered to be a name for which this country is commonly known as.</p>		<p>existing lists of geographic names for determining which strings require the support or non-objection of a government. This is in the interest of providing a transparent and predictable process for all parties. (See related note above.)</p>
8.1.3	<p>Review the proposal in the DAG in order to ensure that this potential [city name applicants avoiding government support requirement by stating that use is for non-community purposes] does not arise. Provide further explanations on statements that applicants are required to provide a description/purpose for the TLD, and to adhere to the terms and condition of submitting an application including confirming that all statements and representations contained in the application are true and accurate.</p>	2	<p>There are post-delegation mechanisms to address this situation. In addition, the "early warning" opportunity will offer an additional means to indicate community objections.</p>
8.1.4	<p>Governments should not be required to pay a fee for raising objections to new gTLD applications. Implement a free objection mechanism would allow governments to protect their interest.</p>	1B	<p>ICANN will investigate a mechanism for the forthcoming round under which GAC members could be exempted from paying fees for objections in some circumstances (subject to constraints imposed by budget and other</p>

APPENDIX E

Coordinates: 23°35′29″S 46°36′28″W﻿ / ﻿23.59139°S 46.60750°W﻿ / -23.59139; -46.60750

Ipiranga (district of São Paulo)

From Wikipedia, the free encyclopedia

(Redirected from Ipiranga)

Ipiranga (Portuguese pronunciation: [ipiˈɾɐ̃ɡa], from the Tupi (*y*, river; *pirang*, vermelho) for "red river") is an historical district located in the subprefecture of the same name of São Paulo, Brazil.^[1] The name Ipiranga comes from the river (which now is a brook) of the same name located in the region, which means "red river" in a Tupí–Guaraní language. The Independence Park (Parque da Independência), where supposedly the Emperor Pedro I of Brazil proclaimed the independence of Brazil, the Paulista Museum, which exhibits classic architecture and a collection of Brazilian colonial artifacts, and the Zoology Museum, are also located in Ipiranga.

The Ipiranga Brook is perhaps one of the most famous Brazilian brooks, because it is mentioned in the very first line of the Brazilian National Anthem.

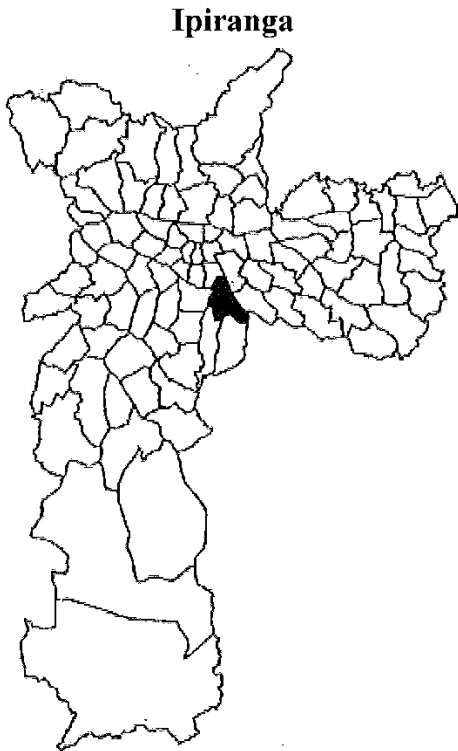
The region near the Tamanduateí River had industrial characteristics, to the point where buses and trams heading there had the destination labeled "Factory". The area next to Nazaré Avenue, in contrast, is filled with mansions of wealthy families and an amount of colleges, like Unesp and São Camilo, and workers of the factories houses.

The commercial center of Ipiranga concentrates on Silva Bueno Street. There are banks, clothes stores and grocery stores like the famous Chocolândia.

References

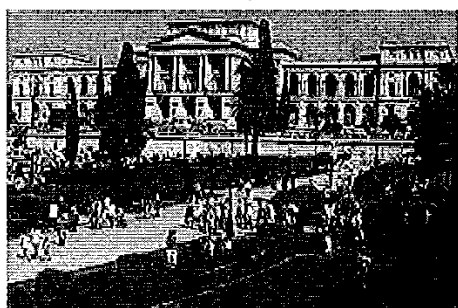
- ↑ Subprefecture of Ipiranga (http://www.prefeitura.sp.gov.br/cidade/secretarias/subprefeituras/ipiranga/)

Retrieved from "http://en.wikipedia.org



Ipiranga

Location in the city of São Paulo



Paulista Museum, in Ipiranga district, crowded in the celebration of the Brazilian Independence Day.

Country	Brazil
State	São Paulo
City	São Paulo
Government	
• Type	Subprefecture
• Subprefect	Danilo Antão Fernandes
Population (2000)	

• Total	98.863
HDI	0.883 –high
Website	Subprefecture of Ipiranga (http://www.prefeitura.sp.gov.br/cidade/secretarias/subprefeituras/ipiranga/)

[/w/index.php?title=Ipiranga_\(district_of_São_Paulo\)&oldid=546553591"](/w/index.php?title=Ipiranga_(district_of_São_Paulo)&oldid=546553591)

Categories: Districts of São Paulo

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Ipiranga Brook


From Wikipedia, the free encyclopedia

The **Ipiranga Brook** is a river of São Paulo state in southeastern Brazil, historically known as the place where Dom Pedro I declared the independence of Brazil from the United Kingdom of Portugal, Brazil and the Algarves.

Its name derives from the Tupi words: "Y", which means water or river, and "Piranga", which means red. It is also mentioned in the country's national anthem.

Contents

- 1 Declaration of Independence
- 2 See also
- 3 References
- 4 External links

Ipiranga Brook	
	
Origin	São Paulo state
Basin countries	Brazil

Declaration of Independence

On September 2, 1822, a decree with Lisbon's demands arrived in Rio de Janeiro, while Prince Pedro was in São Paulo. Princess Maria Leopoldina, acting as Princess Regent, met with the Council of Ministers and decided to send her husband a letter advising him to proclaim Brazil's independence. The letter reached Prince Pedro on September 7, 1822. That same day, in a famous scene at the shore of the Ipiranga Brook, he declared the country's independence, ending 322 years of colonial dominance of Portugal over Brazil.^[1] According to journalist Laurentino Gomes, who wrote a book about the event, *1822*, Prince Pedro "could not wait for his arrival to São Paulo to announce the decision";^[2] Pedro "was a reckless man in his decisions but he had the profile of leader that Brazil needed at the time, because there was no time to think".^[2]



Prince Pedro declares the Independence of Brazil on September 7, 1822.

"Independência ou morte" (Independence or death) (1888), oil on canvas painting by Pedro Américo.

See also

- List of rivers of São Paulo
- Independence Day (Brazil)
- *1822* (book by Laurentino Gomes)

References

- [^] **(Portuguese)** Sete de Setembro (http://www.multirio.rj.gov.br/historia/modulo02/sete_setembro.html) Prefeitura do Rio de Janeiro. Retrieved on 2009-07-05.
- [^] ^a ^b Brasil, Ubiratan. "O impetuoso que o país precisava" (http://www.estadao.com.br/estadaodehoje/20100905/not_imp605427,0.php). *O Estado de S. Paulo*. September 5, 2010.

External links

- Brazilian Ministry of Transport (http://www.zonu.com/imapa/americas/md_SaoPaolo_brazil.pdf)

Retrieved from "http://en.wikipedia.org/w/index.php?title=Ipiranga_Brook&oldid=564429723"

Categories: Rivers of São Paulo (state) | São Paulo (state) geography stubs

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Brazilian National Anthem

From Wikipedia, the free encyclopedia

The **Brazilian national anthem** (Portuguese: *Hino Nacional Brasileiro*) was composed by Francisco Manuel da Silva in 1831 and had been given at least two sets of unofficial lyrics before a 1922 decree by President Epitácio Pessoa gave the anthem its definitive, official lyrics, by Joaquim Osório Duque-Estrada, after several changes were made to his proposal, written in 1909.

The anthem's lyrics have been described as Parnassian in style and Romantic in content.^[1]

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- 2 Lyrics
- 3 Tupi lyrics
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History

The melody of the Brazilian national anthem was composed by Francisco Manuel da Silva and was presented to the public for the first time in April 1831.^[2] On 7 April 1831, the first Brazilian Emperor, Pedro I, abdicated the Crown and days later left for Europe, leaving behind the then-five-year-old Emperor Pedro II.

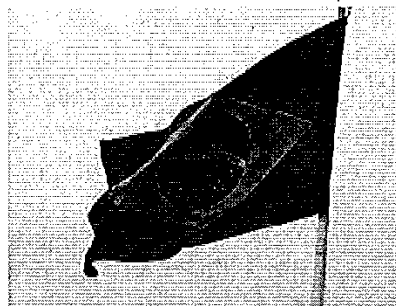
From the proclamation of the independence of Brazil in 1822 until the 1831 abdication, an anthem that had been composed by Pedro I himself, celebrating the country's independence (and that now continues to be an official patriotic song, the *Independence Anthem*), was used as the National Anthem. In the immediate aftermath of the abdication of Pedro I, the Anthem composed by him fell in popularity.

Francisco Manuel da Silva then seized this opportunity to present his composition, and the Anthem written by him was played in public for the first time on April 13, 1831.^[3] On that same day, the ship carrying the former Emperor left the port of Rio de Janeiro. The date of April 13 now appears in official calendars as the *Day of the Brazilian National Anthem*.

As to the actual date of composition of the music presented in April 1831, there is controversy among historians. Some hold that Francisco Manuel da Silva composed the music in the last four months of 1822

Hino Nacional Brasileiro

English: Brazilian National Anthem



National anthem of



Brazil

Lyrics Osório Duque-Estrada, 1909

Music Francisco Manuel da Silva, 1831

Adopted 1831 during the Empire of Brazil and 1890 in the Federative Republic of Brazil (then named *Republic of the United States of Brazil*).

Music sample

Hino Nacional Brasileiro (Instrumental)

0:00

to commemorate Brazil's independence (declared on 7 September 1822), others hold that the hymn was written in early 1823 and others consider the evidence of composition dating back to 1822 or 1823 unreliable, and hold that the Anthem presented on 13 April 1831 was written in 1831, and not before.^[4] In any event, the Anthem remained in obscurity until it was played in public on 13 April 1831. In style, the music resembles early Romantic Italian music such as that of Gioachino Rossini.

Initially, the music composed by Francisco Manuel da Silva was given lyrics by Appeals Judge Ovídio Saraiva de Carvalho e Silva not as a National Anthem, but as a hymn commemorating the abdication of Pedro I and the accession of Pedro II to the Throne. It was known during this early period as "April 7 Hymn".^[5] The lyrics by Ovídio Saraiva soon fell out of use, given that they were considered poor, and even offensive towards the Portuguese. The music, however, continued enjoying sustained popularity, and by 1837 it was played, without lyrics, in all public ceremonies.^[6]

Although no statute was passed during the imperial period to declare Francisco Manuel da Silva's musical composition as the National Anthem, no formal enactment was considered necessary for the adoption of a National Anthem. A National Anthem was seen as resulting from praxis or tradition. Thus, by 1837, when it was played in all official solemnities, Francisco Manuel da Silva's composition was already the Brazilian National Anthem.

A new set of lyrics was proposed in 1841, to commemorate the coming of age and Coronation of Emperor Pedro II; those lyrics, popular but also considered poor, were soon abandoned too, this time by order of Emperor Pedro II, who specified that in public ceremonies the Anthem should be played with no lyrics. Emperor Pedro II directed that Francisco Manuel da Silva's composition, as the National Anthem of the Empire of Brazil, should be played, without lyrics, on all occasions when the monarch presented himself in public, and in solemnities of military or civilian nature; the composition was also played abroad in diplomatic events relating to Brazil or when the Brazilian Emperor was present.^[7]

During the Empire of Brazil era, the American composer and pianist Louis Moreau Gottschalk, then residing in Rio de Janeiro, Brazil, composed two nationalistic works of classical music based on the Brazilian National Anthem that achieved great popularity during the imperial period: the *Brazilian Solemn March* ("Marcha Solene Brasileira", in the modern Portuguese spelling or "Marcha Solemne Brasileira", in the original spelling in force at the time of composition^[8]) and the *Great Triumphal Fantasy on the Brazilian National Anthem* ("Grande Fantasia Triunfal sobre o Hino Nacional Brasileiro"). The former was dedicated to Emperor Pedro II, and the latter was dedicated to his heiress presumptive, the Princess Imperial Isabel, comtesse d'Eu. Those works are in the vein of similar compositions written at the time in other Nations, such as Charles Gounod's *Fantasy on the Russian National Anthem*. The *Grand Triumphal Fantasy*, long forgotten, resurfaced in popularity in 1985, at the dawn of Brazil's *New Republic*, during the country's re-democratization process, when it was played to accompany the funeral cortège of President Tancredo Neves.

After the Proclamation of the Republic in 1889, the new rulers made a competition in order to choose a new anthem, and the competition was won by Leopoldo Miguez. After protests against the adoption of the proposed new anthem, however, the Head of the Provisional Government, Deodoro da Fonseca, formalized Francisco Manuel da Silva's composition as the National Anthem, while Miguez's composition was deemed the Anthem of the Proclamation of the Republic. Deodoro himself was said to prefer the old anthem to the new composition that became the Anthem of the Proclamation of the Republic. The Decree of the Provisional Government (Decree 171 of 1890) confirming Francisco Manuel da Silva's music, that had served as the National Anthem of the Empire of Brazil, as the National Anthem of the new Republic, was

issued on 20 January 1890.

In the early days of the new Federal Republic, the National Anthem continued without official lyrics, but several lyrics were proposed, and some were even adopted by different states of Brazil. The lack of uniform, official lyrics would only be terminated in 1922, during the celebrations of the first centennial of the Proclamation of Independence, when an adapted version of Joaquim Osório Duque Estrada's lyrics, first proposed in 1909, were deemed official.

The official lyrics of the Brazilian National Anthem were proclaimed by decree of President Epitácio Pessoa (Decree 15.761 of 1922), issued on 6 September 1922, at the height of the celebrations of the Independence Centennial. This presidential decree was issued in execution of a legislative decree adopted by Congress on 21 August 1922.

The National Anthem is considered by the current Constitution of Brazil, adopted in 1988, one of the four national symbols of the country, along with the Flag, the Coat of Arms and the National Seal. The legal norms currently in force concerning the National Anthem are contained in a statute passed in 1971 (Law 5.700 of 1 September 1971), regulating the national symbols.

The music of the National Anthem was originally intended to be played by symphonic orchestras; for the playing of the National Anthem by bands, the march composed by Antão Fernandes is included in the instrumentation. This adaptation, long in use, was made official by the 1971 statute regulating national symbols. This same statute also confirmed as official the traditional vocal adaptation of the lyrics of the National Anthem, in F major, composed by Alberto Nepomuceno.

Lyrics

The song consists of two consecutive stanzas. The adoption in 1922 of lyrics containing two stanzas thus created the present situation of the music of the anthem being played twice so as to allow for the singing of both stanzas.

Brazilian law stipulates that the music needs to be played only once in instrumental renditions of the anthem without vocal accompaniment (thus, in instrumental renditions without vocal accompaniment, the playing of the music twice is optional), but both stanzas must be sung in vocal performances.

The second stanza is often dropped when played at sporting events, but most renditions of the Brazilian National Anthem for sporting events are instrumental and not vocal.

In the lyrics, the opening line's mention of the Ipiranga river refers to the stream near (and now part of) the city of São Paulo where Prince Dom Pedro, the future Emperor Dom Pedro I of Brazil, declared Brazilian independence from Portugal.^[9]

Portuguese lyrics

English translation

First stanza

Ouviram do Ipiranga as margens plácidas

The placid shores of Ipiranga heard

De um povo heroico o brado retumbante,
E o sol da Liberdade, em raios fúlgidos,
Brilhou no céu da Pátria nesse instante.

Se o penhor dessa igualdade
Conseguimos conquistar com braço forte,
Em teu seio, ó Liberdade,
Desafia o nosso peito a própria morte!

Ó Pátria amada,
Idolatrada,
Salve! Salve!

Brasil, um sonho intenso, um raio vívido,
De amor e de esperança à terra desce,
Se em teu formoso céu, risonho e límpido,
A imagem do Cruzeiro resplandece.

Gigante pela própria natureza,
És belo, és forte, impávido colosso,
E o teu futuro espelha essa grandeza.

Terra adorada
Entre outras mil
És tu, Brasil,
Ó Pátria amada!

Dos filhos deste solo
És mãe gentil,
Pátria amada,
Brasil!

the resounding cry of a heroic people
and in shining rays, the sun of liberty
shone in our homeland's skies at this very moment.

If the assurance of this equality
we achieved by our mighty arms,
in thy bosom, O freedom,
our chest shall defy death itself!

O beloved,
idolized homeland,
Hail, hail!

Brazil, an intense dream, a vivid ray
of love and hope descends to earth
if in thy lovely, smiling and clear skies
the image of the (Southern) Cross
shines resplendently.

Giant by thine own nature,
thou art beautiful, thou art strong, an intrepid colossus,
and thy future mirrors thy greatness.

Beloved Land
amongst a thousand others
art thou, Brazil,
O beloved homeland!

To the children of this land
thou art a gentle mother,
beloved homeland,
Brazil!

Second stanza

Deitado eternamente em berço esplêndido,
Ao som do mar e à luz do céu profundo,
Fulguras, ó Brasil, florão da América,
Iluminado ao sol do Novo Mundo!

Do que a terra mais garrida
Teus risonhos, lindos campos têm mais flores,
"Nossos bosques têm mais vida",
"Nossa vida" no teu seio "mais amores". (*)

Eternally laid on a splendid cradle,
by the sound of the sea and the light of the deep sky,
thou shinest, O Brazil, finial of America,
illuminated by the sun of the New World!

Than the most elegant land abroad,
thy smiling, pretty prairies have more flowers
"Our meadows have more life",
"our life" in thy bosom "more love". (*)

Ó Pátria amada,
Idolatrada,
Salve! Salve!

Brasil, de amor eterno seja símbolo
O lábaro que ostentas estrelado,
E diga o verde-louro dessa flâmula
- Paz no futuro e glória no passado.

Mas se ergues da justiça a clava forte,
Verás que um filho teu não foge à luta,
Nem teme, quem te adora, a própria morte.

Terra adorada
Entre outras mil
És tu, Brasil,
Ó Pátria amada!

Dos filhos deste solo
És mãe gentil,
Pátria amada,
Brasil!

O beloved,
idolized homeland,
Hail, hail!

Brazil, of eternal love be the symbol
the starred banner thou showest forth
and proclaim the laurel-green of thy pennant
'Peace in the future and glory in the past.'

But if thou raisest the strong gavel of Justice,
thou wilt see that a son of thine flees not from battle,
nor does he who loves thee fear his very own death.

Beloved Land,
amongst a thousand others
art thou, Brazil,
O beloved homeland!

To the children of this land
thou art a gentle mother,
beloved homeland,
Brazil!

(*) The passages in quotation marks were extracted from Gonçalves Dias' poem "Canção do exílio".

Tupi lyrics

These are unofficial Tupi language.

First stanza: Embeyba Ypiranga sui, pitúua, Ocendu kirimbáua sacemossú Cuaracy picirungára, cendyua, Retama yuakaupé, berabussú.

Cepy quá iauessáua sui ramé, Itayiúá irumo, iraporepy, Mumutara sáua, ne pyá upé, I manossáua oiko iané cepy.

Iassalssú ndê, Oh moetéua Auê, Auê !

Brasil ker pi upé, cuaracyáua, Caissú í saarússáua sui ouié, Marecê, ne yuakaupé, poranga. Ocenipuca Curussa iepé !

Turussú reikô, ara rupí, teen, Ndê poranga, i santáua, ticikyíé Ndê cury quá mbaé-ussú omeen.

Yby moetéua, Ndê remundú, Reikô Brasil, Ndê, iyaissú!

Mira quá yuy sui sy catú, Ndê, ixaissú, Brasil!

Second stanza: Ienotyua catú pupé reicô, Memê, paráteapú, quá ara upé, Ndê recendy, potyr America sui. I

Cuaracy omucendy iané !

Inti orecó purangáua pyrê Ndê nhu sorryssára omeen potyra pyrê, iCicuê pyrê orecó iané caaussúf. Iané cicué, indê pyá upé, saissú pyrêf.

Iassalsú ndê, Oh moetéua Auê, Auê !

Brasil, ndê pana iacy-tatá-uára Toicô rangáua quá caissú retê, I quá-pana iakyrá-tauá tonhee Cuire catuana, ieorobiára kuecê.

Supí tacape repuama remé Ne mira apgáua omaramunhã, Iamoetê ndê, inti iacekyé.

Yby moetéua, Ndê remundú, Reicô Brasil, Ndê, iyaissú !

Mira quá yuy sui sy catú, Ndê, ixaissú, Brasil!

Footnotes

- [^] Você entende o Hino Nacional Brasileiro? (<http://www.soportugues.com.br/secoes/curiosidades/hino.php>) - Só Português (in Portuguese)
- [^] <http://www.clerioborges.com.br/hinonacional.html#0002>
- [^] <http://www.clerioborges.com.br/hinonacional.html#0002>
- [^] http://www.miniweb.com.br/cidadania/hinos/historia/hist_hino_nacional.html
- [^] <http://www.clerioborges.com.br/hinonacional.html>
- [^] <http://www.clerioborges.com.br/hinonacional.html>
- [^] <http://www.clerioborges.com.br/hinonacional.html>
- [^] Because the spelling of Brazil with a "z" became obsolete in the Old Republic due to changes in the orthography of the Portuguese language, and the country's name has since then been spelled with an "s" in Portuguese - Brasil - sometimes the title of that composition is rendered as "Marcha Solemne Brasileira", the adjective "Solemne" retaining the 19th century spelling, while the adjective "Brasileira" is rendered in the modern spelling to avoid writing the country's name with a "z".
- [^] <http://nationalanthems.me/brazil-hino-nacional-brasileiro/>

See also

- Brazilian Flag Anthem (Hino à Bandeira)
- Brazilian Anthem of Independence (Hino da Independência)
- Brazilian Republic Anthem (Portuguese: Hino da Proclamação da República)

External links

- Brazil: *Hino Nacional Brasileiro* - Audio of the national anthem of Brazil, with information and lyrics (<http://nationalanthems.me/brazil-hino-nacional-brasileiro/>)
- Free sheet music ([http://cantorion.org/pieces/1600/Brazilian_National_Anthem_\(Hino_Nacional_Brasileiro\)](http://cantorion.org/pieces/1600/Brazilian_National_Anthem_(Hino_Nacional_Brasileiro))) of the Brazilian National Anthem from *Cantorion.org*
- Other patriotic songs - Brazilian Government portal website (<http://www.brasil.gov.br/sobre/o-brasil/estado-brasileiro/simbolos-e-hinos>)

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Categories: [National anthems](#) | [National symbols of Brazil](#) | [Portuguese-language songs](#)
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APPENDIX F



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Prioritization Number	String [1]	Applicant	Location [2]
▶ 1357	IPIRANGA	Ipiranga Produtos de Petroleo S.A.	BR

Displaying 1 - 1 of 1

Notes:

1. **String [1]:** ASCII or Unicode for IDN strings
2. **Location [2]:** Indicated by applicant as principal place of business. Two-letter country code is based on ISO 3166-1 code lists. See http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm
3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46695 (KIDS), 1-1873-71868 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
9. The String Similarity Panel has determined that this string is visually similar to an existing TLD (.mil), creating a probability of user confusion.
10. Per the 4 June 2013 New gTLD Program Committee (NGPC) approved [resolution](#) to adopt the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué."



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Notes:

1. **String [1]:** ASCII or Unicode for IDN strings
2. **Location [2]:** Indicated by applicant as principal place of business. Two-letter country code is based on ISO 3166-1 code lists. See http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm
3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46895 (KIDS), 1-1873-71868 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
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Notes:

1. **String [1]:** ASCII or Unicode for IDN strings
2. **Location [2]:** Indicated by applicant as principal place of business. Two-letter country code is based on ISO 3166-1 code lists. See http://www.iso.org/iso/country_codes/iso_3166_code_lists/country_names_and_code_elements.htm
3. **Community:** Based on applicant's answer to question 19
4. **Geographic:** Based on applicant's answer to question 21
5. **Applicant Support:** Three applications have applied for applicant support. See application IDs: 1-1309-46695 (KIDS), 1-1873-71868 (IDN) and 1-2104-81541 (UMMAH)
6. **Format:** In some cases the display of the application data has been adjusted for format consistency
7. The Geographic Names Panel has determined that the string does not fall within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4.
8. The Geographic Names Panel has determined that the string falls within the criteria for a geographic name contained in the Applicant Guidebook Section 2.2.1.4. The applicant was contacted to provide documentation of support/non-objection per Section 2.2.1.4.3 of the Applicant Guidebook.
9. The String Similarity Panel has determined that this string is visually similar to an existing TLD (.mil), creating a probability of user confusion.
10. Per the 4 June 2013 New gTLD Program Committee (NGPC) approved [resolution](#) to adopt the "NGPC Scorecard of 1As Regarding Non-Safeguard Advice in the GAC Beijing Communiqué."

EXHIBIT C-044



December 3, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President and CEO
Mr. Cherine Chalaby, Chair of the New gTLD Program Committee
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Dr. Crocker, Messrs. Chehade and Chalaby, and Members of the New gTLD Program Committee:

On behalf of Amazon EU S.à.r.l (Amazon), we write in connection with our pending gTLD applications for .AMAZON and its IDN equivalents.

During ICANN's recent meeting in Buenos Aires, multiple sources brought to our attention a possible misunderstanding regarding Amazon's attempts to find a mutual resolution with the Governments of Brazil and Peru. Although the NGPC was unable to meet with us to discuss potential concerns, we hope this letter provides sufficient details to clarify any misunderstandings.

Amazon conferred with the Governments of Brazil and Peru on numerous occasions – both before and after Beijing – and proposed a variety of compromises that we believed respected both the cultural history and needs of the Amazonia Region, as well as those of Amazon as a global corporation trusted by millions of people world-wide. These compromises included: i) a proposal to support a regionally-focused .AMAZONIA, .AMAZONAS, or .AMAZONICA gTLD to be owned/controlled by the governments of the Amazonia Region; ii) a proposal to block on the second-level of .AMAZON terms representing governments and government organizations, including the Organização do Tratado de Cooperação Amazônica (OTCA, the treaty organization that represents the entire Amazonia Region); iii) a proposal to identify, in coordination with the OTCA, terms of specific cultural sensitivity and prevent second-level use of such terms on .AMAZON; iv) a proposal for regional governments to use relevant domain names to re-direct to the official government sites; and, v) proposals for other ways in which Amazon and governments in the Amazonia Region could work together to find a mutually acceptable resolution. With each proposal and during other open ended discussions to identify a mutually agreeable solution, we were told that the governments would only accept withdrawal of our applications and/or a change of our gTLD string (for example, .AMAZONCORPORATION or .AMAZONCOMPANY).

Our attempts at compromise occurred over eight months, including communications by letter, email, telephone, video-teleconference calls, meetings at ICANN, as well as sending a delegation (made up of a few Amazon representatives who work on the new gTLD program for the company and our regional counsel) to Brasilia. The meeting in Brasilia was held at OTCA's headquarters and was organized and managed by representatives from the Amazonia Region governments, not by representatives from Amazon. In addition to our verbal and written

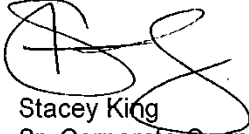
proposals made to the relevant governments, we have reflected several of the proposals above in a PIC, which we continue to stand behind (attached).

All of our communications and meetings with the governments of the Amazonia Region were respectful, and we repeatedly attempted to provide additional concessions – up until the week before the ICANN Meeting in Durban – in the hope we could resolve the matter in a mutually agreeable way. At no time did Amazon ever make “demands” on the governments. Indeed, as noted by Brazil’s own GAC representative in their Durban comments, “I would like to inform all of you that we have very good conversations with the Amazon, Inc. We understand their business plan. All of our conversations, we have met at least three times, were carried out with a very faithful willing from both sides. Nobody thinks that each of the other side has bad faith on this. We understand their business plan. We understand they’re willing to make a good job. But for a matter of principle, we cannot accept this registration.” Transcript – GAC Plenary, Tuesday, July 16, 2013.

We hope this information assists the NGPC in its deliberations and understanding of our good faith attempts to find a resolution. We remain willing to meet with the NGPC to discuss this or any other matters in connection with these applications.

Thank you for your time and consideration.

With best regards,

A handwritten signature in black ink, appearing to be 'Stacey King', written over a circular stamp or seal.

Stacey King
Sr. Corporate Counsel, Amazon



July 4, 2013

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. Cherine Chalaby, Chair of the New gTLD Committee
Internet Corporation for Assigned Names and Numbers (ICANN)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Dear Dr. Crocker and Messrs. Chehadé and Chalaby:

On behalf of Amazon EU S.à.r.l (Amazon), we write to submit for your consideration the attached Public Interest Commitment (PIC) in connection with our gTLD applications for .AMAZON (including our IDN applications).

As you know, the Government Advisory Committee (GAC) was unable to reach consensus in Beijing on the objection by the Governments of Brazil and Peru to our .AMAZON applications. As a result, the GAC advised that our applications be placed on hold until Durban, which the Board accepted and instituted.

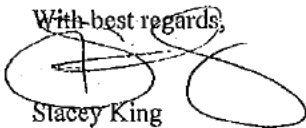
Amazon is committed to working with the Governments of Brazil and Peru to address their concerns and has reached out on several occasions – both before and after Beijing – and made a variety of proposals we believe represent a middle ground that respects both the cultural history and needs of the Amazonia Region, as well as the rights of Amazon, a company with a global brand name and our millions of customers world-wide. Unfortunately, we have been unable to reach an agreement at this time. It is our hope, however, that the Governments of Brazil and Peru will be open to continued dialogue in the future.

The attached PIC is submitted to both you and the GAC. Amazon is ready and willing to attach this PIC to our applications for .AMAZON (including our applications for .AMAZON in Chinese and Japanese script) upon the release of our applications from Board/GAC suspension.

We continue to have great respect for the Amazonia Region and its Governments, and look forward to engaging in continued dialogue that reflects the needs and sensitivities of all the parties involved.

Please contact us if you have any questions.

With best regards,



Stacey King
Sr. Corporate Counsel, Amazon

Cc: Heather Dryden, Chair, Government Advisory Committee

Amazon EU S.à.r.l (Amazon) is committed to operating the .AMAZON registry in compliance with all applicable laws and regulations and in furtherance of the goals outlined in our Application, Question 18.

The primary objective for Amazon's Public Interest Commitment ("PIC") is to reinforce and clarify our intentions to operate the .AMAZON registry as a secure, stable, and trusted platform for our customers in every part of the world.

Amazon understands and is sensitive to the concerns raised by the Governments of Brazil and Peru. We are committed to avoiding user confusion and respecting the region's history and cultural identity, while simultaneously respecting ongoing principles of coexistence between Amazon's global commercial operations and the Organização do Tratado de Cooperação Amazônica's (OTCA) inter-governmental protections of the Amazonia Region. To that end, Amazon will:

- Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA and its Member Governments.
- Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.
- Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".

Amazon's commitments identified in this Specification 11 are limited to and may be invoked and/or contested under the PIC Dispute Resolution Process ("PICDRP") only by the OTCA on behalf of the Governments that jointly govern the Amazonia Region on behalf of the Amazonia people.

Amazon's commitments identified in this Specification 11 are contingent on Amazon's reasonable satisfaction with the final terms of ICANN's proposed PIC requirements, including the associated PICDRP. In such case, Amazon will consider whether any change request will be required.

EXHIBIT C-045



PERÚ

Ministerio
de Relaciones Exteriores

Lima, December 24th, 2013

Mr. Steve Crocker
Chair of the Board
of ICANN

Dear Mr. Crocker:

Regarding the objection presented by Peru, Brasil and the Amazonian countries, for the application of the domain ".amazon", I am pleased to extend a copy of the certification provided by the International Organization for Standardization.

In the above mentioned document, the department of Amazonas, located in Peru, is registered in ISO 3166-2, which according to article 2.2.1.2.2 "Geographic Names Requiring Government Support" of the gTLD Applicant Guidebook, constitutes a safeguard for any interested party in the registration of a geographical domain name:

"3. An application for any string that is an exact match of a sub-national place name, such as a country, province, or state, listed in the ISO 3166-2 standard."

We believe, this information further advances the objection presented by Peru, Brasil and the Amazonian countries that, as established, should be understood as covering the expression subject of application, in every language.

Regards,

Fernando Rojas Samanez
Vice Minister of
Foreign Affairs of Peru

EXHIBIT C-046



January 10, 2014

Dr. Steve Crocker, Chairman of the Board
 Mr. Fadi Chehadé, President and CEO
 Mr. Cherine Chalaby, Chair of the New gTLD Program Committee
 Internet Corporation for Assigned Names and Numbers (ICANN)
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094

Dear Dr. Crocker, Messrs. Chehade and Chalaby, and Members of the New gTLD Program Committee:

On behalf of Amazon EU S.à.r.l (Amazon), we write in follow up to the attached December 24, 2013 letter from the Vice Minister of Foreign Affairs for Peru to the Board regarding our pending gTLD applications for .AMAZON and its IDN equivalents.

The Applicant Guidebook ("AGB") specifically requires an exact match to names listed in the ISO 3166-2 standard. AMAZON is not an exact match with AMAZONAS.

As stated in our Response to the GAC's Durban Communiqué:

1. .AMAZON, .アマゾン and .亚马逊 are not country or territory names, and thus are not prohibited as gTLD strings under Section 2.2.1.4.1 of the AGB;
2. Nor are they geographic names that require documentation of support or non-objection from any government or public authority pursuant to Section 2.2.1.4.2 of the AGB.

Five specific categories of strings are considered "geographic names" requiring such government or public authority support, including "any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard." (AGB §2.2.1.4.2) (emphasis added).

.AMAZON, .アマゾン and .亚马逊 do not fall within any of the five categories, including the ISO 3166-2 list.

The AGB is clear in its distinction between country, territory and capital city names listed in the ISO 3166-1 standard - which are all protected "in any language" - and sub-national place names (e.g., a county, province, or state), which require protection of the "exact match" of those place names listed in the ISO 3166-2 standard. Requiring sub-national place names to be subject to government approval in any language goes beyond the clear rules set out in the AGB. Indeed, the section of the AGB cited by the Vice Minister clearly states this rule.

As noted in our reply to the GAC's Durban Communiqué, a recent decision of the Peruvian Trademark Office found no similarities between a third party mark for AMAZONAS and our well-known AMAZON mark "since the denomination AMAZONAS makes reference to one of the regions located north of Peru, while the denomination AMAZON will be perceived by the average consumer as a fanciful sign."¹

Thank you for your time and consideration.

With best regards,

Stacey King
 Sr. Corporate Counsel - Amazon

¹ *Maribel Portella Fonseca v. Amazon Technologies, Inc.*, Resolución N. 2154-2013/CSD-INDECOPI.



PERÚ

Ministerio
de Relaciones Exteriores

Lima, December 24th, 2013

Mr. Steve Crocker
Chair of the Board
of ICANN

Dear Mr. Crocker:

Regarding the objection presented by Peru, Brasil and the Amazonian countries, for the application of the domain ".amazon", I am pleased to extend a copy of the certification provided by the International Organization for Standardization.

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"3. An application for any string that is an exact match of a sub-national place name, such as a country, province, or state, listed in the ISO 3166-2 standard."

We believe, this information further advances the objection presented by Peru, Brasil and the Amazonian countries that, as established, should be understood as covering the expression subject of application, in every language.

Regards,



Fernando Rojas Samanez
Vice Minister of
Foreign Affairs of Peru

EXHIBIT C-047

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/396/ICANN/13 (c. EXP/397/ICANN/14, EXP/398/ICANN/15)

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE)

vs/

AMAZON EU S.À.R.L. (LUXEMBOURG)

and

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE)

vs/

AMAZON EU S.À.R.L. (LUXEMBOURG)

and

PROF. ALAIN PELLET, INDEPENDENT OBJECTOR (FRANCE)

vs/

AMAZON EU S.À.R.L. (LUXEMBOURG)

This document is an original of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

**International Chamber of Commerce
International Centre for Expertise**

Case No.

396/ICANN/13 (c. EXP/397/ICANN/14, EXP/398/ICANN/15)

in re “.AMAZON”; アマゾン and 亚马逊 gTLD

EXPERT DETERMINATION

Prof. Alain Pellet, Independent Objector

– Objector –

vs.

AMAZON EU S.à.r.l.

– Applicant –

Expert

Professor Luca G. Radicati di Brozolo

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DEFINITIONS

AGB	ICANN gTLD Applicant Guidebook, version 2012-06-04
Amazon Community	The community defined in § 40 below
Applicant	AMAZON EU S.à.r.l.
Centre	International Centre for Expertise of the International Chamber of Commerce
Expert	Professor Luca G. Radicati di Brozolo
gTLD	Generic top level domain
IO	Independent Objector
Objection Procedures	Module 3 of the AGB
OTCA	Amazon Cooperation Treaty Organization
Procedure	New gTLD Dispute Resolution Procedure, Attachment to Module 3 of the AGB
Strings	“.AMAZON”, “.アマゾン” and “.亚马逊” gTLDs

1. This Expert Determination is rendered in the consolidated dispute settlement proceedings arising from the community objections to three applications for the generic top-level domain (“gTLD”) name “.AMAZON”, and the Japanese and Chinese terms for AMAZON (respectively アマゾン and 亚马逊) within the framework of the ICANN gTLD Application Process governed by the ICANN gTLD Applicant Guidebook, version 2012-06-04 (the “AGB”).

I. INTRODUCTION

2. The three community objections at the origin of these proceedings (the “**Objections**”) were filed on March 12, 2013 with the International Centre for Expertise of the International Chamber of Commerce (the “**Centre**”) by the Independent Objector, Professor Alain Pellet, Contact Information Redacted (the “**IO**”).
3. The Objections (EXP/396/ICANN/13, EXP/397/ICANN/14 and EXP/398/ICANN/15) relate to three applications (the “**Applications**”) filed by AMAZON EU S.à.r.l., Contact Information Redacted (the “**Applicant**”) Contact Information Redacted respectively for the “.AMAZON”, “.アマゾン” and “.亚马逊” gTLDs (collectively the “**Strings**”).
4. The content of all the Objections is practically identical.
5. On April 23, 2013 the Centre informed the Parties of its decision to consolidate the Objections.
6. The Applicant filed its Responses to the Objections on May 24, 2013.
7. The IO is represented in these proceedings by Ms Heloïse Bajer-Pellet, Contact Information Redacted
Mr Daniel Müller, Contact Information Redacted
Mr Phon van den Biesen, Contact Information Redacted
; and Mr Sam Wordsworth, Contact Information Redacted
Contact Information Redacted
8. The Applicant is represented in these proceedings by Messrs. Nick Bolter and Gareth Dickson, Edwards Wildman Palmer UK LLP, Contact Information Redacted
9. On June 28, 2013 the Centre informed the Parties that on June 24, 2013 the Chairman of the Standing Committee appointed as sole member of the Panel of Experts Professor Luca G. Radicati di Brozolo, Arblit Radicati di Brozolo Sabatini, Contact Information Redacted (the “**Expert**”), who submitted his declaration of acceptance and availability and statement of impartiality and independence on June 26, 2013.
10. The file of the case was transmitted by the Centre to the Expert on August 1, 2013.

Article 21(a) of the Procedure provides that the Centre and the Expert shall make reasonable efforts to ensure that the Expert renders his decision within 45 days of the “*constitution of the Panel*”. The Centre considers that the Panel is constituted when the Expert is appointed, the Parties have paid their respective advances on costs in full and the file is transmitted to the Expert.

11. Following an exchange of correspondence with the IO and the Applicant (collectively the “**Parties**”), the Expert issued the Expert Mission on September 3, 2013.
12. At the request of the IO, the Expert allowed an exchange of submissions on the Applicant’s challenge to the IO. The IO filed his additional written statement on August 16, 2013 whilst the Applicant filed its reply on August 22, 2013.
13. On September 9, 2013 the Centre informed the Expert that the time limit for submission of the draft expert determination was extended until October 5, 2013.
14. On the same date the Centre agreed to the Expert’s request to deal with all three Objections in a single expert determination. The request was based on the consideration that the Applicant and the Objector are the same in all the consolidated proceedings and that the issues raised by all three Objections are practically identical and raise almost identical factual and legal issues.
15. In accordance with Article 19 of the the New gTLD Dispute Resolution Procedure (the “**Procedure**”),¹ and in the absence of any request by the Parties, no oral hearing was held.
16. The draft expert determination was submitted by the Expert for scrutiny to the Centre within the extended time limit in accordance with Article 21(a) and (b) of the Procedure.
17. These proceedings are administered by the Centre pursuant to Article 3(d) of the Procedure, which is applicable by virtue of its Article 1(d).
18. The proceedings are governed, as to matters of procedure, by the Procedure and by the Rules for Expertise of the International Chamber of Commerce, as supplemented by the ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure (Article 4(a) and 4(b)(iv) of the Procedure).
19. Pursuant to Article 5(a) of the Procedure, the language of all submissions and proceedings was English. Moreover, in accordance with Article 6(a) of the Procedure, all communications by the Parties, the Expert and the Centre were submitted electronically.
20. As dictated by Article 20 of the Procedure, the merits of the dispute before the Expert are to be decided by reference to the relevant standards defined by ICANN, in particular in Module 3 of the AGB (the “**Objection Procedures**”), as well as to any rules and principles that the Expert determines to be applicable, having due regard

¹ Attachment to Module 3 of the AGB.

to the statements and documents submitted by the Parties. The burden of proof that the Objection should be sustained rests with the Objector in accordance with the applicable standards.

21. As agreed by the Centre, and given that the issues raised by the three Objections are for the most part identical, this Expert Determination deals with all three Objections collectively. Reference to the individual Objections will only be made insofar as they raise different issues from the other Objections.

II. THE CHALLENGE TO THE IO AND THE IO'S STANDING

(a) *The Position of the Applicant*

22. On April 6, 2013, after the filing of the Objections by the IO, the Applicant wrote to ICANN denouncing that "*the office of the IO exhibits a Conflict of Interest within the meaning of ICANN's Conflict of Interest Policy*". The challenge contended that the IO's Objections were based on comments in the Early Warning Procedure by the Governments of Peru and Brazil, with whom the IO has "*special links*" due to his professional ties with them, as he has with the Governments of Bolivia and Argentina, likewise identified as opponents of the Applications. Those links are asserted to have influenced and to continue to influence the IO's decision-making process in these proceedings. For the Applicant the Objections were used to formalize the objections of the governments of Brazil and Peru, in contrast with the principle that the IO can only act on behalf of the public who uses the global internet. The conflict of interest is viewed as the reason for the alleged inconsistency between the IO's approach to this application and to the ones for similar gTLDs (for instance for ".africa", ".persiangulf" and ".islam"). According to the Applicant, allowing the Objections to proceed would damage the integrity of the gTLD dispute resolution process, because the challenges would be made public, leading to the perception that the IO is not a safety net for the public. The Applicant concluded with the request that ICANN set aside the Objection on account of the conflict of interest and, if deemed necessary, appoint another non-conflicted IO. The Applicant accepted to maintain confidentiality over its challenge, while reserving its right to raise the matter if the Objection were allowed to proceed.
23. The Applicant wrote to ICANN again on April 24 and May 18, 2013 reiterating its challenge and soliciting a response prior to the deadline for responding to the Objection.
24. Referring to its correspondence with ICANN, in the Response to the Objection the Applicant restated that the IO lacks standing in these proceedings because of the conflict of interest. Indeed, under the AGB he has standing only to represent "*the public who use the global internet*", and cannot act on behalf of any particular entity or entities, as he is purportedly doing in these proceedings.
25. In its reply of August 22, 2013 to the IO's additional statement of August 16, 2013, the Applicant puts forward three sets of arguments. *First*, it argues that the IO has a "*clear*" conflict of interest requiring him to recuse himself. It contests that the AGB

does not require the IO to be independent of anyone standing to benefit from the objection and releases him from the “*universally recognized obligation to decline additional work where it would create a conflict of interest with an existing relationship*”. While recognizing that the IO does not act as a judge, arbitrator or expert, the Applicant underscores that the AGB binds him to the same basic rules of ethics that apply to those offices in relation not only to ICANN and applicants, but also to any other influences. The Applicant concedes that “*a normal average social life*” does not necessarily entail a conflict of interest or lack of independence, but asserts that the IO’s ties to the governments of Brazil or Peru are not merely part of such a social life.

26. Second, the Applicant restates that the IO can only represent the community made up of those who use the internet (referred to by the parties also as the “*internet community*”) and that it is “*plainly wrong*” that he can only represent a community that is “*delineated and distinguishable from internet users in general*”. The IO is granted special standing to fulfill his role within the gTLD program and, unlike “*ordinary*” objectors, does not have to prove an on-going relationship with a community. Consequently, he loses his special standing if he acts outside his role, e.g. on behalf of a community comprising particular persons or entities. In the case at hand the community represented by the IO is not the public who use the internet. The IO requests the same remedy sought by his client Peru, who is the largest financial contributor to the Amazon Cooperation Treaty Organization (“**OTCA**”). Notwithstanding that the Applications generated no reasoned or substantiated comments from the public, unlike similar applications (“*.gcc*”, “*.islam*”, “*.persiangulf*” and “*.africa*”), the IO only objected to the Applicant’s ones. The Applicant also contests that OTCA lacks the capacity to file an objection and differs in this respect from other organizations that could have objected to the strings to which the IO did not object. It adds that objections to the Applications could have been put forward by other entities. Had he followed the same criteria as for other objections, the IO would have concluded that OTCA and the governments of Brazil and Peru were in at least as good a position as the IO to file an objection. The IO’s failure to demonstrate his complete independence and his apparent pursuit of the interest of particular persons or entities deprives him of standing in this case.
27. Third, the Applicant refers to a statement of the Centre that the decision over the IO’s independence falls within the Expert’s authority². The Applicant argues that whether the IO has exceeded his role is a serious issue, because the Expert Determination will be accepted by ICANN (Section 3.4.6 of the Objection Procedures). This means that, if the issue is not decided by the Expert, the Applicant

² The Applicant refers to a letter of the Center dated July 8, 2013 in reply to a request submitted by it on this point. Actually the Center’s letter of that date states that “*Whether a decision on this question [i.e. the independence of the IO] falls into the Expert Panel’s scope and authority pursuant to the applicable rules and procedures, will have to be decided by the Expert Panel itself. Should the Expert Panel decide that it does fall into the scope of its work, it will then be directly on the Expert Panel to take a decision on the raised question.*”

risks “*unjustly and unfairly los[ing] with limited, if any, scope for a remedy*”. This would result in irreparable damage to the integrity of the gTLD dispute resolution process.

(b) *The position of the IO*

28. In a letter to counsel for the Applicant of June 8, 2013 the IO denounced the inappropriateness of the Applicant’s direct approach to ICANN on the matter of his independence, stating that it is not for ICANN to take a position on it. The IO argued that the claim concerning his alleged bias “*has to be dealt with by the Expert panel, who has full authority to decide in all impartiality*”.
29. In the Objection the IO disclosed his relations with the Governments of Brazil and Peru, but clarified that in the present proceedings he is not representing them and is acting in the sole interests of the public who use the internet and that his relation with a State has nothing to do with his decision to object or not.
30. In his additional statement of August 16, 2013 the IO noted that Article 11(4) of the Rules is not relevant to a challenge of the IO, since the IO is only a party to these proceedings. He acknowledged, however, that the absence of a general procedure concerning the IO’s independence and the possibility to challenge him for the entire gTLD program does not mean that no remedy is available. The IO recalls that in his June 8 letter referred to above he recognized that the Expert has the power to assess the IO’s independence and to draw the necessary conclusions with regard to the Objection. Indeed, adds the IO, “*the Expert Panel is the guardian of the integrity of the process and it has the duty to ensure that the Expert Determination is soundly based on the standards established by the Guidebook*”. Although it affects only the IO’s standing, the condition that the IO must not act on behalf of any particular person or entity, but solely in the best interests of the users of the internet (Objection Procedures, Section 3.2.5), needs to be addressed by the Expert even if in Article 2(d) of the Procedure the expert determination is referred to only as a “*decision upon the merits of the objection*”. The Expert must also address the standing of the Objector (Objection Procedures, Section 3.2.2). On this point the IO concludes that the Expert has the power to address whether the IO acts in the interest of the internet public or of a particular category of persons, regardless of whether the issue pertains to standing or to the merits. The matter must be decided in a single expert determination, there being no option to have separate decisions on standing and merits.
31. On the merits of the challenge, the IO posits that, pursuant to Section 3.2.5 of the Objection Procedures, he must remain independent and unaffiliated with any gTLD applicant. He considers that the Applicant’s understanding that conflicts can occur where an objection is filed in furtherance of the interests of a potential community with ties to the IO “*hardly makes any sense and would ultimately exclude any person having a normal average social life to serve as the Independent Objector*”. The Applicant should not be entitled to construct its case on the artificial alleged bias deriving from the IO’s professional relationships when he was appointed. While accepting that the AGB directs him to act in the sole interest of “*the public who use*

the global internet", the IO cannot accept that this implies that that public is the only community that he has standing to represent. The fact that the IO is dispensed from proving the regular standing requirements for the types of objections that he can file (Objection Procedures, Section 3.2.5) does not mean that his community objections can concern only the rights and interests of a "hypothetical" community of internet users. This would entail a profound change in one of the four tests for community objections, the one relating to the existence of a clearly delineated community, because the public who use the internet is not such a community. Even if the community relevant here were the one of those living in the geographical region with strong links to the Amazon, it would not follow that the IO is acting on its behalf, also considering the Applicant's acknowledgment that such community would not benefit from the rejection of the Application. The AGB does not require that every string which targets a community be applied for by a representative of that community. It is irrelevant whether the Applicant intends to target a specific community or to reserve its gTLD for it. However, the operation of the gTLD must not impinge on the rights and legitimate interests of a significant portion of the community to which the string is explicitly or implicitly targeted. The IO points to Section 1.2.3.2 of the Objection Procedures, which permits community applications even if the application is not designated as community-based or aimed at a particular community. Therefore, what is relevant is not who is targeted by the applicant, but whether a particular community is targeted by the string. The IO acts for a public interest even if he invokes the interest of a particular community and mitigates the risk that in some cases a valid objection might not be raised by those entitled to do so. As such he acts as a safety net. Finally, the IO notes that his policy is not to file an objection when there is "a single established institution" that could do so. In the present case there is no such single institution. OTCA, in particular, could not validly have filed an objection because it is not aimed at representing the interests of the Amazon region, but at realizing the economic interest of its Member States within that region.

(c) *The Determination of the Expert*

32. In light of the Expert's conclusions on the merits of the Objection (Section III below), an analysis of the challenge to the IO's independence could be moot. However, the issues raised by the Applicant in this connection have been amply debated by the Parties and raise important questions of principle for the gTLD dispute resolution process. The Expert therefore deems it appropriate to address them.

(i) The Expert's power to decide the challenge

33. The Parties' arguments raise, as a preliminary matter, the issue whether it falls within the Expert's mandate to address the existence of the IO's alleged conflict of interest and, in the event, to draw the consequences of a finding that a conflict exists.
34. Both the Applicant and the IO concur that the Expert has authority to decide a challenge to the IO's independence.

35. The Expert shares this view.
36. As noted by the Parties, there is no rule explicitly dealing with the power to decide on challenges to the independence of the IO, and in particular vesting it on the Expert. Such a power is not conferred on the Expert by the Rules, Article 11(4) of which deals only with challenges to the independence of the expert panel, nor by the Objection Procedures or the Procedure, the latter of which defines the expert determination as “*the decision on the merits of the Objection*” (Article 2(d)).
37. Nonetheless, as noted by the Applicant, whether the IO has exceeded his role is a serious issue that can impact on the decision on an objection and that must be capable of being decided. This is all the more so because Section 3.4.6 of the Objection Procedures stipulates that expert determinations will be accepted by ICANN, thus in essence making them final.³ The power to decide a challenge to the IO would therefore seem to inure to the Expert’s inherent powers.
38. The issue is even less problematic if, as acknowledged by the Parties, the question of the IO’s independence can be characterized as pertaining to the IO’s standing. Indeed, it is indisputably within the Expert’s powers to rule on the standing requirements of objectors (Objection Procedures, Section 3.2.2). There is no reason to hold that this does not hold true also for the standing of the IO.

(ii) The merits of the challenge to the IO

39. It being accepted that the Expert has jurisdiction to deal with a challenge to the IO’s independence, the next question debated by the Parties that needs to be addressed is whether, as contended by the Applicant, the IO may only file objections on behalf of the community consisting of “*the public who uses the global internet*” or whether, instead, he is entitled to object on behalf of, or at least in the interest of, more strictly defined groups or communities.
40. This issue is preliminary to the one of conflict of interest. In the present case, even on the IO’s admission, the Objection relates not to the interests of the internet public but to those of a particular group of individuals or entities, which will be referred to here as the “**Amazon Community**” with an expression used also by the Parties⁴. Accepting the Applicant’s preliminary arguments would therefore entail that the IO would lack standing altogether, so that the conflict issue would not even have reason to be raised.
41. The Applicant relies on a strict reading of the statement in Section 3.2.5 of the Objection Procedures that the IO “*does not act on behalf of any particular persons or interests, but acts solely in the best interests of the public who use the internet*”.

³ Section 3.4.6. of the AGB reads as follows: “*The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process*”.

⁴ This definition leaves unprejudiced whether the Amazon Community is a community within the meaning of the substantive standards for the sustainability of a community objection under Section 3.5.4 of the Objection Procedures. This issue is addressed in Section III below.

42. In the Expert's opinion such a formalistic interpretation would result in an unduly restrictive conception of the IO's role. Indeed, there is merit in the IO's position that the internet community is not clearly delineated (and perhaps even, in his words, "*hypothetical*"). This being so, the Applicant's position would entail that the IO's objections would never meet the clear delineation test. What is more, since the internet community is somewhat amorphous, if the IO's standing to object were limited to applications affecting the interests of that community his role would be seriously curtailed, because few applications would qualify as such.
43. The language of Section 3.2.5 of the Objection Procedures allows a more constructive interpretation. The statement that the IO's role is to file objections when "*no objection has been filed*" can be construed in the sense that his role is to raise objections in situations where, for whatever reason, no objection will be forthcoming, even if the application is "*highly objectionable*". This could occur, for instance, if there is nobody in a position to represent the community or if those who could raise the objection are unwilling to do so for fear of negative repercussions, lack of financial means and so on. Likewise, the statement that the IO "*does not act on behalf of any particular person or entities*" can be understood as permitting the IO to raise an objection in situations where, while not technically acting "*on behalf*" of anybody (in the sense that nobody has given him a mandate to act or would even want him to act), he takes into account what can be considered the interests of a given community that would be prejudiced by an application.
44. The conclusion must therefore be that the Objections' admissibility is not affected by the fact that it concerns interests possibly coinciding with those of the Amazon Community, rather than those of the broader internet community.
45. In light of this conclusion and of the asserted coincidence between the interests of the Amazon Community defended by the Objections and those of the States with which the IO has professional relations, the issue of conflict of interest raised by the Applicant becomes relevant.
46. On the subject of the IO's conflicts of interest Section 3.2.5 of the Objection Procedures requires the IO to be and to remain independent and unaffiliated "*with any of the gTLD applicants*". In this connection, it points to the "*various rules of ethics for judges and international arbitrators*" as models to assess independence. It is silent, instead, on the possible conflicts arising from the IO's relations with the persons or entities whose interests he may be deemed to further by means of a given objection.
47. This silence could be explained by the fact that the Objection Procedures deal with the IO's independence in relation to his selection process, which occurs when the potential objectors are not yet identified and possibly even identifiable. It is therefore not conclusive. Although the IO is not in the same position as a judge or an arbitrator, the requirement that he be independent of one of the parties with an interest in the outcome of the proceedings (the applicant) seems to militate in favor of imposing the same requirement with respect to the other interested party (the group in whose purported interest the objection is filed). The IO's acceptance that

the Expert has jurisdiction to examine the challenge implies an acknowledgement on his part that a conflict with parties standing to benefit from his Objection is potentially fatal to the Objection.

48. The Expert has difficulty accepting the IO's assertion that a finding of conflict in circumstances such as those of the present case would preclude anybody with "*a normal average social life*" from serving as the IO. The question is not whether the existence of special ties with certain persons or entities or categories of entities (which anybody will inevitably have) prevents a person from being appointed IO.⁵ Rather, it is whether the existence of such ties becomes problematic in the event that the IO raises an objection that can be correlated to the interests of those with whom the ties exist.
49. The Applicant does have a point when it contests that the IO's professional ties at issue here do not fall within the notion of normal average social life. Such a definition does not sit well with the IO's representation of two sovereign States in international judicial proceedings.
50. In any event, if regard must be had to the standards applicable to judges and arbitrators (as predicated by Section 3.2.5 of the Objection Procedures), the relevant perspective in international arbitration nowadays is an objective one. In the words of the *IBA Guidelines on Conflicts of Interest in International Arbitration* (General Standard 2(c)), it is that of "*a reasonable and informed third party*", whilst the ICC Rules of Arbitration refer to independence "*in the eyes of the parties*" (Article 11.2). By such standards, the IO's ties to two prominent members of the Amazon Community could give rise to a presumption of conflict in this case, completely regardless of whether, in filing the Objection, the IO acted "*on behalf*" of his clients, as contended but in no way substantiated by the Applicant.
51. There is one argument that could be advanced to refute the allegation of conflict of interest. It has to do with the absence of any indication that the two Governments "*on whose behalf*" he is alleged to be acting could not have filed an objection themselves (§ 91 ff. below) and would therefore have had to rely only on the IO to do it for them. In these conditions, the lack of initiative on the part of those Governments could denote that they had no interest in the Objections and that therefore the IO's action was prompted by other considerations. In the view of the Expert, however, such an argument does not carry sufficient weight. The decision on the existence of a conflict of interest cannot be made to depend on speculations as to the reasons why an objection was made by the IO rather than by the entities that could in principle stand to benefit from them.
52. Likewise, the Expert does not believe that the conflicts between the IO and the potential beneficiaries of an objection should be assessed differently from those with applicants. Admittedly, the practical relevance of the two types of conflicts

⁵ The Applicant does not suggest that the IO should not have accepted his role at the outset because of ties of that kind.

could be different.⁶ Yet, the Expert considers it paramount for the confidence in the gTLD dispute resolution process that any decision on the IO's independence be taken on purely objective criteria and bearing in mind the need to ensure the perception of complete neutrality and impartiality of the office of the IO.

53. The Expert is of the view that, objectively considered, the links between the IO and two major representatives of the Amazon Community lead to justifiable doubts as to his independence in the eyes of the Applicant and of the broader public. Given the importance of ensuring the perception of neutrality, independence and impartiality of the office of the IO and of the entire gTLD dispute resolution process, the Expert finds that the Applicant's challenge to the independence of the IO must therefore be upheld.

III. THE MERITS OF THE OBJECTION

54. The Objection Procedures do not address the consequences of an upholding of a challenge to the independence of the IO. In particular, they do not provide that, upon a finding of a conflict of interest of the IO, the IO loses standing or that another IO must be appointed for the specific case, as suggested by the Applicant; nor do they provide for any other solution. If the consequence of a finding of lack of independence were a loss of standing by the IO, any consideration on the merits of the challenge would be moot. However, given the silence of the Objection Procedures and the resulting uncertainty on the consequences of the finding that the IO lacks the requisite independence in this case, the Expert considers it appropriate to deal also with the merits of the Objections and to decide whether they would deserve to be upheld, regardless of the IO's standing.
55. In accordance with Section 3.5.4 of the Objection Procedures, objections can be sustained if the Expert ascertains the existence of substantial opposition from a significant portion of the community to which the string may be targeted. This provision applies also to objections filed by the IO.
56. For a showing of such opposition the IO must prove that:
- (i) the community invoked by him is clearly delineated;
 - (ii) there is substantial community opposition to the Applications;
 - (iii) there is a strong association between the community invoked by the IO and the Strings;
 - (iv) the Applications create a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the

⁶ Conflicts of interest of the IO with respect to an applicant entail a risk that no objection would be raised, despite the application's potential adverse impact on general interests. On the other hand, a conflict with respect to a party standing to benefit from an objection might lead to an objection being filed by the IO where none would otherwise be filed. However, the objection would still have to be assessed on its merits by a third party (the expert panel).

Strings may be explicitly or implicitly targeted.

57. The four criteria will be addressed here in the order in which they have been addressed by the IO in the Objections.

III.A Targeting: the association between the community invoked by the IO and the Strings

(a) The position of the IO

58. According to the IO, although the Applications have not been framed as community-based, since they only target the Applicant and its subsidiaries, the Strings can be implicitly linked to a specific community different from the Applicant. The test to assess the Applications' implicit target is not limited to the intended use of the Strings by the Applicant, but is primarily concerned with the expectation of the average internet users and with their perceptions of the Strings and their associations.
59. The Applications target also "*the South-American region with the same English name around the Amazon River*". The identity between the Applicant's business name and brand and the English word for the South American river is not coincidental. The Applicant itself intentionally links the Strings to the Amazon river and region in its communications. The correlation between the Strings and the Amazon river and region is corroborated by the consistent use of the term "*Amazon*" to describe and characterize the Amazon region and the community. The term "*Amazon region*" is used by the 1978 Treaty for Amazon Cooperation and by UNESCO, which has included parts of the Amazon region in the World Heritage List under the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage. The denomination is used also by the World Wildlife Fund.
60. In the eyes of the IO, all the foregoing demonstrates a strong association between the Amazon region and its community and the Strings.

(b) The position of the Applicant

61. The Applicant premises its argument on this point on the consideration that under the AGB only one community is targeted by an application, since the AGB requires more than a mere nexus between the applied-for string and the asserted community; it requires a "*strong association*". The IO has failed to show that the Strings target the public who use the global internet, if this is the only community that the IO is entitled to represent, nor has he proved that the Strings target any other community.
62. According to the Applicant, it is not possible to target someone accidentally, since targeting implies precision and looks to the intent of the party alleged to be doing the targeting. The Application makes no mention of the community invoked by the IO and is "*clearly targeted*" at the Applicant's brand. The IO's argument on implicit targeting is too simplistic because it ignores the Applicant's strong brand recognition

in the eyes of the public who use the global internet and holds that the Applicant will forever target Amazonia with its present and future services. The argument that the targeting test is based on the existence of a certain link or possible association by the public based on string similarity has been rejected by ICANN, which acknowledges that brand names and other strings that happen to relate to some geographic entities may also have legitimate unrelated uses. The Applicant “*clearly has ‘legitimate uses’*” for its marks, global brand and company name as a gTLD string, including in local languages, which it has used since 1994. The Applicant cites the example of the “.patagonia” gTLD, that was found not to target the community of Patagonia.

(c) *The Determination of the Expert*

63. In the Objection Procedures (Section 3.5.4) the term “*targeting*” is used in relation to the third substantive test that must be satisfied by a community objection, i.e. the one of strong association between the invoked community and the applied-for string.
64. The Objection Procedures point to the following non-exclusive factors that can be balanced to indicate a strong association between a community and the applied-for-string: (i) statements contained in the application; (ii) other public statements by the applicant; (iii) associations by the public.
65. The reason for dealing with this test at the outset in the present case is that, prior to establishing whether there is a strong association between the Strings and a community, the community having the purportedly strong association must be identified. As seen above, in the context of the challenge to the IO’s independence the Parties debated the IO’s standing to file an objection in the interest of a community other than the internet community. In relation to the substantive test, the dispute between the Parties on the identification of the community is framed in terms of whether the community in whose interest an objection is brought can differ from the one “*targeted*” by the applicant.
66. The Applicant contends that consideration can only be given to the community “*explicitly*” targeted by the Applications, which in this case is the one revolving around the business activities of the Applicant’s group and the Amazon brand. No relevance can be given to the Amazon Community which is, instead, the focus of the Objections. The IO, for his part, adopts a broader approach, which relies on the community “*implicitly*” targeted by the Applications, which in this case is the Amazon Community.
67. The Objection Procedures do not bear out the Applicant’s interpretation. Although the standard of strong association is dealt with under the heading “*targeting*”, the “*target*” of the objection is not considered in Section 3.5.4. This provision requires proof that the applied-for gTLD be strongly associated with the community “*represented by the objector*”. The focus is therefore on the community that the objector, and in this case the IO, considers to be affected, or prejudiced, by an application (and, in this sense, targeted) and on whose behalf or interest he acts. It

is not relevant whether that community is the one to which the applicant intends to direct its gTLD. The IO is persuasive in his argument that the association between a community and a string depends primarily on the expectations and perceptions of the average internet user.

68. The Applicant implies that only one community can be “*targeted*” by a gTLD and an application. The Expert finds no support in the Objection Procedures for this position, which is actually counterintuitive. If the term “*targeted*” is properly understood as meaning “*affected*”, there is no reason why there cannot be more than one community affected by a given application for a gTLD. A gTLD can well have an impact on a broader range of persons or entities than the one envisaged by the applicant. The requirement invoked by the Applicant that the association between the community and the string be “*strong*” is not conclusive, since more than one of a string’s possible multiple associations can be strong.
69. The Applicant’s argument also risks upsetting the functioning of the gTLD objection procedure, which is aimed at protecting interests other than those of gTLD applicants. If applicants were in a position to render objections virtually impossible, in practice by determining themselves the community on whose behalf objections can be brought, in most cases no objection would be possible.
70. In light of this, the Applicant’s emphasis on the intent of the party alleged to be doing the targeting and on the impossibility to target something accidentally is misplaced, because it relies on a notion that is not relevant for the strong association test. For the same reason, the insistence on the Applicant’s “*legitimate uses*” for the applied-for gTLDs and on its “*strong brand recognition in the eyes of the public*” is beside the point in this context.
71. In the case at hand, therefore, the point is not the undisputed link between the Strings and the Amazon company name and brand, which quite probably exists in the perception of a large number of internet users. Rather, the point is whether there may also exist an at least equally strong association between the Strings and other communities affected by the Application, and in particular the one whose interests the IO purports to further.
72. The answer can only be affirmative. The Strings coincide with the name of the Amazon River and thereby entail an obvious association with the Amazon Community. Leaving aside for the moment whether there is such a community (which will be addressed in the following subsection III.B), there is no doubt that not only there exists an association between the Strings and the alleged Amazon Community, but that such association is “*strong*” in the perception of internet users.
73. This is borne out by the IO’s evidence. As a matter of fact, not even the Applicant seems to dispute this, since its arguments go only to the preliminary points of whether the Amazon Community can be relevant for this test and of whether it exists at all, which is the subject of the next substantive test to be addressed.
74. The Expert is thus satisfied that the IO’s Objection meets the test of “*strong association*” between the Strings and the community in whose interest it is filed.

III.B The clear delineation of the community invoked by the IO

(a) *The position of the IO*

75. The IO recalls that the AGB does not define the term “community”. However, in requiring that the community expressing opposition be “clearly delineated” it lists certain non-limited factors, such as the recognition at local or global level, the level of formal boundaries and length of existence, the global distribution or the size of the community. The term community refers to a group of people living in the same place or having some characteristic in common, such as a territory, a region or place of residence, a language, a religion, an activity or values, interests or goals.
76. One of the relevant criteria is whether the group of individuals or entities can be delineated from others and whether members of the community are delineated from internet users in general and whether the community is recognized amongst its members and by the general public at global or local level. The IO quotes the description of the World Wildlife Fund which points to the Amazon’s vast geographic expanse that embraces the territories of nine countries, to the features of its landscape in terms of variety of species, extension of the forests and in particular tropical ones, and the number and length of rivers, to the variety of ethnic and indigenous groups and to the link between the health of the region and the health of the planet.
77. The Amazon community can be clearly delineated from the general public by its strong link with the Amazon region. The community does not only share the geographic region. It has more far-reaching common interests and ties, including economic ones and those relating to the respect of the environment and the preservation of the indigenous culture and of the archeological and ethnological wealth. These common interests are recognized and protected through OTCA by the States which share the region and a common understanding of the specificities of the Amazon community and have put in place a process of cooperation, *inter alia* to achieve sustainable development.
78. The most interested States that share the Amazon territory have thus recognized the specificities of the region, the interests of the community and their particular needs. Their cooperation shows that the community is clearly recognized as a whole, irrespective of the divisions of sovereign States. All this leads to the conclusion that the community is clearly delineated.

(b) *The position of the Applicant*

79. The Applicant points to Section 4.2.3 of the AGB which states the need for “very stringent” requirements for a clearly delineated community and that community implies “more of cohesion than mere commonality of interest”. It then acknowledges that, if the IO may only represent the public who use the global internet, that class meets the requirements of clear delineation. If, on the other hand, it is accepted that the IO may act on behalf of particular persons or entities, then the IO has not shown that the community he claims to be acting for has the required cohesiveness to be

considered as a community. The asserted community comprises eight separate and sovereign countries with their own geography, economy, history, population and bio-diversities, which entail a diversity that rules out the idea of cohesiveness. Even the existence of common interests, ties and characteristics, assuming it could be proved factually, does not establish a community under the AGB. In any event, the alleged community is not clearly delineated because it lacks formal boundaries, which is a strict requirement under the AGB. Specific and strong links with a region are insufficient to establish clear delineation.

(c) *The Determination of the Expert*

80. As discussed above, the community whose clear delineation must be considered here is the Amazon Community, and not that of internet users in general, as contended by the Applicant.
81. The Expert recalls that, in accordance with Section 3.5.4 of the Objection Procedures, the factors that can be balanced to determine whether the invoked community is clearly delineated include, but are not limited to, (i) the level of the community's public recognition, (ii) the level of formal boundaries around it and what persons or entities are considered to form it, (iii) the length of time it has been in existence, (iv) its global distribution and (v) the number of people or entities that make it up.
82. The Expert considers that some of the factors highlighted by the IO could indicate the existence of an Amazon Community. The economic interests and ties within the Amazon region, and the community that can be considered related to it, are significant. More pertinently, the Amazon Community is characterized by its importance in terms of wealth of culture, archeology, ethnology and environment, as well as by its impact on the environment of the world as a whole. It therefore has its own specificity and interests, and its interests to a certain extent coincide with those of the broader public, in particular as concerns the environment. In general terms it can also be seen to be recognized as a community by outsiders. Moreover, the Amazon Community unquestionably has a very large population and has been in existence for a long time.
83. On the other hand, as underlined by the Applicant, the purported community is composed of several different countries and exhibits within itself a considerable diversity in terms of geography, economy, population and bio-diversity. This could rule out the idea of cohesiveness, that arguably lies at the core of the notion of community and might imply something more than a mere commonality of interests. Furthermore, the IO has not focused particularly on the existence of formal barriers, which is one of the possible relevant criteria for the clear delineation test.
84. The record is therefore mixed and doubts could be entertained as to whether the clear delineation criterion is satisfied. However, in light of the conclusions on the other tests, there is no need to reach a conclusive finding on clear delineation.

III.C Whether there is a substantial opposition to the Strings within the community

(a) *The position of the IO*

85. The IO avers that the mere numerical criterion was not the intent of the drafters of the AGB, so that the Expert is not limited to a simple comparison between the number of those having expressed opposition and the overall size of the community. The word “*substantial*” can also be used to designate something of considerable importance or worth. In addition to the number of oppositions, regard must be had to their material content. Particular importance should be paid in that regard to the comments of the Governments in the Early Warning Procedure.
86. The broad meaning of the term substantial opposition is confirmed by the fact that the possibility to file community objections was granted to the IO, who has pointed out that he will abstain from filing an opposition if a single established institution is better placed to represent the community concerned. This shows that the IO’s role is to defend the public interest by acting on behalf of the public for the defense of rights and interests that lack an institution which obviously could represent it. The IO also refers to Section 3.2.5 of the Objection Procedures, which makes the IO’s objection conditional upon at least one comment in opposition having been made.
87. The IO acknowledges that the Application for the “.Amazon” string has triggered “*only a small number of comments*” and that those for the other two Strings have triggered “*no direct comments*”. This can be explained by the limited awareness of members of the community of the new gTLD program and, in the case of the Strings in the Japanese and Chinese languages, by their language. This in itself is not enough to disqualify the Objection. Indeed, it is an essential part of the IO’s mission to protect the users of the internet who are less aware of the ICANN Program and of its impact on their rights and interests. Particular importance must be accorded to the Early Warning issued by the Brazilian and Peruvian members of the GAC⁷, given that Brazil shares more than half of the Amazon region and Peru is particularly interested in the protection and promotion of the interests and rights of the Amazon Community. In support of its position on the weight of the opposition the IO points also to the endorsement by Bolivia, Ecuador and Guayana. He further notes that the Application has not received the support of any government in the region.

(b) *The position of the Applicant*

88. For the Applicant, the IO has not proved substantial opposition within “*his asserted community*” or the larger one of the internet public. In its words, “[t]here are many significant voices who could speak out in the event of genuine community opposition

⁷ The IO acknowledged that the Early Warning related only to the “.Amazon” string, but noted that it is equally relevant for the other two Strings. The concerns expressed by the Brazilian GAC member were expressed to relate also “*to possible future or existing applications in other languages, including IDN applications*”.

to the gTLDs before any opposition could be said to be ‘substantial’”. The Applicant points to OTCA,⁸ of which eight States are members and four are on ICANN’s Governmental Advisory Committee, to the millions of people who live and do business in the region, to the many environmental groups working to preserve the region’s environment and to the representatives of its indigenous peoples. The Applicant notes that, despite having knowledge of the process and the means to object, none of these potential opponents felt the need to file an objection, or even to comment or register concern regarding the Applications in the Applications Comments Forum or to oppose them in ICANN’s At-Large Advisory Committee (“ALAC”), including the Regional At-Large Organization (“RALO”) for Latin America and the Caribbean Islands. The Early Warning filed by the Governments of Brazil and Peru in November 2012, which was only directed at the Application for “.Amazon”, only requested that the Application “*be included in the GAC early warning process*”, which is not an objection. According to Section 1.1.2.4 of the AGB, it is up to governments to file an objection if they remain opposed to an application. In response to the early warning, and before the lapse of the objection period, the Applicant established contacts with the Governments involved, who have preferred to continue negotiations rather than file objections. This means that the Governments “*believe this objection does not have to succeed to protect their interests*”.

(c) *The Determination of the Expert*

89. According to the Objection Procedures (Section 3.5.4) the factors that can be balanced to establish substantial opposition to the application within the community purported to be represented by an objector include (i) the number of expressions of opposition relative to the composition of the community, (ii) the representative nature of the entities expressing opposition, (iii) their stature and weight, (iv) their distribution or diversity, (v) their historical defense of the community in other contexts and (vi) the costs incurred by the objector to convey opposition.
90. As evidence of substantial opposition to the Applications the IO relies essentially on the position expressed by the Governments of Brazil and Peru in the Early Warning Procedure. The two Governments undoubtedly have significant stature and weight within the Amazon Community. However, as noted by the Applicant, beyond their expressions of opposition in the Early Warning Procedure, the two Governments did not voice disapproval of the initiative in other forms. As a matter of fact, they engaged in discussions with the Applicant.
91. This is not without significance. Indeed, had the two Governments seriously intended to oppose the Application, they would presumably have done so directly. There is no reason to believe that they could have been deterred from doing so by the fear of negative consequences or by the costs of filing an objection. The

⁸ As mentioned in the discussion on the Applicant’s challenge, the Applicant is of the view that OTCA does have the power to object to the Application.

Applicant is persuasive in arguing that the Brazilian and Peruvian Governments' attitude is an indication of their belief that their interests can be protected even if the Objection does not succeed. Indeed, in assessing the substantial nature of the opposition to an objection regard must be had not only to the weight and authority of those expressing it, but also to the forcefulness of their opposition.

92. The IO acknowledges that the Applications triggered only a small number of comments, and that actually the Applications for the Chinese and Japanese translations of "Amazon" triggered none at all. He explains this with the alleged limited awareness of the Applications within the Amazon Community. This is not entirely convincing.
93. It is not necessary here to enter into the discussion between the Parties on whether, in strict legal terms, the OTCA would have had the power to file an Objection, or to consider whether, albeit lacking formal powers, it could nonetheless have made its voice heard in a debate on the Applications' potential negative consequences. However, it is difficult to ignore the argument that there were many other parties defending interests potentially affected by the Applications (environmental groups, representatives of the indigenous populations and so on) that could have voiced some form of opposition to the Applications, had they been seriously concerned about the consequences. Particularly given the standing of at least some of those organizations, it is implausible that none of them would have been aware of the Applications.
94. These considerations lead the Expert to find that the IO has failed to make a showing of substantial opposition to the Applications within the purported Amazon Community.

III.D Whether the Applications create a likelihood of material detriment to a significant portion of the Amazon community

(a) The position of the IO

95. The IO underscores that the Applications are aimed exclusively at providing "*a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation*" and that the only eligible registrants are the Applicant and its subsidiaries. If the Applications were upheld, the Strings would become closed brand gTLDs which the Applicant intends to operate without taking into account the Amazon Community's particular needs and interests. Domain names in the gTLDs in question will be "*used to support the business goals of Amazon*" and will not be offered to third parties, including the Governments and members of the targeted community.
96. This entails a risk of misappropriation, because granting exclusive rights on the Strings to a private company would prevent the use of the domains for public interest purposes related to the protection, promotion and awareness-raising on issues related to the Amazon region. The "*confiscation*" of the entire name space within the Strings by a single corporate entity would deprive the members of the

community and owning its cultural heritage of the possibility of obtaining the Strings and of benefitting from the reputation linked to the name of their community and region. This would lead to a disappearance of the link between the term Amazon and the Amazon region *“with far reaching consequences for the region and its population”*, because the users of the global internet *“will probably link the [Strings] exclusively to the Applicant and its corporate entities”*. Furthermore, the global internet users’ awareness of the existence and importance of the region will suffer, causing harm to the core issues of the region, and ultimately to the health of the planet which is clearly linked to the health of the Amazon.

97. The IO concludes that the launch of closed-brand gTLDs as foreseen in the Applications is very likely to interfere with the legitimate interests of the Amazon Community and to cause material harm to it and to the public who use the global internet.

(b) The position of the Applicant

98. The Applicant premises its discussion of this point by underscoring the self-standing nature of the criterion of detriment. It also notes that ICANN amended the AGB to include the qualification that the detriment should be material and to the community, and not just to the objector. It also points to ICANN’s statement that there is a *“presumption”* in favor of granting new gTLDs to eligible applicants. The Applicant contests the relevance of the IO’s argument that, in case of success of the Applications, *“the peoples and entities being part of the Amazon community”* would be unable to obtain the Strings, underlining that the AGB makes it clear that *“an allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment”*. Moreover, the detriment to the community would be the same even if the Applications were rejected, because it would still be unable to use the Strings, since neither it nor anyone else applied for them. In relation to the Chinese and Japanese translations of “Amazon” the Applicant adds that there is no evidence that the asserted community would want to use the Chinese or Japanese domain names. The Applicant also underscores that it has used “Amazon” as a trademark in many countries, including the ones of the Amazon region, for many years with no evidence of reduced awareness of, or confusion with, the Amazon region. Indeed, even the countries in the Amazon region have granted Amazon trademark registrations or lower-level domain names for “Amazon”. The Applicant highlights the absence of negative impact of the Amazon brand (described as *“one of the world’s most recognized and trusted brands”*) on the Amazon region since its introduction in 1994. Since then, only the Applicant and its group of companies have used “Amazon.com” and other “Amazon” domain names and trademarks, including in Latin America. There is no evidence that this has been detrimental to the Amazon region, nor that the elimination of the *“inconsequential ‘.com’”* would change the perception of users of the global internet in such a way that Amazonia will be removed from public consciousness and the region and the world will suffer the dire consequences presented by the IO.

(c) *The Determination of the Expert*

99. The Objection Procedures list the following factors that can be taken into account to assess whether the Application is likely to create material detriment to the rights and legitimate interests of a significant proportion of the community: (i) the nature and extent of the damage to the community's reputation; (ii) evidence that the applicant does not act, or intend to act, in accordance with the interests of the community; (iii) interference with core activities of the community; (iv) nature and extent of the concrete or economic damages to the community and (v) level of certainty of alleged detrimental outcomes.
100. There is no dispute that the Applicant intends to use the Strings to operate closed domains. Consequently, no one, including the Amazon Community or anyone with coinciding interests, will be allowed to use the Strings. However, as the Applicant remarks, even if the Objections were sustained the Amazon Community would still not be entitled to use the Strings, since it did not apply for them. The Expert considers that, in and of itself, the failure of the Amazon Community, or of anybody sharing its interests, to apply for the Strings can be regarded as an indication that the inability to use the Strings is not crucial to the protection of the Amazon Community's interests.
101. In any event, the Amazon Community's inability to use the Strings is not an indication of detriment, and even less of material detriment. The Objection Procedures are clear in specifying that "*[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a filing of material detriment*" (Section 3.5.4).
102. Furthermore, the IO does not explain how the impossibility for the Amazon Community or entities or persons connected to it to use the Strings and their use by the Applicant would lead to a loss of the link between the term Amazon and the Amazon region. On the other hand, as the Applicant points out, "Amazon" has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community's interests, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage.
103. As further noted by the Applicant, it is unlikely that the loss of the ".com" after "Amazon" will change matters. More generally, there is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. ".Amazonia" springs to mind.
104. Indirect confirmation of the absence of a risk of detriment to the interests of the

Amazon Community comes also from the lack of serious opposition to the Application by those that might be considered to have the Community's interests at heart, which has already been underscored in Section III.C above. Of course, opposition to an application and detriment are considered under two different tests in the Objection Procedures. Opposition is not necessarily evidence of detriment, just as non-opposition is not conclusive evidence of lack of detriment. However, in this case very significant potential consequences are alleged and there are many entities that could have expressed opposition had their interests been threatened. The fact that none of them was prompted to raise any objection, whether formally or at least informally, can be taken as a significant indication of lack of likelihood of detriment. It further corroborates the position that the use by the Applicant of the Strings for closed gTLDs cannot impair the interests of the Amazon Community

105. In these conditions the Expert holds that the IO has failed to satisfy its burden of proof in relation to the material detriment requirement.

IV. CONCLUSION

106. The Expert finds that he has jurisdiction to rule on the challenge to the IO's independence and that, given the need to guarantee the perception of neutrality of the gTDL dispute resolution system, the challenge must be upheld.
107. On the merits of the Objections the Expert has found that the IO has sufficiently proven the strong relation between the Strings and the Amazon Community. Instead, the IO has not shown that there is substantial opposition to the Application within that community or that the Application would lead to substantial detriment. These findings make it unnecessary to decide on the clear delineation test.
108. Since pursuant to Section 3.5.4 of the Objection Procedures all four tests must be met for a community objection to prevail, the Objections must be rejected.

V. DECISION

109. For the reasons set out above and in accordance with Art. 21(d) of the Procedure, the Panel hereby renders the following Expert Determination:
- (i) The Independent Objector's Objections are dismissed and therefore the Applicant is the prevailing party in all consolidated cases;
 - (ii) The Applicant AMAZON EU S.à.r.l is entitled to the refund of the advance payment of costs in all consolidated cases by the Centre pursuant to Article 14(e) of the Procedure.

Place of the Expertise: Paris

January 27, 2014

The Expert

A handwritten signature in blue ink, appearing to be 'Luca G. Radicati di Brozolo', written in a cursive style.

Professor Luca G. Radicati di Brozolo

EXHIBIT C-048

Jérôme Passa

Contact Information Redacted

I, the undersigned Jérôme Passa, *agrégé* in law, professor at the Université Panthéon-Assas (Paris II, France), have been requested by ICANN to provide an opinion on the well-foundedness of various objections raised against the reservation of the new gTLD ‘.amazon’. This legal opinion is set out below.

1. In 2011, the Internet Corporation for Assigned Names and Numbers (ICANN), which is responsible for the worldwide administration of the Domain Name System (DNS), launched a new domain name system offering operators the possibility of reserving new gTLDs (generic Top Level Domains) designed to provide suffixes for new domain names.

Under this system, a company can reserve its own name or that of its trade mark or one of its trade marks, such as ‘.vuitton’ or ‘.ipad’, for example, as a new gTLD. Geographical names and purely generic product or service names can also be reserved in this way.

The system and, in particular, the conditions for assigning these new gTLDs are set out in a lengthy document entitled the Applicant Guidebook.

When, after an in-depth evaluation process, ICANN decides to assign a new gTLD to an applicant, the parties enter into an agreement known as a ‘registry agreement’ under which ICANN delegates the management of the new suffix to the beneficiary; the beneficiary thus becoming the registry operator for the new gTLD.

The beneficiary to whom the new gTLD is reserved is the only one permitted to exploit, or to authorise others to exploit, worldwide the domain names associated with the suffix consisting of this gTLD.

As the registry operator of the new suffix, the beneficiary of a new gTLD reservation may decide to open its gTLD and allow interested third parties to reserve domain names associated with this suffix (second-level registrations in this gTLD). It then becomes the registrar of these third-party domain names and, as such, draws up its own naming conventions, laying down the conditions under which third parties can reserve these domain names.

Some new gTLDs, namely those consisting of a generic product or service name, are by their nature open, while those consisting of the name of a business or a brand are not necessarily open.

2. Reservation of a new gTLD may infringe prior third-party rights or, more generally, interests.

ICANN is clearly well aware of this issue since a certain number of provisions in the Applicant Guidebook are aimed at preventing this type of infringement.

The beneficiary of a prior right or interest, for example, can object to the assignment of a gTLD (Applicant Guidebook, 3.2.1).

In addition, on issues affecting its member states, ICANN's Governmental Advisory Committee (GAC), an inter-governmental committee made up of representatives of national governments and intergovernmental organisations, can issue advice to ICANN's board on applications for new gTLDs (Applicant Guidebook, section 3.1).

The advice of the GAC, which may suggest that ICANN refuse to reserve a given gTLD (as in the case of '.amazon' as we shall see below) is sent to the applicant which has a right of reply.

3. In view of the objections raised by the GAC and various member states, this concern to protect prior third-party rights and interests has led ICANN to consider the legitimacy and opportuneness of assigning the new gTLD '.amazon' to its applicant, namely the Amazon company .

The undersigned has been consulted on the specific issue of whether, on strictly legal grounds in the field of intellectual property law relating, in particular, to the rules of international law or fundamental principles, ICANN would be **bound**:

- to assign the new gTLD in question to its applicant, or, to the contrary,
- to refuse to assign it in order to protect prior rights as mentioned above.

In essence, the answer lies in whether or not a prior right actually exists and, where this is the case, in the nature and function of the right and the scope of protection conferred upon it by the rules of law.

Consequently, the undersigned will limit his opinion to the provisions of applicable international **intellectual property** agreements, to the fundamental principles governing this area of law and, where applicable, to the rules of supranational law constituted by the provisions of the applicable European Union legislation in the field of intellectual property.

With a few individual exceptions, there will be no reference to the provisions of the various regulations adopted by ICANN, the legal nature of which is likely to give rise to some debate.

Given the wording of ICANN's questions to the undersigned, this opinion will concentrate exclusively on the reasons why ICANN might be led to assign or refuse to assign the new gTLD in question, in other words on the disputes which have arisen during the evaluation stage of the application. It will not examine, as its main focus, questions and disputes likely to arise in the subsequent stage, following assignment of this new gTLD, during which the second-level domains open in the gTLD will be exploited.

The examination will deal with the application for assignment of the new gTLD '.amazon'.

4. Amazon, a US corporation and owner of the *Amazon* trade mark for various products and services in a wide range of countries, has made an application for the new gTLD ‘.amazon’.

Objections have been raised against this application by various Latin American countries, including Brazil and Peru, through which the River Amazon flows and whose territories form part of the river’s 5.5 million km² plain, known as Amazonia.

These objections were passed on by the GAC which recommended that ICANN reject Amazon’s application.

The issues currently facing ICANN are:

- whether the rules and principles cited in support of these objections and reiterated in the unfavourable advice issued by the GAC are of such nature as to oblige ICANN to reject the application filed by Amazon (A) or, to the contrary,
- whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC’s advice oblige it to reserve the new gTLD ‘.amazon’ (B).

A.- Concerning the objections to the assignment of the new gTLD ‘.amazon’

5. Though the term ‘amazon’ does not appear to correspond to the name of the Amazonia region in any language, and in particular in Spanish, Portuguese or English, an objection against the reservation of the new gTLD ‘.amazon’ for Amazon might, in principle, nevertheless be raised on the basis of the notion of ‘geographical indication’ as defined in intellectual property law.

Indeed, where a geographical indication is protected on this basis it is protected not simply against the use of identical names but also, in most legal systems, against the use of names which imitate or invoke it. This is only logical since the use of a name which is merely similar may also be designed to take advantage of the reputation of the geographical indication or result in a reduction in its attractiveness in the eyes of the public.

Thus, if the names ‘Amazonia’ and ‘Amazonas’ were geographical indications, it would, given the evident similarity of the names in question, be possible to protect them against the use of the name ‘Amazon’.

The simple fact that the names ‘Amazon’ on one hand and ‘Amazonia’ and ‘Amazonas’ on the other are not identical is not, therefore and as such, sufficient argument to exclude application of the geographical indications regime on which a rejection of Amazon’s application might be based.

6. However, the geographical name in question, ‘Amazonia’ or ‘Amazonas’ in this case, must constitute a **geographical indication within the meaning of intellectual property law**.

But this is not the case here.

Indeed, the geographical name of a place can constitute a geographical indication and be recognised and protected as such under intellectual property law only if there exists in the public mind a link between the place in question and particular qualities or a reputation for specific products of that place because these qualities or this reputation are attributed to this geographical origin.

Thus, Article 22(1) of the TRIPS Agreement, which forms Annex I C of the Agreement establishing the World Trade Organisation and is binding on a great number of states, provides that “geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”

Both European Union law and certain international conventions draw a distinction between such geographical indications based on the strength of the link between the geographical origin and the characteristics and qualities of the product in question. For example, the various European regulations on geographical indications draw a distinction between appellations of origin and geographical indications in the strict sense of the term.

Appellations of origin are the geographical names with the closest link between geographical origin and product characteristics or qualities. For example, Article 5(1) of Regulation (EU) No 1151/2012 of 21 November 2012 on quality schemes for agricultural products and foodstuffs¹ provides that “‘designation of origin’ is a name which identifies a product: (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area.”

This definition is based closely on that given in Article 2(1) of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, an international convention which came into effect in 1966 and which defines the term ‘appellation of origin’ as “the geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment including natural and human factors.”

An appellation of origin is thus characterised by the fact that the particular quality or characteristics of products which represent their interest to the consumer are the result of local natural factors and local expertise.

¹ Please note that such Regulation excludes wine and spirits which are regulated by specific Regulations, *i.e.* Regulation (EU) n°1308/2013 of 17 December 2013 establishing a common organization of the markets in agricultural products (for wines) and Regulation (EC) n°110/2008 of 15 January 2008 on the definition, description, presentation, labeling and the protection of geographical indications of spirit drinks; both Regulations provide for similar provisions as Regulation (EU) n°1151/2012.

Geographical indications in the strict sense of the term differ from appellations of origin in that the link between the qualities or character of a product and its locality of origin is more tenuous. Indeed, Article 5(2) of the aforementioned EU Regulation provides that “‘geographical indication’ is a name which identifies a product: (a) originating in a specific place, region or country; (b) whose given quality, reputation or other characteristics is essentially attributable to its geographical origin; and (c) at least one of the production steps of which take place in the defined geographical area.” The effect of geographical provenance on product characteristics is thus required, but not specified, and may therefore relate to both natural or human factors.

7. In many legal systems the protection of geographical indications in its wider sense is dependent on the completion of certain formalities in the country or region – such as the European Union – of origin of the products in question. This may be through either statutory recognition or registration with an administrative authority. In both cases, the formalities will define the geographical area in which the products in question must be produced, manufactured or processed and specify the production or manufacturing conditions to be fulfilled in order for the products to be identified under the geographical indication in question.

However, in certain legal systems – including under French law, for example² – a geographical name which is not – or not yet – recognised either by statute or by registration can still be afforded a certain degree of protection where the products from the geographical area in question are deemed to have special characteristics or qualities.

8. Under intellectual property law, a geographical name enjoys no status, regime or particular protection where it designates a place which is not specially known by the public for its products and services, whatever they may be. This is the case where this place is not the origin of any particular products or services or where the products or services originating in it do not or are not deemed to have any particular characteristics due to this origin in the minds of the public.

Such conclusion clearly results from the law governing geographical indications. It also emerges from the rules governing the relationships – frequent in practice – between trade marks and geographical names in most legal systems and in particular under EU and French law.

For example, we know that a trade mark consisting of the geographical name of a place is misleading and will therefore be refused by the Trade Mark Office or invalidated by the courts if the products it covers do not come from the place in question and the public knows that the products which do come from the place in question possess particular characteristics or qualities. This rule is contained in substance in Article 22(3) of the TRIPS Agreement.

By contrast, it is accepted that a trade mark is not misleading if the products it covers do not come from the place in question but the place in question has no particular reputation for these products.

² Through the notion, not used in the law, of ‘indication of provenance’.

For example, it has been held in France – and the solution would be the same in most legal systems – that a trade mark registered for clothing can validly consist of or contain the name ‘Boston’ even if the products in question are not manufactured in Boston as long as this US city has no particular reputation for clothing³, which would only be the case if clothing made in Boston possessed particular characteristics or qualities because of its origin or a reputation in the minds of the public.

In this example the name ‘Boston’ is a **neutral geographical name** for clothing which has no impact under trade mark law.

It is also accepted that a trade mark consisting exclusively of the geographical name of a place will be refused or invalidated as being devoid of distinctive character if the place is the place of origin of the products covered by the trade mark, in this case the trade mark being, in effect, deemed to be descriptive of one of the characteristics of the products in question, i.e. their geographical provenance.

It has, however, also been held, notably by the General Court of the European Union, that this solution applies only where the geographical name has a certain reputation for the products in question in the minds of the public.

Thus in a judgment dealing with the trade mark *Port Louis*, consisting of the name of the capital of Mauritius, registered for textile products, the General Court underlined that “the registration as a Community trade mark of names designating certain geographical places already reputed or known for the category of products in question and which consequently have a link with this category in the eyes of interested parties”⁴ is not possible. The fact that the trade mark owner’s clothing comes or may come from this place is of no relevance and the trade mark is not considered to be descriptive since the town in question has no particular reputation for this category of products.

As in the case of the name ‘Boston’ dealt with above, the geographical name is neutral and therefore has no impact on the conditions of validity of the trade mark.

9. Supposing that, given its very large surface area and the fact that it comprises parts of various different countries, Amazonia constitutes the geographical area of a geographical indication within the legal meaning of the term – though this is already be disputed in view of the aforementioned definition of Article 22 (1) of the TRIPS Agreement which refers to products “originating in the territory of a Member” – Amazonia would appear to have no particular reputation for the production of specific products. Neither are products from this region known to have particular characteristics or qualities due specifically to their origin.

In fact, the objecting states are not claiming that the name of the Amazonia region would have been recognised in their legal systems as a geographical indication either by statute or by registration for any specific products .

³ Paris Appeal Court, 10 Jan. 2001, *PIBD* 2001, no. 721, III, 290 (*Boston-Création*). In the same vein, Paris Appeal Court, 6 Mar. 2002, *PIBD* 2002, no. 753, III, 545 in relation to the name *NYC* for clothing; Paris Appeal Court, 9 Mar. 2005, *PIBD* 2005, no. 809, III, 345 in relation to the name *Versailles* for sweets and confectionary.

⁴ General Court of EU, 15 Oct. 2008, case ref. T-230/06, no. 31. See also General Court of EU, 8 Jul. 2009, case ref. T-226/08 in relation to the trade mark *Alaska* for mineral water.

It is my view that the geographical names ‘Amazonie’, ‘Amazonia’ and ‘Amazonas’ do not constitute a geographical indication within the meaning of intellectual property law and in particular within the meaning of Article 22 (1) of the TRIPS Agreement, nor do they appear likely to become so in the near future for any specific products. However, ICANN may have specific information on this last point which might lead it to reach a different conclusion.

In consequence, I do not believe that assignment of the new gTLD ‘.amazon’ to the Amazon company could be rejected on the basis of international or even local law on geographical indications.

10. Even supposing, hypothetically, that the geographical names ‘Amazonie’, ‘Amazonia’ and ‘Amazonas’ constituted geographical indications for specific products, this geographical indication would not necessarily justify the rejection of the application for assignment of the gTLD to the Amazon company.

As has already been pointed out, it is true that the fact that the name ‘Amazon’ and the name of the geographical indication are not identical is unlikely to prevent the application of the law governing geographical indications.

However, legal recognition of a geographical indication does not in any way imply that the geographical indication enjoys absolute protection, that is to say, protection against **any type** of use of an identical or similar name by a third party.

11. **On one hand**, indeed, Article 22 of the TRIPS Agreement provides only for protection against use as an indication of the geographical provenance of a product where this use misleads the public as to the geographical origin of the product.

On this point, “in respect of geographical indications” Article 22 2(a) requires parties to the Agreement to provide the legal means for interested parties to prevent “the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good.”

However, given the nature of the Amazon company’s activities and the fact that the *Amazon* sign is neither used nor designed to be used by it as an indication of the geographical origin of a product or service, the reservation and use by Amazon of the gTLD ‘.amazon’ **does not fall within the scope of protection afforded to geographical indications** by the TRIPS Agreement.

Since this gTLD consists of the name and the trade mark of a company, it should not in principle be open to independent third parties carrying on various activities which might themselves infringe the geographical indication. Even if this were the case, such a risk, further down the process at the exploitation stage of the gTLD, would not justify a general refusal to assign it to the Amazon company. Any such infringement would be attributable to the third party and would fall within, notably, the contractual relationship between the Amazon company as registrar of the gTLD and the contracting third party (see section 23 below).

Article 22 2(b) of the Agreement also requires the parties to protect geographical indications against “any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention”. However, in order for an “act of competition contrary to honest practices in industrial or commercial matters” within the meaning of this last provision (sub-section 2) and an act “of such a nature as to create confusion (...) with the establishment, the goods, or the industrial or commercial activities, of a competitor” (sub-section 3 (i)) or “indications or allegations the use of which (...) is liable to mislead the public as to the (...) characteristics” or the quality “of the goods” (sub-section 3(iii)) to exist, the name identical or similar to the geographical indication must, as above, necessarily be used as the indication of the geographical provenance of products.

To summarize, the legal protection afforded to a geographical indication – supposing that such geographical indication exists – by the provisions of the TRIPS Agreement and the Paris Convention does not, on its own, justify a rejection of the Amazon’s company application.

12. On the other hand, unlike the TRIPS Agreement, some legal systems do not limit the protection of geographical indications to cases in which an identical or similar name is used by a third party to indicate the geographical provenance of a product.

Thus, in the case of appellations of origin, Article 3 of the aforementioned Lisbon Agreement provides that “protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as “kind”, “type”, “make”, “imitation” or the like”.

Even though the Agreement does not specify what such “usurpation or imitation” consists of, its general nature and wording suggest that the protection extends beyond cases in which a third party uses an identical or similar sign to indicate the geographical provenance of a product. Given the broad language used in this provision, it is difficult however to know exactly what the conditions and terms of this protection are.

The provisions of the above mentioned European regulations protecting geographical indications of agricultural and food products⁵, wines⁶ and spirits⁷ are, however, more specific on this point.

This is the case, in particular, of Article 13(1) of the aforementioned Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs⁸, according to which:

“Registered names shall be protected against:

- a). any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;

⁵ Regulation (EU) No 1151/2012 of 21 November 2012.

⁶ Regulation (EU) No 1308/2013 of 17 December 2013.

⁷ Regulation (EC) No 110/2008 of 15 January 2008.

⁸ Please note that similar provisions are provided for in (EU) Regulation n°1308/2013 (for wines) and (EC) Regulation n°110/2008 (for spirits).

- b). any misuse, imitation or evocation, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’ or similar, including when those products are used as an ingredient;
- c). any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product that is used on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- d). any other practice liable to mislead the consumer as to the true origin of the product.”

A joint reading of sub-sections a) and b) of this provision reveals that geographical names registered under the Regulation are protected against any direct or indirect commercial use of a sign identical or similar (imitation or evocation) to the protected name for products comparable to those covered by the registration or for an product or service where this use takes advantage of the reputation of the protected name.

Though, where not otherwise stipulated, protection extends to uses which do not indicate a geographical provenance, a number of conditions must nevertheless be fulfilled. Either the sign in dispute must be used for products comparable to those covered by the registration or – unlike for a comparable product – the use in dispute must take advantage of the reputation of the protected name.

Though the trade mark *Champagne* registered and exploited by Yves-Saint-Laurent for a luxury perfume, i.e. in a non-geographical manner, was invalidated and prohibited in France on the basis of comparable statutory provisions, it was because the use of this trade mark allowed its owner to take advantage of the reputation and prestige of the renown appellation of origin *Champagne* for a sparkling wine from the Champagne region⁹.

Supposing that ICANN were required to take account of the provisions of European Union law, even though I do not believe this to be so particularly since in this case the geographical names in question – Amazonia, Amazonas and Amazonie – is not registered under any EU regulation, the reservation of the gTLD ‘.amazon’ would not in any case infringe a prior geographical indication, if one existed.

For, firstly, it would not in all likelihood be for the use of products comparable to those covered by this geographical indication – indeed it is hard to see just what these products might be – and, secondly, given the nature of its activities and the already great reputation of both its name and its trade mark, the Amazon company’s use of ‘.amazon’ would be neither intended nor allow it to take advantage of the reputation of this geographical indication.

This reasoning can undoubtedly be applied to other national or regional protection system for geographical indications.

13. In conclusion, there is no rule of the law on geographical indications which obliges ICANN to reject the application for reservation of the gTLD ‘.amazon’ filed by the Amazon company due to the existence of the geographical name of the Amazonia region.

⁹ Paris Court of Appeal, 15 Dec. 1993, *JCP* 1994, II, 2229; *PIBD* 1994, no. 560, III, 92.

Beyond the law of geographical indications, the assignment of ‘amazon’ to Amazon would not in any event be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve ‘amazon’, could always if they so wished reserve a new gTLD such as ‘amazonia’ or ‘amazonas’ which would create no risk of confusion with ‘amazon’.

Finally, the fact that neither the name ‘Amazon’ nor that of the Amazonia region appears in any language on the ISO 3166 list is irrelevant. It is true that the country and region names on this list, whether they are reproduced, imitated or translated into a foreign language, cannot be reserved¹⁰. However, the fact that there is no bar to reserving the TLD ‘amazon’ on this ground does not mean that it could not be rejected on other grounds put forward by the objecting states or that Amazon could not claim a right to reserve it. On this last point, it is clear that no one can claim a TLD simply because the name it consists of is not included on the ISO list.

B.- Concerning the arguments put forward by the Amazon company in support of the assignment of the new gTLD ‘amazon’

14. In response to the advice of the GAC reiterating the arguments of the objecting states, the Amazon company cites a certain number of rules of international law which, it claims, mean it must be assigned the TLD ‘amazon’.

15. Firstly, and principally, the Amazon company cites its trade mark *Amazon* which is registered in almost 150 states around the world, including Brazil and Peru.

In substance, it contends that the intellectual property rights it holds in the name *Amazon* as a result of these registrations give it a *right to* the TLD ‘amazon’ and that ICANN is therefore obliged to assign the TLD to it.

In support of this argument Amazon cites Article 16(1) of the TRIPS Agreement which gives the owner of a registered trade mark “the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trade mark is registered (...).”

15-1. However, it is my view that the argument advanced by Amazon is based on an incorrect understanding of the nature of the protection afforded by a registered trade mark and, more generally, by an intellectual property right.

Indeed, an intellectual property right, whatever its nature, affords its owner an exclusivity or monopoly of exploitation over the subject matter of the right within the limits stipulated by law – whether national or regional¹¹ – applicable to this right. This exclusive right allows its holder to prevent third parties from carrying out on this subject matter the acts of exploitation which the law reserves to him.

¹⁰ Applicant Guidebook, 2.2.1.4.1.

¹¹ Such as, in European Union law, Regulation (EC) No 207/2009 on the Community trade mark and Regulation (EC) No. 1/2002 on Community designs.

An intellectual property right is therefore, like any property, a right to exclude third parties and, in this case, a right to exclude unauthorised third parties from the scope of protection which the law grants to the owner of the intellectual property right.

Binding as against third parties, an intellectual property right never affords its owner **the right to exploit or to use the subject matter of its right.**

We know, for example, that a patent does not confer upon its owner the right to exploit the invention. Firstly, the exploitation of the invention may, for example, require him to obtain marketing approval as is the case for the marketing of pharmaceutical products. Secondly, if the patented invention in question represents an improvement of a prior invention which is itself also covered by a patent valid for the same territory, the patented invention cannot legally be exploited without the authorisation of the holder of the prior patent.

We also know that the holder of a copyright in a work is not necessarily able to exploit the work simply on the basis of this right. Firstly, its exploitation may come up against an administrative or legal prohibition based on reasons of public policy or a third party's right to privacy, for example. Secondly, if this work is derived from a prior work which is itself also protected, it cannot legally be exploited without the consent of the holder of the rights in the first work.

These simple examples demonstrate that an intellectual property right does not grant its owner a **right to use** the intangible subject matter in question. The right grants him ownership, ownership which is always binding on unauthorised third parties, but not, unless misinterpreting the notion of intellectual property, the possibility to exploit the subject matter of its ownership in any circumstances.

15-2. The same applies under trade mark law.

A trade mark right – the right associated with the registration of a trade mark – grants the owner a monopoly binding on third parties within the limits defined by law.

However, the holder cannot invoke this right as *a right to use* the sign, even for the products and services specified in the registration, or even as the right to use the sign in particular forms, such as a new gTLD.

The owner of a registered trade mark, though it is fully binding on third parties while it is in force, may, for example, be prevented from exploiting it due to a prior right held by a third party.

The Court of Justice of the European Union confirmed this in a recent judgment¹² in respect of a Community trade mark governed by Council Regulation (EC) No 207/2009. It held that the owner of a Community trade mark can be found guilty of infringing a prior Community trade mark and, consequently, be prevented from using its trade mark, even where no action for invalidity has been brought and therefore non cancellation of the trade mark ordered. Thus, a person may be the owner of a trade mark which is valid and therefore binding on third parties but be unable to exploit it due to a court order issued prohibiting such use so as to protect the prior right of a third party.

¹² CJEU, 21 Feb. 2013, C-561/11, *Fédération Cynologique*.

A few months earlier, the Court of Justice had already adopted the same solution with regard to Community designs¹³.

15-3. The exclusive right held by the Amazon company in its trade mark *Amazon* in various Member States under Article 16(1) of the TRIPS Agreement does not therefore necessarily give it **the right per se either to use it or to use the *Amazon* sign in any other form it may choose, such as a new TLD.**

In my belief, therefore, the Amazon company is wrong in citing its registered trademarks and its rights under Article 16(1) of the TRIPS Agreement and in deducing that ICANN is therefore obliged to assign it the new TLD to allow it to exploit, as a TLD, the *Amazon* sign which forms the subject matter of these trade marks.

The *Amazon* trade marks held by the applicant do not in legal terms give it a right to the new TLD ‘.amazon’. The fact that the objecting states did not cite any trade marks in support of their arguments is irrelevant in this respect.

Moreover, I would also add that all these *Amazon* trade marks, which are each subject to the principle of territoriality, are legally effective on a national – or regional in the case of a Community trade mark – territory only, in particular, if Amazon holds one of them and that in consequence none of these trade marks would be binding on ICANN, which is responsible for the assignments of new TLDs worldwide in any event.

15-4. At the very most, the Amazon company’s trademarks permit it to claim a **legitimate interest for applying for assignment** of ‘.amazon’.

However, this interest does not in any way guarantee it assignment of this new TLD in legal terms for there are other considerations to be taken into account in the ICANN decision.

16. The same can be said of the arguments put forward by Amazon based on Article 8 of the Paris Convention for the Protection of Industrial Property.

This very succinct article provides for the protection of trade names in the states party to the Convention without the need for any filing or registration formality.

Apart from the fact that it does not specify the conditions or the nature of this protection – a matter that is left to the appreciation of the states party to the Agreement – like Article 16(1) of the TRIPS Agreement on the protection of registered trade marks, this Convention protects trade names against acts of exploitation of the sign carried out by non-authorised third parties. It does not in any way confer upon the holder of a trade name either a general *right to use* the sign or a right to the sign in a particular form, such as a TLD, for example.

Like a registered trade mark, a trade name does indeed give its owner a **legitimate interest** in applying for the assignment of the new TLD corresponding to the sign at stake. However, as with a trade mark, this legitimate interest alone does not justify the assignment of the new TLD since ICANN can also take other considerations into account.

¹³ CJEU, 16 Feb. 2012, C-488/10, *Celaya Empananza*.

17. Finally, in this case Amazon cannot effectively rely on the provisions of international human rights law and, in particular, – supposing it were applicable to and binding on ICANN – the European Convention on Human Rights (ECHR).

It is true that Article 1 of the First Additional Protocol to the ECHR provides for an entitlement “to the peaceful enjoyment of (...) possessions”, while in its *Anheuser-Busch/Portugal* judgment of 11 January 2007¹⁴ the European Court of Human held that this provision “applies to intellectual property as such”.

However, Amazon cannot use this argument to claim a right to the registration of the new TLD ‘.amazon’.

Indeed, **firstly**, filing an application for assignment of this new TLD in no way guarantees it the assignment of the TLD.

In the aforementioned judgment, the European Court of Human Rights held that, given all the economic rights and interests attached to such an application, the owner of an application for registration of a trade mark is the holder of a substantial interest protected by Article 1 of the First Additional Protocol but that the Trade Mark Office’s rejection of the application did not constitute interference in the applicant’s right to the peaceful enjoyment of his possessions and thus a breach of Article 1 – thereby thankfully guaranteeing the freedom of offices to refuse trade mark or patent applications.

Supposing that an application for assignment of a new gTLD corresponding to a trade mark held by the applicant were to be qualified as a possession within the meaning of Article 1 of the First Additional Protocol, as is the case with an application for the registration of a trade mark – which in my view could be disputed –, according to the European Court’s analysis ICANN’s rejection of this application would not constitute a breach of the peaceful enjoyment of this possession.

Secondly, the Amazon company’s *Amazon* trade marks undeniably constitute goods within the meaning of the aforementioned provision.

However, given its subject matter and purpose, a registered trade mark does not in any way guarantee its holder (as set out in section 15-2 et seq. above) a **right to** the assignment of the corresponding new TLD. Since this assignment is not a prerogative of the owner of the trade mark, a refusal to assign the TLD could not be considered a breach of the right to peaceful enjoyment of the possession represented by the registered trade mark.

¹⁴ Req. n° 73049/01.

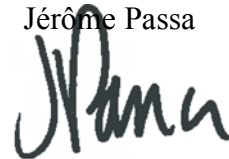
18. Therefore, there exists no provision in either international intellectual property law or in the field of fundamental rights which could oblige ICANN to assign the gTLD '.amazon' to the Amazon company.

Conclusion

As regards the application for assignment of the new gTLD '.amazon' filed by the Amazon company:

- i)* there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN to reject the application;**
- ii)* there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.**

Jérôme Passa



Paris, March 31st, 2014

EXHIBIT C-049



The Internet Corporation for Assigned Names and Numbers

7 April 2014

Governmental Advisory Committee
Via, Ms. Heather Dryden
Chair, Governmental Advisory Committee

Re: Governmental Advisory Committee (GAC) Advice – .AMAZON (and related IDNs)

Dear Ms. Dryden:

I am pleased to inform you that the ICANN Board New gTLD Program Committee (NGPC) continues to make progress to address the open item of advice from the GAC concerning the New gTLD Program applications for .AMAZON, and related IDNs. As you are aware, in its Durban Communiqué, the GAC advised the ICANN Board that “the GAC has reached consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following application: .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591).”

As previously reported, ICANN commissioned an independent, third-party expert to provide additional advice on the specific issues of application of law at issue. The analysis attached has been received and is being considered by the NGPC as it continues to deliberate on the appropriate next steps to address the GAC’s advice on .AMAZON (and related IDNs).

ICANN provides this analysis to keep the parties informed and welcomes any additional information that they believe is relevant to the NGPC in making its final decision on the GAC’s advice on .AMAZON (and related IDNs). ICANN has requested that Amazon EU S.à r.l. (the applicant of the .AMAZON applications identified in the GAC’s advice) submit any additional information by 14 April 2014.

The NGPC is committed to giving due consideration to the complex issues at the crux of the matter, and reiterates its commitment to the most timely response possible to all interested parties including the distinguished members of the GAC. We appreciate the collaboration of the GAC in the New gTLD Program and all of its deliberations and inputs to the process.

Thank you in advance for your kind attention.

Sincerely,

A handwritten signature in black ink, which appears to read "Stephen D. Crocker".

Stephen D. Crocker
Chair, ICANN Board of Directors

EXHIBIT C-050



PERÚ

Ministerio
de Relaciones Exteriores

Lima, April 11, 2014

Mr. Steven D. Crocker
Chair, ICANN Board of Directors

Dear mister Crocker:

Regarding your letter dated April 7th, in which it is attached the advice of an independent counsel, on the early warning presented by Peru and Brasil, and the negative GAC advise for the gTLD ".amazon", we would like the members of the Board to consider the following:

1. The procedure followed by Peru matches exactly ICANN's bylaws and it is grounded in sound principles of international law. ICANN shall pay due regard to the fact that an early warning by two sovereign subjects, a negative advice by the Intergovernmental Committee and a negative report by an independent objector have been duly issued and forwarded to the board according to such procedure. The Peruvian government shall clearly state that there has not been any request, contact or exchange of views between the Peruvian government and the independent objector in any stage of this procedure and that the report shall not be objected on those grounds.
2. Not sufficing the above, the Board has requested another legal report. That report however is not pertinent to this procedure. Expressly limits its scope to the provisions of applicable international intellectual property agreements. It clearly states that through the analysis, there will be "no reference to the provisions of the various regulations adopted by ICANN and their legal nature", among others, the Applicant Guidebook. Furthermore, the study purposely excludes the contents of the Applicant Guidebook, which is the only reference set up by ICANN to establish the rules for the procedure and the subsequent applicable framework. The opinion of the independent counsel solicited by ICANN to this respect, analyzes the case of ".amazon" in a setting that might be appropriate for an IPRs forum by ICANN. The Guidebook gives no authority to consider IPRs issues as paramount provisions, noting that domain names are not a subject matter ruled by IPRs.

4.- The Durban communiqué voices the opinion of the community of countries that integrate the ICANN. Such communiqué reiterates the rights of the countries to intervene in claims that include words that represent a geographical location of their own –which by the way in this case, is recognized by ISO codification – in particular when such terms evoke strategic, historical and cultural values for the eight countries of the Amazon basin and their people.

Claims based on one single element of one of the criteria established on the Guidebook which is not tantamount in the system (trademark ownership), cannot take precedence against the rest of the criteria established in the same guidebook and certainly cannot disregard public policy legitimate concerns raised by the GAC and by the community, considering the current debate regarding internet actual and future governance.

On the grounds of ICANN's regulations and multistakeholder approach, the government of Peru requests ICANN's Board to reject the application of ".amazon".

Regards,





Fernando Rojas Samané
Vice Minister of Foreign Affairs

EXHIBIT C-051



April 14, 2014

Dr. Steve Crocker, Chairman of the Board
Mr. Fadi Chehadé, President & CEO
Mr. Cherine Chalaby, Chair of the New gTLD Committee
Members of the New gTLD Program Committee
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Amazon's Response to M. Passa's Expert Report on .AMAZON (and related IDNs)

Dear Dr. Crocker, Messrs. Chehadé and Chalaby, and Members of the ICANN Board of Directors
New gTLD Program Committee,

Thank you for the opportunity to comment on the independent, third-party expert M. Jerome Passa's legal opinion ("Expert Report") regarding the application of law in the matter of .AMAZON and related IDNs ("AMAZON").

Amazon EU S.a.r.l ("Amazon") has tried to negotiate with the governments involved and, despite our best efforts, is disappointed that this matter has reached a point of impasse and is politicized in many fora. As it appears the New gTLD Program Committee ("NGPC") will be required to make a decision in this matter, we reiterate the points we have made throughout this process: Amazon submitted applications based on a community-created process (in which governments were involved); we followed the rules set forth in the Applicant Guidebook ("AGB"); we passed ICANN's evaluation process; successfully defended against a community objection filed by the Independent Objector;¹ and should be allowed to contract on our registries like any other applicant in a similar position.

We agree with M. Passa's core conclusions, which compel the same result:

1. Existing law on sovereign rights and geographical indications does not support blocking .AMAZON;² and
2. Granting .AMAZON would not prejudice the objecting governments as they may still represent the Amazonia region through future geographical gTLDs, such as .AMAZONIA or .AMAZONAS.³

¹ As the ICC ruled in that case, "'Amazon' has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community's interests, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage." ICC Decision Case No. Exp/396/ICANN/13, cl. 102.

² Expert Report at 9.

³ Id. at 10.

Contact Information Redacted

WWW.AMAZON.COM

The Expert Report also contains several inaccuracies, however, that require correction.

GAC Advice on Amazon is Inconsistent with International Law

As noted in our August 23, 2013 response (the "Response") to the Governmental Advisory Committee's Durban Communiqué ("GAC Advice"), international law and national legal systems have well-established mechanisms for protecting terms, including use of geographical names. These mechanisms fall into four major categories: (1) Intellectual Property; (2) Regulatory Recognition; (3) National Sovereignty; and (4) Indigenous Rights. The Expert Report only addresses the first of these four categories (intellectual property) in any detail.⁴ Though the Expert Report correctly concludes that sovereign rights under intellectual property regimes support Amazon's application,⁵ the same is true for each of these categories.

We have never argued, despite the question posed to the Expert, that Amazon is entitled to .AMAZON or that ICANN is obliged to award us .AMAZON based on intellectual property rights alone. Like other applicants, we followed the Applicant Guidebook ("AGB"); we applied for .AMAZON and IDN variants in accordance with the rules of the AGB; we are not using the term in a geographic manner; we passed the ICANN evaluation process, including the Geographic Names Panel; we successfully defended against a community objection filed by the Independent Objector; and, the applied-for gTLDs are not any of the banned terms found in the AGB. It is through successfully following the application process, as well as owning separate, legitimate interests to use and enforce our mark in a lawful manner, that Amazon should be allowed to proceed to contracting, as any other applicant would. In short, Amazon has a legitimate claim to make a non-geographic use of the term 'Amazon', including by applying for a gTLD reflecting its globally recognized and well-known mark.⁶ Indeed, with this ultimate conclusion, the Expert agrees.⁷

Further, we agree with the Expert Report that:

Beyond the law of geographical indications, the assignment of 'amazon' to Amazon would not in any event be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve 'amazon', could always if they so wished reserve a new

⁴ The expert notes at the outset he was asked by ICANN to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN was 'obliged' to grant .AMAZON based on pre-existing trademark registrations.

⁵ "The [expert] has been consulted on the specific issue of whether, on strictly legal grounds in the field of intellectual property law relating, in particular, to the rules of international law or fundamental principles, ICANN would be bound [] to refuse to assign [.AMAZON] in order to protect prior rights as mentioned above." Expert Report at 2.

⁶ From the .AMAZON Applications response to Q.18(a) on the mission of the .AMAZON registry: "To provide a unique and dedicated platform for Amazon while simultaneously protecting the integrity of its brand and reputation. .AMAZON registry will: (1) Provide Amazon with additional controls over its technical architecture, offering a stable and secure foundation for online communication and interaction. (2) Provide Amazon a further platform for innovation. (3) Enable Amazon to protect its intellectual property rights."

⁷ "At the very most, the Amazon company's trademarks permit it to claim a legitimate interest for applying for assignment of 'amazon.'" Expert Report at 10.

gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon.'⁸

Amazon has repeatedly agreed to co-exist with any future geographic gTLD applied for by the Governments of the Amazonia region for .AMAZONIA, .AMAZONAS, or .AMAZONICA. From the time concerns were raised, we reiterated this offer in our numerous attempts to negotiate with the Governments as well as in writing to ICANN. As the Expert agrees, the grant of .AMAZON does not block local governments or people from representing their region in a gTLD. The terms used by the vast majority of the people in the region are still available for future registration and use. Amazon should not be penalized, however, for applying when the Governments did not (unlike the Swiss Confederation for .SWISS; the League of Arab States for the .ARAB IDN; or the City of Paris for .PARIS, among others).⁹ Nor should ICANN create rights for the governments that the governments themselves have not obtained through international and national law – be it intellectual property or otherwise.

Accepting GAC Advice in Contravention to International Law and ICANN's Bylaws Results in a Reversal of Multistakeholder-Created Consensus Policy

GAC Advice should not be used to override years of multistakeholder-created consensus policy, which the AGB represents. The 2007 GAC Principles are now being cited to by the GAC to retroactively modify rules and revive proposals previously rejected by the multistakeholder ICANN Community and Board. The Board has already rejected GAC advice that the GAC has a carte blanche right to block any gTLD application based on principles of "national sensitivities" or broad-based, undefined geographic terms or national interests.¹⁰ Similarly, the GNSO's initial new gTLD policy recommendations¹¹ and adoption of the final AGB represent a rejection of those Principles. ICANN's willingness to grant the GAC this right after GNSO consensus policy and Board approval sets a dangerous precedent that has potentially damaging ramifications for both current and future gTLD applicants (and potentially, based on recent suggestions from a GAC Working Group, on future rounds and rules applying to second-level names in new gTLDs), and for the transparency, predictability and non-discriminatory nature of the new gTLD application process.

Amazon recognizes the various sensitivities this issue presents to the Amazonia region and has tried on numerous occasions to come to a mutual resolution. As recently as the Singapore ICANN meeting, however, these efforts have met with resistance to conducting negotiations on any level. Cultural diversity is not constrained by allowing .AMAZON to proceed; the region and its territories,

⁸ Expert Report at 10. Indeed, the ICC Community Objection decision reiterates this. "[T]here is no evidence either that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. ".Amazonia" springs to mind." ICC Decision Case No. Exp/396/ICANN/13, cl. 103.

⁹ "Beyond the law of geographical indications, the assignment of '.amazon' to Amazon would not in any event be prejudicial to the objecting states who, since they have no reason for linguistic reasons to reserve '.amazon', could always if they so wished reserve a new gTLD such as '.amazonia' or '.amazonas' which would create no risk of confusion with '.amazon'." Expert Report at 10.

¹⁰ See Amazon Response, p. 14-16.


¹¹ ICANN GNSO Final Report - Introduction of New Generic Top-Level Domains (8 August 2007).

identities, and cultural identity can still be fully represented by the terms commonly used and recognized as representing the region – .amazonia, .amazonas and .amazonica.

If ICANN allows the GAC to supersede the community-derived process and policy found in the AGB (which included Board review and rejection of certain of the 2007 GAC Principles, including those cited to now by certain members of the GAC) governments will have the final say over multistakeholder and community driven policy, and established international/national law. This sets a dangerous precedent for the transparency, predictability and non-discriminatory nature of the new gTLD application process. It injects uncertainty on participants; it creates and affirms a form of sui generis rights for governments not supported by international or national law; it penalizes a legitimate applicant, with legitimate rights, and which has otherwise cleared through all stages of the applicant process; and it sets a dangerous precedent for multistakeholder created policy.

We thank the NGPC for its time and consideration of our comments, and ask the NGPC to reject the GAC Advice on .AMAZON and allow our applications to proceed. We welcome any questions and would be happy to discuss this and any other submissions at your convenience.

With best regards,



Scott Hayden

Vice President, Intellectual Property - Amazon

EXHIBIT C-052

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GAC Advice re: Community Views on .HEALTH.....p. 20-21

Report of Public Comments on Review Mechanism for String Confusion
Objection Expert Determinations.....p. 22-31

ANNEX 1

GAC Advice (Singapore, Buenos Aires, Durban, Beijing): Actions and Updates

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

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REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1a

TITLE: GAC Advice on .AMAZON (and related IDNs)

Process for Consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws

Proposed Process:

Step 1: Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC's advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

Step 2: In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered “Bylaws Consultations”. The Board will provide written notice to the GAC (the “Board Notice”) stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board’s Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

Step 3: As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the “Bylaws

Consultation”). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

Step 4: Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

Step 5: During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

Step 6: After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board’s preliminary or interim decision. The Board’s final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board’s decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months.

The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

Step 7: If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site.

REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1a

TITLE: **GAC Advice on .AMAZON (and related IDNs)**

Timeline of GAC Advice on .AMAZON (and related IDNs)

- 20 November 2012: “[T]he Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also the Government of Argentina, would like to request that the ‘.AMAZON’ gTLD application be included in the GAC early warning process.”
- 3 March 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter notes that Amazon is supportive of the concept of public interest commitments (PIC) but was unable to submit a PIC at that time because the process had not yet been finalized.
- 12 March 2013: The Independent Objector [files three community objections](#) with the International Centre for Expertise of the International Chamber of Commerce (the “Centre”) concerning .AMAZON and related IDNs in Chinese and Japanese.
- 11 April 2013: In the [Beijing Communiqué](#), the GAC advises the Board not to proceed beyond Initial Evaluation for the applied-for strings .AMAZON and IDNs in Chinese and Japanese.
- 22 May 2013: ICANN [publishes](#) applicant responses to the GAC’s Beijing Communiqué, which includes the applicant response on the .AMAZON GAC advice.
- 4 June 2013: The NGPC [accepts](#) the advice in the Beijing Communiqué and determines that at that time, ICANN will not proceed beyond initial evaluation of the identified strings.
- 4 July 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter expresses Amazon’s willingness to work with Brazil and Peru, and provides public interest commitments that Amazon is willing to commit to in order to address the governments’ concerns.
- 18 July 2013: In the [Durban Communiqué](#), the GAC advises the Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the

Applicant Guidebook on the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)

- 28 August 2013: ICANN publishes applicant responses to GAC advice, which includes the [applicant response](#) on .AMAZON (and related IDNs) GAC advice.
- 10 September 2013: The NGPC adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC notes that Amazon submitted a response to the advice in the Durban Communiqué, and given the volume of information presented, the NGPC proposed to consider the information and take action at a future meeting.
- 13 September 2013: [Letter](#) from Mr. Stefanos Tsimikalis (Attorney, Tsimikalis Kalonarou). The letter notes that he has been following the issue with genuine interest, and suggests that “It cannot be disputed that the word Amazon is part of the Greek culture, and henceforth, of world culture and legacy. If any country had the right to object to Amazon’s application... that should be Greece.” The letter suggests that if ICANN follows the GAC’s advice it “would be acting as a judge of history and would be assigning quasi sovereign exclusivity on the name Amazon to Brazil and Peru, depriving the world of its cultural heritage.”
- 28 September 2013: the NGPC adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC notes that due to the complexity and uniqueness of the issues raised in the applicant’s response, and the volume of information submitted, the NGPC intends to further study and analyze the issues raised by this application and the GAC’s advice. The NGPC directs staff to prepare additional analysis regarding the advice and the issues raised in the applicant’s response.
- 4 October 2013: [Letter](#) from Mr. Ernesto H.F. Araújo (Chargé D’ Affaires, a.i., Brazilian Embassy). The letter notes that on 8 August 2013, the Committee on Foreign Affairs and National Defense of the Brazilian Senate approved a resolution requiring “the Brazilian Government to express to ICANN the Committee’s formal opposition to the registration of the gTLD ‘.amazon’ without the proper consent of the countries in whose territory the Amazon is located, among which Brazil.”

- 20 November 2013: In the [Buenos Aires Communiqué](#) the GAC requested an update on the current status of the implementation of the GAC's advice on .AMAZON (and related IDNs).
- 3 December 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter details the steps Amazon has taken to meet with the concerned governments to discuss its applications for .AMAZON (and related IDNs).
- 24 December 2013: [Letter](#) from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru). The letter presents additional information concerning geographical protections in an effort to further advance the objections of Peru, Brazil and other countries objecting to the .AMAZON stings.
- 10 January 2014: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter comments on the GAC's advice regarding .AMAZON, and reiterates its previous position on the matter.
- 27 January 2014: The Independent Objector's objections against .AMAZON (and related IDNs) are [dismissed](#) and the applicant (Amazon) prevails.
- 5 February 2014: The NGCP adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC agreed to send an update to the GAC on its progress to address the .AMAZON (and related IDNs) GAC advice.
- 10 February 2014: In a [letter](#) to the GAC Chair, Ms. Heather Dryden, the NGPC provides an update on its progress to address the GAC's advice concerning .AMAZON (and related IDNs). The letter notes that ICANN has commissioned an independent, third party expert to provide additional advice on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.
- 3 March 2014: [Letter](#) from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter reiterates the position of the Peruvian government and requests that ICANN adopt a clear resolution in Singapore to responded to the GAC's advice.
- 25 March 2014: [Letter](#) from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization). The letter urges the Board to move

forward and accept the GAC's consensus advice that the applications for .AMAZON (and related IDNs) be rejected.

- 7 April 2014: The NGPC sends a letter to the [GAC](#) and to [Amazon](#) to provide a copy of the third party analysis to keep the parties informed and to welcome the submission of any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.
- 11 April 2014: [Letter](#) from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the independent, third party advice and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

REFERENCE MATERIALS – NGPC PAPER NO. 2014.04.29.NG1b

TITLE: **GAC Advice regarding Community Views -
.HEALTH and health-related TLDs**

Agenda Item Not Considered.

Agenda Item Not Considered.

Report of Public Comments

Title:																																												
Publication Date:	24 April 2014																																											
Prepared By:	Christine Willett																																											
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Staff Contact:	Christine Willett	Email: christine.willett@icann.org																																										
Section I: General Overview and Next Steps																																												
<p>At the direction of the ICANN Board New gTLD Program Committee (NGPC), ICANN solicited public comment on a proposed review mechanism to address the perceived inconsistent Expert Determinations in certain New gTLD Program String Confusion Objection proceedings. If adopted, the proposed review mechanism will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.</p>																																												
Section II: Contributors																																												
<p><i>At the time this report was prepared, a total of thirty-five (35) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																																												
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Uniregistry, Corp.	Bret Fausett	UNI
United TLD Holdco Ltd.	Statton Hammock	UNITED
Universal Postal Union	Paul Donohoe	UPU
Valideus Ltd	Brian Beckham	VAL
VeriSign, Inc.	Thomas Indelicarto	VSIGN

Individuals:

Name	Affiliation (if provided)	Initials
Rudi Fras		RF
Mike Gailer		MG
Jean Guillon		JG
Noreply		NO
Chris Penn		CP
s s		SS

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

The comments submitted during the public comment period generally fall into the following categories and themes, each of which is explained in more detail below:

- Do not adopt the Proposed Review Mechanism. (8 commenters)
- Adopt the Proposed Review Mechanism. (2 commenters)
- Adopt a Review Mechanism with an expanded scope. (5 commenters)
- Do not adopt the Proposed Review Mechanism or expand the scope. (3 commenters)
- Adopt some form of review, but not necessarily the Proposed Review Mechanism. (2 commenters)
- Recommended modifications to the framework principles of the Proposed Review Mechanism, if a review mechanism is adopted.

Do Not the Adopt Proposed Review Mechanism.

Eight commenters suggest that the NGPC should not create a review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations in this round of the New gTLD Program. These commenters argue that changing the rules after the fact would be unfair, would constitute a breach of contract, and may be creating top-down policy changes outside of the GNSO policy development process. These commenters suggest that applicants agreed to the process included in the Applicant Guidebook, which did not include this review mechanism, and applicants relied on these rules. Some commenters also expressed concern that adopting such a review mechanism may be a breach of ICANN's Bylaws. Additionally, commenters suggest that adopting the

review mechanism at this time would call into question all other objection/contention sets, which would serve to undermine many other parts of the New gTLD Program. Also, some commenters suggest that future rounds should include a review mechanism, although such a review mechanism may not be appropriate for this round.

“The ‘framework principles’ proposed are utterly absurd. And by what right are the NGPC involved? ... The NGPC is treading on hallowed ground of policy change. The GNSO have to tell them in no uncertain terms that they should stay off the heart of GNSO terrain.” RF

“The proposed appeal review materially prejudices our investment and we are obtaining formal legal advice on this matter. It is our understanding that a change of process as proposed would open up potential contractual claims around the application process itself based on the contractual terms to which all applicants signed up.... We strongly request that ICANN should reconsider the review proposals and honour the process which all application agreed to and therefore returning to an environment in which all applicants are treated equally and fairly.” DVP

“A right of appeal is a fundamental change to the [New gTLD Dispute Resolution] Procedure – which the Board simply did not have the due competence and authority to make.... Dot Agency Limited fully intends to make a Request for an Independent Review Panel under Article IV, Section 3 of the ICANN Bylaws, should the Framework Review be adopted for implementation by the NGPC....” FFM

“...[W]e do not believe there is a need for an entirely new review process intended solely to re-litigate two specific instances in which an objection proceeding resulted in a dubious ruling, when other inconsistencies (e.g., with the community objection proceedings) have not merited similar treatment. Without resorting to a new mechanism, there is already existing guidance for dealing with inconsistent string contention scenarios within the language of the Applicant Guidebook. As set forth in the Guidebook (and suggested in our previous public comment on auction rules), a reasonable solution for the .CAR/CARS and .CAM/COM strings would be to simply move all of the relevant applications into a single contention set for the purposes of the auction procedure, whether through direct or indirect contention. Such an approach is the fairest and most predictable manner in which to handle an imperfect situation, and certainly easier for ICANN to administer than a new review mechanism aimed at only two specific contention sets.” GOOG

“It is my formal request that ICANN cease these community discussions, which serve only as a point of distraction; and rather adhere to the guidelines discussed to exhaustion in the planning period. ICANN does not need an overhaul of its systems it simply needs to do what it promised initially. Evaluate not just CAM/COM AND CAR/CARS but all TLDs for Visual, Audial and Meaning as per set policies and guidelines.” CP

“In any future gTLD application rounds, MarkMonitor supports a widely applicable and reliable String Confusion Objection appeals mechanism. Consumer protection experts both within the

ICANN community as well as external to the ICANN community should develop objective criteria by which to judge string similarity in future rounds.” MM

“The Applicant Guidebook provided no mechanism for appeals, and all parties applied for their top-level domains under the express promise by ICANN, and the reasonable contractual expectation of the applicants, that decisions by the dispute resolution providers would be final. The proposal to further reconsider these decisions on what appears to be an arbitrary selection basis for such reconsideration is an invitation for all parties dissatisfied with outcomes to lobby for ad-hoc changes to the new TLD process.” UNI

“The Proposed Review, rather than addressing the core problem which has directly caused the inconsistent String Confusion Objections (“SCO”) Determinations, exacerbates the problem by artificially constraining the review to purposefully avoid recognizing the extent of the inconsistent SCO Determinations and its impact on the participations.” COMCON

Adopt the Proposed Review Mechanism.

Two commenters recommended that ICANN adopt the proposed review mechanism. These commenters suggest that ICANN’s Bylaws require it to address the perceived inconsistencies, and to allow the inconsistencies to stand would cause an unfair prejudice.

“Central to ICANN’s proposed review mechanism is the recognition that, consistent with its Bylaws, ICANN must administer its programs in a manner that is neutral, objective, and does not cause disparate treatment to any party unless justified by ‘substantial and reasonable cause....’ As a policy matter, where two or more expert panels considering the same strings, the same objector arguments, and the same standards reach diametrically different conclusions, it is a clear indication of an untenable outcome resulting in one or more applicants facing ‘disparate treatment’ that cannot be ‘justified by substantial and reasonable cause,’ in direct contravention of Art. II, § 3 of the ICANN Bylaws (Non-Discriminatory Treatment).” DCARS

“United TLD believes that review of inconsistent SCO Expert Determinations should be confined to those involving the EXACT SAME string. The .CAM/.COM decision affecting United TLD and the .CAR/.CARS decision affecting DERCars LLC are exceptional cases that have nothing to do with singular vs. plural confusion. ICANN has correctly identified these two circumstances as the only two truly inconsistent Expert Determinations....United TLD urges ICANN to implement the proposed review mechanism IMMEDIATELY so that the applicants for the exact same string can resolve contention and move forward in the program as all applicants have been substantially delayed as a result of the uncertainty caused by these two .CAR and .CAM SCO Expert Determinations.” UNITED

Adopt a Review Mechanism with an Expanded Scope.

Five of the comments submitted generally support the idea of a review mechanism but urge the NGPC

to expand the scope of the review mechanism beyond the two identified String Confusion Objections (.CAM/.COM and .CAR/.CARS). These commenters suggest that the proposed mechanism is too narrow as currently defined. The commenters express varying degrees to which the scope should be expanded. While some suggest that the scope be expanded to other String Confusion Objections, such as those related to .shop/.shopping, others recommend an even broader scope that would be widened to include “inconsistencies” in Community and Limited Public Interest Objections. Additionally, some commenters suggest that the NGPC to expand the scope of the review mechanism such that “inconsistencies” subject to review should include singular and plural versions of the same string.

“The ALAC supports the details of the process described, but recommends that it be widened to include cases such as the various .shop objections where the objected-to strings were not identical, but the results were just as inconsistent.” ALAC

“We generally are supportive of a limited review process to address inconsistent string confusion objection *outcomes* and not just inconsistent determinations.... [T]his limited review should be extended to include a third contention set where there is an incongruent outcome. In the .SHOP vs. .SHOPPING objection, the same panelist who found .SHOP to be confusion to a Japanese .IDN found in favor of the objector with regard to the Donuts’ .SHOPPING application.... Finally, we urge ICANN to undergo a similar review mechanism in cases of inconsistent outcomes with the Limited Public Interest and Community objections.” DONUTS

“The BC has repeatedly requested a broader appeals mechanism for new gTLD objections, in particular with respect to those involving singular and plural versions of the same generic TLD strings.... In light of this strong community sentiment in favor of a broader appeals process, the BC is disappointed with the limited scope of the present review mechanism proposed by ICANN. We continue to believe that a more comprehensive review is necessary for singular/plural string confusion objections....” BC

“[I]f a review process were to be created, Google supports the standing request from the Business Constituency for ICANN to: (1) Publish any evidence considered by expert panels, arbitration providers, and ICANN staff in its evaluation of string confusion determinations; and (2) Publish more specific objective criteria used to judge string similarity, while creating a broader appeal system to allow parties to challenge prior ICDR decisions on singular-plural TLDs.” GOOG

“The Board should expand their inquiry to ensure that the twin Policy goals of predictability and fairness are met. To do otherwise will impugn the integrity of the new gTLD process and program.... In particular, we recommend that: [t]he scope of inconsistent objections must be expanded and the Board should agree to take up the issue of inconsistencies in Community and Limited public interest objections.” RADIX

“...ICANN’s Proposal misses yet another opportunity to mitigate user confusion about which ICANN has been repeatedly warned but as yet continues to bedevil this program.... There is no

compelling rationale to exclude from appeal Verisign's unsuccessful objections. If ICANN believes that the inconsistencies in the com/cam situation cannot stand, then all three decisions should be consolidated and reviewed on appeal and the appeal panel should be required to issue one ruling covering all three objections.... Verisign therefore joins with others such as the BC, the IPC and the GAC in calling on ICANN to revisit and reverse its decision to allow singular and plural versions of the same string to proceed to delegation." VSIGN

Do Not Adopt the Proposed Review Mechanism or Expand the Scope of the Proposed Review.

Three of the comments submitted suggest that the NGPC should either expand the scope of the proposed review mechanism to address other "inconsistencies", or do not adopt a review mechanism at all. These commenters generally seem to recommend an "all or nothing" approach.

"While the IPC appreciates the work ICANN has dedicated in proposing a review mechanism, we identify serious fairness concerns since only two contention sets would potentially be reviewed. Further, assuming *arguendo* that some form of appeal mechanism does move forward, we feel that key changes are necessary." IPC

"Whilst no one would deny that the objection process has given rise to some laughable results (shop and 通販 are confusingly similar?), how can they single out just two sets of strings for review? ICANN already absolved themselves of responsibility by asking third parties to make these sorts of determinations for them. Some may say that was a smart move. So why now are they doing exactly the opposite, by selecting just a couple of string confusion decisions for review, when panellists have made much worse decisions and been more inconsistent? Surely any review must be all or nothing?" JG

"A limited review which allows relief to only randomly-selected members of the ICANN community makes no sense. The Guidebook did not provide for a review process, we should all have a right of redress, or none at all." NO

Adopt Some Form of a Review, But Not Necessarily the Review Mechanism Proposed.

Two commenters suggest that some form of a review mechanism is needed, but these commenters do not necessarily advocate for the adoption of the review mechanism proposed. One of the comments outlines alternative review mechanisms that could be adopted by the NGPC.

"The entire String Confusion Objections had significant deficiencies and there have been a number of controversial decisions when looking at all the decisions. Therefore, ICANN together with ICDR and independent experts must review all decisions and define clear rules under which parties concerned may apply for an appeal of their decision." The commenter provides rules for an appeal based on the percentage of visual similarity as determined by the SWORD tool. HTLD

"I would like to voice my opinion that the .CAM gTld will be confusing with the existing .COM

gtld and therefore I hope that ICANN will do the right thing (for once) and refuse the application for .CAM.” MG

Suggested Modifications to the Proposed Review Mechanism, If Adopted.

Various comments submitted during the public comment forum suggest that the NGPC modify the framework principles of the Proposed Review Mechanism, if the NGPC decides to move forward with adopting a review mechanism. Some of the commenters note that they are not advocating for approval of the review mechanism, but merely suggesting improvements if the NGPC is inclined to take action to adopt the Proposed Review Mechanism. The suggestions for modifications to the framework principles generally focus on the following: (1) the scope of the Proposed Review Mechanism, (2) the applicable standard of review, (3) the parties who have standing to use the Proposed Review Mechanism, and (4) the composition of the Panel of Last Resort.

Scope

Comments on expanding the scope of the framework principles included in the Proposed Review Mechanism are addressed above.

Applicable Standard of Review

The proposed standard of appellate review is flawed in that it focuses on the subjective reasonableness of the underlying decision as determined by application of the Applicant Guidebook and procedural rules.... we believe strongly that the clearly erroneous standard of appellate review is more appropriate.” GOOG

“United TLD proposes adding the following language to the standard of review:

Could the Expert Panel have reasonably come to the decision reached on the underlying SCO through an appropriate application of the standard of review as set forth in the Applicant Guidebook and procedural rules and not unfairly prejudice any applicant by being inconsistent with other SCO determinations for the exact same string? UNITED

“The appropriate common law standard of appellate review for such factual determinations is the clearly erroneous standard—a highly deferential standard.... Conversely, the standard proposed by ICANN appears to subjectively dissect the reasonableness of the determination, and it seemingly lacks any real deference to the initial panel.” IPC

“Members of the Intellectual Property Constituency (IPC) suggested that ICANN’s proposed standard of review be changed and a “clearly erroneous” standard be adopted for the review by the Panel of Last Resort. Applying such a standard is wholly misplaced given that review is not an appeal process but ultimately, a review of ICANN’s compliance with its bylaws and the Applicant Guidebook.” UNITED

“...the standard of review should not be merely whether it was reasonable for a panelist to have reached that decision. Rather, the standard should include whether it is reasonable to have inconsistent outcomes in the same contention set.... If any one .CAM applicant is permitted to proceed, both .CAM and .COM will be active TLDs. Hence, any confusion on the part of the public between .CAM and .COM will exist. As such, the review should look at the reasonableness of the outcome in light of the other outcomes and the end result.” DONUTS

Standing

“We further join with the comments of the BC and the IPC insofar as they request that ICANN’s Proposal be modified at least to permit the objectors an equal right to appellate review as the applicants.” VSIGN

“Fundamental principles of fairness and due process dictate that both parties in a dispute have an equal right to appeal an unfavorable determination.... [T]he BC urges ICANN to allow both losing objectors and the applicants to have standing to appeal the results of an inconsistent ICDR decision.” BC

“United TLD supports the recommendation made by Donuts that only losing applicants be allowed to seek redress under the review mechanism. To allow objectors to file for review would amount to allowing a second round of objections and effectively change the AGB in a way that materially harms the applicants.” UNITED

“Fundamental principles of fairness dictate that either party in a dispute have the right to appeal an unfavorable determination. Vesting appellate discretion solely with ‘Losing Applicant[s]’ creates an impermissible presumption that only cases where objectors were successful were wrongly decided and are somehow problematic. Rather, convention and equity dictate that both losing objectors and applicants have the right to appeal unfavorable decisions.” GOOG

“If the Board decides to add an appeal mechanism not contemplated by the Applicant Guidebook, the principle that makes the appeal available only to the ‘applicant for the application that was objected to in the underlying SCO and lost’ should be adopted subject to appropriate opportunity for comment, and not decided as a ‘process detail.’” UNI

Panel of Last Resort

“[A]ny Panel of Last Resort should be composed entirely of arbitrators with demonstrated experience in new gTLD program string confusion objections—and ideally, arbitrators who also have some degree of experience in the relevant target industries, such as the automotive or hospitality industries.” GOOG

“[T]he BC proposes that any review or appeals panel be comprised entirely of arbitrators with specific demonstrated experience in the new gTLD program string confusion objections. To the

extent that any arbitrators also have some degree of experience in the relevant target industries, such as the automotive (e.g., for .CAR/.CARS) or hospitality industries (e.g., for .HOTEL/.HOTELS), such qualifications would also be preferable.

“United TLD disagrees with ICANN’s view that only two potential outcomes may occur.... It seems clear that the only two potential outcomes should be these: 1) that the Panel determines that the strings at issue are confusingly similar in all three applications or, 2) the strings are not similar, for all three applications. These are the only outcomes for a review if ICANN wishes to avoid prejudicing any one applicant.” UNITED

“...[T]here will have to be clear guidelines offered on what standards of evidence and burden of proof apply - there will have to be a review of the case law to date and a serious critical effort made to analyse the decisions, draw out the common themes and to agree on the correct judicial approach. This is a task which should clearly not be entrusted to the existing dispute resolution service providers, but to an independently convened panel of academics who understand the rules of evidence and how they should be applied in a global context.” NO

Other Comments.

“ICANN’s recognition of community concern over what it has characterized as a ‘limited universe ...limited to two circumstances’ of so-called inconsistent Objection determinations, coupled with its own proposal for a Review Mechanism, highlights the need for a formal appeals process for future new gTLD application rounds (if nothing more than to avoid situations such as the present where a makeshift post hoc review process is under consideration).” (A footnote indicates that Valideus does not “mean to suggest that the concerns herein should be seen as inapplicable to the current objection process; [Valideus] is aware however of the complexity of addressing these concerns in the current round.”) VAL

“I want to be clear, however, that ‘consistent’ application of the confusingly similar standard DOES NOT require the ‘same’ outcome for all applications for the exact match for a particular string. If that were the case, then the dispute resolution panels would be required to evaluate the likelihood of confusion without regard to each applicant's unique plan for a gTLD string and their arguments articulating why such plans would not cause confusion. That would be a huge mistake. In fact, the proposed use of a new gTLD is highly relevant to the question of whether or not there is a likelihood of confusion. Indeed, it is to be expected that expert panels might reasonably conclude, as has apparently happened, that the string “.cam” is confusingly similar to ‘.com’ in one case but not in another.... In fact, the complained-of inconsistency in other cases appears to arise from the panel's failure to actually take account of the context in which a proposed gTLD would operate. Examples include translation cases where the different markets were likely not considered.” NEU

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

After reviewing feedback from the public comment forum, the NGPC will consider options to address the perceived inconsistent String Confusion Objection Expert Determinations, including whether to allow the Expert Determinations to stand as is, and whether or not to adopt the proposed review mechanism. The summary of public comments will be included in the briefing materials as part of the NGPC's deliberations on this matter.

EXHIBIT C-053

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NGPC Meeting Agenda – 29 April 2014 – 2 hours

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1. GAC Advice	Disspain / Hedlund
a) .Amazon	
b) Community applications (.health)	
c) IGO Protections	
d) Singular/Plural Strings	
e) .ram/ .indians	
f) RCRC Names	
g) .spa	
h) .wine/.vin	
i) Written briefing - safeguards	
j) IOC/RC Protections	
k) Cat 2 Safeguards – Exclusive Access	
2. Perceived Inconsistent String Confusion Expert Determinations – Review Mechanism	Stathos
3. New gTLD Auction Rules	Willett
4. New gTLD Program Financial Update	Willett

ICANN NGPC PAPER NO. 2014.04.29.NG1

TITLE: **GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Updates**

PROPOSED ACTION: **For Information**

EXECUTIVE SUMMARY:

The attached Annex 1 provides a status update on the remaining open items of advice issued by the Governmental Advisory Committee (GAC) in Beijing, Durban and Buenos Aires concerning the New gTLD Program. Over the past several months, the NGPC has taken several actions to respond to the advice in the Beijing Communiqué, Durban Communiqué, and Buenos Aires Communiqué, and thus only a handful of open items remain including protections for acronyms of IGOs, Category 2 safeguards for generic strings proposing exclusive registry access, and the GAC's consensus advice concerning .AMAZON (and related IDNs).

Additionally, Annex 1 includes new items of advice issued by the GAC in its Singapore Communiqué (dated 27 March 2014) and the NGPC's proposed response for each item. Consistent with the Applicant Guidebook, ICANN has notified relevant applicants of strings named in the Singapore Communiqué of the GAC advice, and has provided at least 21 days for those applicants to submit responses to the NGPC for consideration. To be considered by the NGPC, applicant responses are required to be submitted no later than 2 May 2014. ICANN will publish applicant responses and provide them to the NGPC for consideration as the NGPC moves forward with addressing the GAC advice. This paper is provided for informational purposes, and the NGPC may consider taking action at subsequent meetings to address the remaining GAC advice after receipt of the applicant responses.

Signature Block:

Submitted by: Jamie Hedlund

Position: Advisor to the President

Date Noted: 22 April 2014

Email: jamie.hedlund@icann.org

ICANN NGPC PAPER NO. 2014.04.29.NG1a

TITLE: GAC Advice on .AMAZON (and related IDNs)

PROPOSED ACTION: For Discussion

EXECUTIVE SUMMARY:

In its Durban Communiqué, the GAC advised the ICANN Board that it is the consensus of the GAC that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (AGB § 3.1) As provided in AGB § 3.1, Amazon EU S.à r.l. (“Amazon”), the applicant of .AMAZON (and related IDNs) was provided an opportunity to submit a response to the ICANN Board to respond to GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN’s governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously agreed to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the GAC-NGPC Scorecard adopted by the NGPC on 5 February 2014 noted that “ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.” The analysis, which is included in the Reference Materials to this paper, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC’s advice. The analysis explores relevant international and local law on geographical indications, related international treaties, and principles of intellectual property law to address the specific issues of application of law at issue.

The analysis concludes the following:

As regards the application for assignment of the new gTLD ‘.amazon’ filed by the Amazon company:

i) there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN to reject the application;

ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.

In response to the 7 April 2014 communication to the GAC and Amazon, ICANN received related correspondence, including the following:

- Letter dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil).
- Letter dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon)

At this time, the NGPC is being asked to consider the GAC’s advice on AMAZON (and related IDNs), including the additional information, analysis and correspondence submitted on this matter, and to discuss options for responding to the GAC’s advice, which may include the following options:

1. Accepting the GAC advice concerning .AMAZON (and related IDNs). By accepting the GAC advice, the applications for .AMAZON (and related IDNs) would not proceed further in the New gTLD Program. As discussed above, if the GAC advises ICANN that it is the consensus of the GAC that a particular application should not

proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (AGB § 3.1)

2. Accepting the GAC advice concerning .AMAZON (and related IDNs) while recognizing that Amazon and the concerned governments may wish to consider continuing further discussions to address noted issues or concerns about delegating .AMAZON (and related IDNs) to Amazon. By selecting this option, the applications for .AMAZON (and related IDNs) would not progress further at this time, while acknowledging the opportunity for Amazon and the governments to resolve the noted concerns.
3. Rejecting the GAC advice concerning .AMAZON (and related IDNs). As required by the ICANN Bylaws, in the event that the ICANN Board determines to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow that advice. The GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The ICANN Board-GAC Recommendation Implementation Working Group (BGRI-WG) has developed a procedure for any consultations that might be needed if the Board determines to take an action that is not consistent with GAC advice. The procedure was approved by the BGRI-WG in Beijing and would be used for any consultation on this GAC advice. The procedure says that the consultation process should conclude within six months, but that the GAC and the Board can agree to a different timetable. The consultation process is included in the Reference Materials to this paper.

The Reference Materials to this paper include a timeline of key events and documents related to this matter.

Signature Block:

Submitted by: Jamie Hedlund

Position: Advisor to the President

Date Noted: 23 April 2014

Email: jamie.hedlund@icann.org

ICANN NGPC PAPER NO. 2014.04.29.NG1b

TITLE: **GAC Advice regarding Community Views -
.HEALTH and health-related TLDs**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

Pages 7/15 - 9/15 Removed. Agenda Item Not Considered.

ICANN NGPC PAPER NO. 2014.04.29.NG2a

TITLE: **Report of Public Comments on Review Mechanism
for String Confusion Objection Expert
Determinations**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

Pages 10/19 - 14/19 Removed. Agenda Item Not Considered.

ICANN New gTLD Program Committee PAPER NO. 2014.04.29.NG3a

TITLE: Briefing on New gTLD Program Auctions

PROPOSED ACTION: For Information

EXECUTIVE SUMMARY:

Pages 15/19 - 19/19 Removed. Agenda Item Not Considered.

EXHIBIT C-054

Translations Français Español

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Approved Resolutions | Meeting of the New gTLD Program Committee

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14 May 2014

1. **Consent Agenda**
 - a. [Approval of Minutes](#)

2. **Main Agenda**
 - a. [Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice](#)
[Rationale for Resolution 2014.05.14.NG02](#)

 - b. [GAC Advice on .AMAZON \(and related IDNs\)](#)
[Rationale for Resolution 2014.05.14.NG03](#)

 - c. [Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism](#)

 - d. [New gTLD Auction Rules](#)

 - e. [New gTLD Program Financial Update](#)

1. **Consent Agenda:**
 - a. [Approval of Minutes](#)

[Resolved \(2014.05.14.NG01\)](#), the ICANN Board New gTLD Program Committee (NGPC) approves the

minutes of the 22 March, 26 March and 3-4 April 2014 NGPC meetings.

2. Main Agenda:

a. Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013 and 5 February 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, and new advice in the Singapore Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG02), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates" (14 May 2014), attached as [Annex 1](#) [PDF, 448 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires and Singapore GAC advice as presented in the scorecard.

Rationale for Resolution 2014.05.14.NG02

Article XI, Section 2.1 of the ICANN Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, and its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014). The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, and Buenos Aires advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Singapore Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, and Buenos Aires GAC advice, and new items of advice from Singapore as described in the scorecard in [Annex 1](#) [PDF, 448 KB], dated 14 May 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice on its website and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>, the Durban GAC advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>, the Buenos Aires GAC advice was posted on 11 December 2013, and the Singapore advice was posted on 11 April 2014. The complete set of applicant responses is provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit community input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>. The NGPC has considered applicant responses in addition to the community feedback in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Conversion=1&modificationDate=1375787122000&api=v2
[PDF, 238 KB]
- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Conversion=1&modificationDate=1374215119858&api=v2
[PDF, 104 KB]
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Conversion=1&modificationDate=1385055905332&api=v2
[PDF, 97 KB]
- GAC Singapore Communiqué (as amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2
[PDF, 147 KB]
- Applicant responses to 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> [PDF, 261 KB]

In adopting its response to remaining items of Beijing, Durban, and Buenos Aires GAC advice, and the new Singapore advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in a manner that

permits the greatest possible number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué and officially notified applicants of the advice on 11 April 2014. The Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. GAC Advice on .AMAZON (and related IDNs)

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC advised the ICANN Board in its Durban Communiqué that the GAC reached "consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications: [t]he application for .amazon (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)." This item of GAC advice is identified in the GAC Register of Advice as [2013-07-18-Obj-Amazon](#).

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NG03), the NGPC accepts the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581)

filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

Rationale for Resolution 2014.05.14.NG03

The NGPC's action today, addressing open items of GAC advice concerning .AMAZON (and related IDNs in Japanese and Chinese), is part of the ICANN Board's role to address advice put to it by the Governmental Advisory Committee (GAC). Article XI, Section 2.1 of the ICANN Bylaws

<http://www.icann.org/en/about/governance/bylaws#XI>

permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The action being approved today is to accept the GAC's advice to the ICANN Board contained in the GAC's Durban Communiqué stating that it is the consensus of the GAC that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if "GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved." (AGB § 3.1) To implement this advice, the NGPC is directing the ICANN President and CEO (or his designee) that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5581) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon

EU S.à r.l. and members of the GAC to pursue dialogue on the relevant issues.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, including Amazon EU S.à r.l. (the applicant for .AMAZON (and related IDNs)), triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Amazon's response to the Board is provided at:

<http://newgtlds.icann.org/en/applicants/gac-advice/>, and the NGPC has considered this response as part of its deliberations on the GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN's governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously decided to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the [GAC-NGPC Scorecard](#) [PDF, 371 KB] adopted by the NGPC on 5 February 2014 noted that "ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments." The independent, third-party expert [analysis](#) [PDF, 737 KB] ("Expert Analysis") explores relevant international and local law on geographical indications, related international treaties, and principles of intellectual property law to address the specific issues of application of law at issue. Among other things, the Expert Analysis considers whether the consensus advice issued by the GAC is of such nature as to oblige ICANN to reject the application filed by Amazon, or to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC's advice oblige ICANN to approve the applications for .AMAZON (and related IDNs). The Expert Analysis concludes the following:

As regards the application for assignment of the new gTLD '.amazon' filed by the Amazon company:

i) there is no rule of international, or even regional or national, law

applicable in the field of geographical indications which obliges ICANN to reject the application;

ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN to accept this application.

The Expert Analysis, which was considered as part of the NGPC's deliberations in adopting this resolution, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the Expert Analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

In response to the 7 April 2014 communication to the GAC and Amazon, ICANN received related correspondence, including the following, which were considered as part of the NGPC's action:

- [Letter](#) [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON. The letter comments on the Expert Analysis and requests that the NGPC reject the applications for .AMAZON.
- [Letter](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgílio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- [Letter](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the Expert Analysis and

requests that the NGPC allow the applications for .AMAZON to continue to move forward.

The NGPC considered several significant factors during its deliberations about how to address the GAC advice concerning .AMAZON (and related IDNs). The NGPC had to balance the competing interests of each factor to arrive at a decision. The concerns raised by the relevant parties highlight the difficulty of the issue. In addition to the factors highlighted above, the following are among the factors the NGPC found to be significant:

- Although the NGPC does not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice in the Durban Communiqué on the applications for .AMAZON (and related IDNs), the NGPC considered the reason/rationale provided in the [GAC Early Warning](#) [PDF, 79 KB] submitted on behalf of the governments of Brazil and Peru on 20 November 2012 expressing concern regarding Amazon's application for the .AMAZON gTLD. In the Early Warning, the concerned governments indicated that among other reasons, it was requesting that Amazon withdraw its application because "[g]ranting exclusive rights to this specific gTLD to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." The Early Warning also explains that the applied-for string "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty...."
- The NGPC also considered correspondence received on the matter, and takes particular note of correspondence from Amazon dated 4 July 2013 and 3 December 2013, wherein Amazon describes its "attempts to find a mutual resolution with the Governments of Brazil and Peru" concerning the .AMAZON applications, and the public interest commitments it is willing to include as contractually enforceable provisions in the Registry Agreement. Amazon indicates that it is

willing to be contractually committed to do the following:

- *Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD to OTCA [Organização do Tratado de Cooperação Amazônica's] and its Member Governments.*
- *Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.*
- *Present a Memorandum of Understanding to ICANN setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".*
- The NGPC considered the community-developed processes established in the Applicant Guidebook, including Section 5.1 of the Applicant Guidebook, which provides that, "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism."

As part of its deliberations, the NGPC's review of significant materials included, but is not limited to the following, letters, materials and documents:

- GAC Early Warning:
<https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2>
[PDF, 79 KB]
- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Con

[version=1&modificationDate=1375787122000&api=v2](#)
[PDF, 238 KB]

- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Conversion=1&modificationDate=1374215119858&api=v2
[PDF, 104 KB]
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_conversion=1&modificationDate=1385055905332&api=v2
[PDF, 97 KB]
- GAC Singapore Communiqué (Amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2
[PDF, 147 KB]
- Applicant Guidebook, Module 3:
<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf> [PDF, 261 KB]
- Applicant responses to GAC advice:
<http://newgtlds.icann.org/en/applicants/gac-advice/>
- [Letter](#) [PDF, 94 KB] dated 3 March 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) [PDF, 68 KB] dated 4 July 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) [PDF, 465 KB] dated 4 October 2013 from Mr. Ernesto H.F. Araújo (Chargé D' Affaires, a.i., Brazilian Embassy).
- [Letter](#) dated 3 December 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) dated 24 December 2013 from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) [PDF, 72 KB] dated 10 January 2014 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter](#) dated 3 March 2014 from Mr. Fernando Rojas SamanéZ (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) [PDF, 459 KB] dated 25 March 2014 from Ambassador Robby Ramlakhan (Secretary

General, Amazon Cooperation Treaty Organization).

- [Letter](#) [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru).
- [Letter](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil).
- [Letter](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon).

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. As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué and officially notified applicants of the advice. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, as noted above, the Expert Analysis was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.

c. Perceived Inconsistent String Confusion Objection
Expert Determinations – Review Mechanism

No resolution taken.

d. New gTLD Auction Rules

No resolution taken.

e. New gTLD Program Financial Update

Item not considered.

Published on 16 May 2014

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Minutes | Regular Meeting of the New gTLD (generic Top Level Domain) Program Committee

This page is available in:

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14 May 2014

Note: On 10 April 2012, the Board established the New gTLD (generic Top Level Domain) Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD (generic Top Level Domain) Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN (Internet Corporation for Assigned Names and Numbers)'s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

A Regular Meeting of the New gTLD (generic Top Level Domain) Program Committee of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors was held telephonically on 14 May 2014 at 13:00 UTC.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN (Internet Corporation for Assigned Names and Numbers)), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Olga Madruga-Forti, Gonzalo Navarro, George Sadowsky, and Mike Silber.

Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu sent apologies.

Jonne Soininen (IETF (Internet Engineering Task Force) Liaison) and Suzanne Woolf (RSSAC (Root Server System Advisory Committee) Liaison) were in attendance as non-voting liaisons to the Committee. Heather Dryden was in attendance as an observer to the Committee.

Invited Guests: Rinalia Abdul Rahim (observing).

Secretary: John Jeffrey (General Counsel and Secretary).

ICANN (Internet Corporation for Assigned Names and Numbers) Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop

- ▶ [ccTLDs \(/resources/pages/cclds-21-2012-02-25-en\)](/resources/pages/cclds-21-2012-02-25-en)

- ▶ [Internationalized Domain Names \(/resources/pages/idn-2012-02-25-en\)](/resources/pages/idn-2012-02-25-en)

- ▶ [Universal Acceptance Initiative \(/resources/pages/universal-acceptance-2012-02-25-en\)](/resources/pages/universal-acceptance-2012-02-25-en)

- ▶ [Policy \(/resources/pages/policy-01-2012-02-25-en\)](/resources/pages/policy-01-2012-02-25-en)

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- ▶ [Help \(/resources/pages/help-2012-02-03-en\)](/resources/pages/help-2012-02-03-en)

(Board Support Coordinator); Michelle Bright (Board Support Manager); Samantha Eisner (Senior Counsel); Allen Grogan (Chief Contracting Counsel); Dan Halloran (Deputy General Counsel); Jamie Hedlund (Advisor to the President/CEO); Elizabeth Le (Senior Counsel); Cyrus Namazi (Vice President, DNS (Domain Name System) Industry Engagement); Olof Nordling (Senior Director, GAC (Governmental Advisory Committee) Relations); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); and Christine Willett (Vice President, gTLD (generic Top Level Domain) Operations).

These are the Minutes of the Meeting of the New gTLD (generic Top Level Domain) Program Committee, which took place on 14 May 2014.

1. Consent Agenda

a. Approval of Minutes

2. Main Agenda

a. Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) Advice

Rationale for Resolution 2014.05.14.NG02

b. GAC (Governmental Advisory Committee) Advice on .AMAZON (and related IDNs (Internationalized Domain Names))

Rationale for Resolution 2014.05.14.NG03

c. Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism

d. New gTLD (generic Top Level Domain) Auction Rules

e. New gTLD (generic Top Level Domain) Program Financial Update

1. Consent Agenda

a. Approval of Minutes

The Chair introduced the items on the Consent Agenda. Chris Disspain moved and Olga Madruga-Forti seconded the resolution to adopt the items on the consent agenda. The Committee took the following action:

Resolved (2014.05.14.NG01), the ICANN (Internet Corporation for Assigned Names and Numbers) Board New gTLD (generic Top Level Domain) Program Committee (NGPC) approves the minutes of the 22 March, 26 March and 3-4 April 2014 NGPC meetings.

All members of the Committee present voted in favor of Resolution 2014.05.14.NG01. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.

2. Main Agenda

a. Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) Advice

The Committee continued its discussion of advice issued by the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)) to the Board concerning the New gTLD (generic Top Level Domain) Program. The Committee reviewed the proposed new iteration of the scorecard to respond to the new advice from the GAC (Governmental Advisory Committee) delivered in the Singapore Communiqué. Chris Disspain highlighted each of the new items of advice in the scorecard, and the Committee considered its proposed responses and actions.

The Committee's consideration of the Singapore Communiqué, included discussion of the GAC (Governmental Advisory Committee)'s advice on specific strings - .SPA, .RAM, and .INDIANS, and the comments submitted by the applicants. The Committee considered the negotiations

with the impacted parties noted in the applicant responses, and discussed whether the Committee should encourage or provide opportunity for additional discussions.

Chris also highlighted certain remaining open items of GAC (Governmental Advisory Committee) advice from the Beijing Communiqué, the Durban Communiqué, and the Buenos Aires Communiqué. He provided an update on the ongoing work to develop a response to address the GAC (Governmental Advisory Committee)'s advice regarding protections for Intergovernmental Organizations (IGOs) in light of the Board's action approving certain GNSO (Generic Names Supporting Organization) consensus policy recommendations on protections for IGOs-INGOs.

Olga Madruga-Forti noted that some members of the community continue to inquire about how the Committee intends to address the Category 2 Safeguard Advice concerning exclusive registry access. She requested that the Committee devote time at an upcoming meeting to explore potential options for addressing the advice.

Chris Disspain moved, and Bill Graham seconded the proposed resolution. Members of the Committee suggested edits to the scorecard, and the Committee took the following action:

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC (Governmental Advisory Committee)'s advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013 and 5 February 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC (Governmental Advisory Committee) advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, and new advice in the Singapore Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2014.05.14.NG02), the NGPC adopts the scorecard titled "GAC (Governmental Advisory Committee) Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates" (14 May 2014), attached as Annex 1 (/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf) [PDF, 436 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires and Singapore GAC (Governmental Advisory Committee) advice as presented in the scorecard.

All members of the Committee present voted in favor of Resolution 2014.05.14.NG02. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.

Rationale for Resolution 2014.05.14.NG02

Article XI, Section 2.1 of the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Bylaws](#) <http://www.icann.org/en/about/governance/bylaws#XI> ([/en/about/governance/bylaws#XI](#)) 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 the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, and its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014). 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 policies. 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 NGPC has previously addressed items of the GAC (Governmental Advisory Committee)'s Beijing, Durban, and Buenos Aires advice, but there are some items that the NGPC continues to work through. Additionally, the GAC (Governmental Advisory Committee) issued new advice in its Singapore Communiqué that relates to the New gTLD (generic Top Level Domain) Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, and Buenos Aires GAC (Governmental Advisory Committee) advice, and new items of advice from Singapore as described in the scorecard in [Annex 1](#) ([/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf](#)) [PDF, 436 KB], dated 14 May 2014.

As part of its consideration of the GAC (Governmental Advisory Committee) advice, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) posted the GAC (Governmental Advisory Committee) advice on its website and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC (Governmental Advisory Committee) advice was posted on 18 April 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>), the Durban GAC (Governmental Advisory Committee) advice was posted on 1 August 2013 <http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>), the Buenos Aires GAC (Governmental Advisory Committee) advice was posted on 11 December 2013, and the Singapore advice was posted on 11 April 2014. The complete set of applicant responses is provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/> (<http://newgtlds.icann.org/en/applicants/gac-advice/>).

In addition, on 23 April 2013, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) initiated a public comment forum to solicit community input on how the NGPC should address Beijing GAC (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) strings <http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm> ([/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm](http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm)). The NGPC has considered applicant responses in addition to the community feedback in formulating its response to the remaining items of GAC (Governmental Advisory Committee) advice.

As part of its deliberations, the NGPC 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_20130718.pdf?version=1&modificationDate=1375787122000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1375787122000&api=v2)
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1375787122000&api=v2) [PDF, 238 KB]
- GAC (Governmental Advisory Committee) Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2
(https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1374215119858&api=v2) [PDF, 104 KB]
 - GAC (Governmental Advisory Committee) Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2
(https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
 - GAC (Governmental Advisory Committee) Singapore Communiqué (as amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2
(https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB]
 - 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, 261 KB]

In adopting its response to remaining items of Beijing, Durban, and Buenos Aires GAC (Governmental Advisory Committee) advice, and the new Singapore advice, the NGPC considered the applicant comments submitted, the GAC (Governmental Advisory Committee)'s advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws. The adoption of the GAC (Governmental Advisory Committee) advice as provided in the attached scorecard will assist with resolving the GAC (Governmental Advisory Committee) advice in a manner that permits the greatest possible number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analyzed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS (Domain Name System).

As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s organizational administrative function, ICANN (Internet Corporation for Assigned Names and Numbers) posted the Singapore Communiqué and officially notified applicants of the advice on 11 April 2014. The Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

b. GAC (Governmental Advisory Committee) Advice on .AMAZON (and related IDNs (Internationalized Domain Names))

The Committee continued its discussions of the advice issued by the GAC (Governmental

Advisory Committee) in the Durban Communiqué concerning the applications for .AMAZON and related IDNs (Internationalized Domain Names) in Japanese and Chinese. In the Durban Communiqué, the GAC (Governmental Advisory Committee) advised that it had reached consensus on "GAC (Governmental Advisory Committee) Objection Advice according to Module 3.1 part I of the Applicant Guidebook" on the applications for .AMAZON and related IDNs (Internationalized Domain Names) in Japanese and Chinese.

Chris Disspain outlined potential alternatives for the Committee to discuss to address the GAC (Governmental Advisory Committee)'s advice, which were revised to take into account the Committee's comments during its previous discussions of the matter. The Committee revisited the next steps and potential consequences associated with each of the alternative approaches.

The Committee engaged in a discussion about options to acknowledge, as appropriate, that there may be continuing dialogue between the concerned governments and Amazon S.à. r.l. Members of the Committee expressed their viewpoints on the merits of this approach. Olga Madruga-Forti made note of Module 3.1 of the Applicant Guidebook, and suggested that the GAC (Governmental Advisory Committee)'s advice should be considered in this context.

The Committee discussed a proposed resolution to respond to the GAC (Governmental Advisory Committee) advice. After additional discussion, Gonzalo Navarro moved, and Olga Madruga-Forti seconded the resolution, and the Committee took the following action:

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC (Governmental Advisory Committee) advised the ICANN (Internet Corporation for Assigned Names and Numbers) Board in its Durban Communiqué that the GAC (Governmental Advisory Committee) reached "consensus on GAC (Governmental Advisory Committee) Objection Advice according to Module 3.1 part I of the Applicant Guidebook on the following applications: [t]he application for .amazon (application number 1-1315-58086) and related IDNs (Internationalized Domain Names) in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)." This item of GAC (Governmental Advisory Committee) advice is identified in the GAC (Governmental Advisory Committee) Register of Advice as [2013-07-18-Obj-Amazon \(https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon\)](https://gacweb.icann.org/display/GACADV/2013-07-18-Obj-Amazon).

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2014.05.14.NG03), the NGPC accepts the GAC (Governmental Advisory Committee) advice identified in the GAC (Governmental Advisory Committee) Register of Advice as 2013-07-18-Obj-Amazon, and directs the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs (Internationalized Domain Names) in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) filed by Amazon EU S.à. r.l. should not proceed. By adopting the GAC (Governmental Advisory Committee) advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à. r.l. and members of the GAC (Governmental Advisory Committee) to pursue dialogue on the relevant issues.

All members of the Committee present voted in favor of Resolution 2014.05.14.NG03. Bruno Lanvin, Erika Mann, Ray Plzak and Kuo-Wei Wu were unavailable to vote on the Resolution. The Resolution carried.

Rationale for Resolution 2014.05.14.NG03

The NGPC's action today, addressing open items of GAC (Governmental Advisory Committee) advice concerning .AMAZON (and related IDNs (Internationalized Domain Names) in Japanese and Chinese), is part of the ICANN (Internet Corporation for

Assigned Names and Numbers) Board's role to address advice put to it by the Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)). Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws <http://www.icann.org/en/about/governance/bylaws#XI> (<http://www.icann.org/en/about/governance/bylaws#XI>) 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 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 policies. 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 action being approved today is to accept the GAC (Governmental Advisory Committee)'s advice to the ICANN (Internet Corporation for Assigned Names and Numbers) Board contained in the GAC (Governmental Advisory Committee)'s Durban Communiqué stating that it is the consensus of the GAC (Governmental Advisory Committee) that the applications for .AMAZON (application number 1-1315-58086) and related IDNs (Internationalized Domain Names) in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD (generic Top Level Domain) Applicant Guidebook (AGB) provides that if "GAC (Governmental Advisory Committee) advises ICANN (Internet Corporation for Assigned Names and Numbers) that it is the consensus of the GAC (Governmental Advisory Committee) that a particular application should not proceed, this will create a strong presumption for the ICANN (Internet Corporation for Assigned Names and Numbers) Board that the application should not be approved." (AGB § 3.1) To implement this advice, the NGPC is directing the ICANN (Internet Corporation for Assigned Names and Numbers) President and CEO (or his designee) that the applications for .AMAZON (application number 1-1315-58086) and related IDNs (Internationalized Domain Names) in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) filed by Amazon EU S.à r.l. should not proceed. By adopting the GAC (Governmental Advisory Committee) advice, the NGPC notes that the decision is without prejudice to the continuing efforts by Amazon EU S.à r.l. and members of the GAC (Governmental Advisory Committee) to pursue dialogue on the relevant issues.

As part of its consideration of the GAC (Governmental Advisory Committee) advice, ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice, including Amazon EU S.à r.l. (the applicant for .AMAZON (and related IDNs (Internationalized Domain Names))), triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Amazon's response to the Board is provided at: <http://newgtlds.icann.org/en/applicants/gac-advice/> (<http://newgtlds.icann.org/en/applicants/gac-advice/>), and the NGPC has considered this response as part of its deliberations on the GAC (Governmental Advisory Committee) advice. In its response to the Board, Amazon asserted that the GAC (Governmental Advisory Committee) advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC (Governmental Advisory Committee) advice would be non-transparent and discriminatory, which conflicts with ICANN (Internet Corporation for Assigned Names and Numbers)'s governing documents; and (3) the GAC (Governmental Advisory Committee) Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

The NGPC previously decided to further study and analyze the issues raised by the applicant and the GAC (Governmental Advisory Committee) advice, and in a recent iteration of the GAC (Governmental Advisory Committee)-NGPC Scorecard ([/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf](http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf)) [PDF, 371 KB] adopted by the NGPC on 5 February 2014 noted that "ICANN (Internet Corporation

for Assigned Names and Numbers) has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments." The independent, third-party expert [analysis \(/en/news/correspondence/crocker-to-dryden-07apr14-en.pdf\)](#) [PDF, 737 KB] ("Expert Analysis") explores relevant international and local law on geographical indications, related international treaties, and principles of intellectual property law to address the specific issues of application of law at issue. Among other things, the Expert Analysis considers whether the consensus advice issued by the GAC (Governmental Advisory Committee) is of such nature as to oblige ICANN (Internet Corporation for Assigned Names and Numbers) to reject the application filed by Amazon, or to the contrary, whether the rules and principles cited by Amazon in its response of 23 August 2013 to the GAC (Governmental Advisory Committee)'s advice oblige ICANN (Internet Corporation for Assigned Names and Numbers) to approve the applications for .AMAZON (and related IDNs (Internationalized Domain Names)). The Expert Analysis concludes the following:

As regards the application for assignment of the new gTLD (generic Top Level Domain) '.amazon' filed by the Amazon company:

i) there is no rule of international, or even regional or national, law applicable in the field of geographical indications which obliges ICANN (Internet Corporation for Assigned Names and Numbers) to reject the application;

ii) there is no rule of international, or even regional or national, law applicable in the field of intellectual property and in particular of trade marks or in the field of fundamental rights, which obliges ICANN (Internet Corporation for Assigned Names and Numbers) to accept this application.

The Expert Analysis, which was considered as part of the NGPC's deliberations in adopting this resolution, was provided to the [GAC \(Governmental Advisory Committee\)](#) as well as Amazon on 7 April 2014. ICANN (Internet Corporation for Assigned Names and Numbers) provided the Expert Analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the [GAC \(Governmental Advisory Committee\)](#)'s advice.

In response to the 7 April 2014 communication to the [GAC \(Governmental Advisory Committee\)](#) and Amazon, ICANN (Internet Corporation for Assigned Names and Numbers) received related correspondence, including the following, which were considered as part of the NGPC's action:

- [Letter \(/en/news/correspondence/samanez-to-crocker-11apr14-en.pdf\)](#) [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON. The letter comments on the Expert Analysis and requests that the NGPC reject the applications for .AMAZON.
- [Letter \(/en/news/correspondence/filho-almeida-to-crocker-14apr14-en\)](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- [Letter \(/en/news/correspondence/hayden-to-crocker-et-al-14apr14-en\)](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the Expert Analysis and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

The NGPC considered several significant factors during its deliberations about how to address the GAC (Governmental Advisory Committee) advice concerning .AMAZON (and related IDNs (Internationalized Domain Names)). The NGPC had to balance the competing interests of each factor to arrive at a decision. The concerns raised by the relevant parties highlight the difficulty of the issue. In addition to the factors highlighted above, the following are among the factors the NGPC found to be significant:

- Although the NGPC does not have the benefit of the rationale relied upon by the GAC (Governmental Advisory Committee) in issuing its consensus advice in the Durban Communiqué on the applications for .AMAZON (and related IDNs (Internationalized Domain Names)), the NGPC considered the reason/rationale provided in the GAC (Governmental Advisory Committee) Early Warning (<https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2>) [PDF, 79 KB] submitted on behalf of the governments of Brazil and Peru on 20 November 2012 expressing concern regarding Amazon's application for the .AMAZON gTLD (generic Top Level Domain). In the Early Warning, the concerned governments indicated that among other reasons, it was requesting that Amazon withdraw its application because "[g]ranteeing exclusive rights to this specific gTLD (generic Top Level Domain) to a private company would prevent the use of this domain for the purposes of public interest related to the protection, promotion and awareness raising on issues related to the Amazon biome. It would also hinder the possibility of use of this domain to congregate web pages related to the population inhabiting that geographical region." The Early Warning also explains that the applied-for string "matches part of the name, in English, of the 'Amazon Cooperation Treaty Organization', an international organization which coordinates initiatives in the framework of the Amazon Cooperation Treaty...."
- The NGPC also considered correspondence received on the matter, and takes particular note of correspondence from Amazon dated 4 July 2013 and 3 December 2013, wherein Amazon describes its "attempts to find a mutual resolution with the Governments of Brazil and Peru" concerning the .AMAZON applications, and the public interest commitments it is willing to include as contractually enforceable provisions in the Registry Agreement. Amazon indicates that it is willing to be contractually committed to do the following:
 - *Limit the registration of culturally sensitive terms such as "Amazonia," "Amazonas," and "Amazonica" under the .AMAZON new gTLD (generic Top Level Domain) to OTCA [Organização do Tratado de Cooperação Amazônica's] and its Member Governments.*
 - *Continue to engage in good faith discussions with the OTCA and its member governments to identify any other existing terms of specific cultural sensitivity.*
 - *Present a Memorandum of Understanding to ICANN (Internet Corporation for Assigned Names and Numbers) setting out Amazon's non-objection to any future application filed by the OTCA and/or its Member Governments for the terms ".AMAZONIA", ".AMAZONAS", or ".AMAZONICA".*
- The NGPC considered the community-developed processes established in the Applicant Guidebook, including Section 5.1 of the Applicant Guidebook, which provides that, "ICANN (Internet Corporation for Assigned Names and Numbers)'s Board of Directors has ultimate responsibility for the New gTLD (generic Top Level Domain) Program. The Board reserves the right to individually consider an application for a new gTLD (generic Top Level Domain) to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD (generic Top Level Domain) application. For example, the Board might individually consider an application as a result of GAC (Governmental Advisory Committee) Advice on New gTLDs or of the use of an ICANN (Internet Corporation for Assigned Names and Numbers) accountability mechanism."

As part of its deliberations, the NGPC's review of significant materials included, but is not

limited to the following, letters, materials and documents:

- GAC (Governmental Advisory Committee) Early Warning:

<https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2>

<https://gacweb.icann.org/download/attachments/27131927/Amazon-BR-PE-58086.pdf?version=1&modificationDate=1353452622000&api=v2> [PDF, 79 KB]
- GAC (Governmental Advisory Committee) Beijing Communiqué:

https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2

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

https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2

https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1374215119858&api=v2 [PDF, 104 KB]
- GAC (Governmental Advisory Committee) Buenos Aires Communiqué:

https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2

https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2 [PDF, 97 KB]
- GAC (Governmental Advisory Committee) Singapore Communiqué (Amended):

https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2

https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2 [PDF, 147 KB]
- 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, 261 KB]
- Applicant responses to GAC (Governmental Advisory Committee) advice:

<http://newgtlds.icann.org/en/applicants/gac-advice/>

<http://newgtlds.icann.org/en/applicants/gac-advice/>
- [Letter \(/en/news/correspondence/king-to-crocker-et-al-05mar13-en.pdf\)](#) [PDF, 94 KB] dated 3 March 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter \(/en/news/correspondence/king-to-crocker-et-al-04jul13-en.pdf\)](#) [PDF, 68 KB] dated 4 July 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter \(/en/news/correspondence/araujo-to-chehade-04oct13-en.pdf\)](#) [PDF, 465 KB] dated 4 October 2013 from Mr. Ernesto H.F. Araújo (Chargé D' Affaires, a.i., Brazilian Embassy).
- [Letter \(/en/news/correspondence/king-to-chehade-et-al-03dec13-en\)](#) dated 3 December 2013 from Stacey King (Sr. Corporate Counsel – Amazon).
- [Letter \(/en/news/correspondence/samanez-to-crocker-24dec13-en\)](#) dated 24 December 2013 from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru).
- [Letter \(/en/news/correspondence/king-to-crocker-et-al-10jan14-en.pdf\)](#) [PDF, 72 KB] dated 10 January 2014 from Stacey King (Sr. Corporate Counsel – Amazon).

- [Letter \(/en/news/correspondence/samanez-to-crocker-et-al-03mar14-en\)](#) dated 3 March 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru).
- [Letter \(/en/news/correspondence/ramlakhhan-to-crocker-25mar14-en.pdf\)](#) [PDF, 459 KB] dated 25 March 2014 from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization).
- [Letter \(/en/news/correspondence/samanez-to-crocker-11apr14-en.pdf\)](#) [PDF, 66 KB] dated 11 April 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru).
- [Letter \(/en/news/correspondence/filho-almeida-to-crocker-14apr14-en\)](#) dated 14 April 2014 from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil).
- [Letter \(/en/news/correspondence/hayden-to-crocker-et-al-14apr14-en\)](#) dated 14 April 2014 from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon).

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). As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s organizational administrative function, ICANN (Internet Corporation for Assigned Names and Numbers) posted the Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué and officially notified applicants of the advice. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. Additionally, as noted above, the Expert Analysis was provided to the [GAC \(Governmental Advisory Committee\)](#) as well as Amazon on 7 April 2014. ICANN (Internet Corporation for Assigned Names and Numbers) provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC (Governmental Advisory Committee)'s advice.

c. Perceived Inconsistent String Confusion Objection Expert Determinations – Review Mechanism

Amy Stathos provided a report to the Committee about the public comments received on a possible review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations. In her report she discussed the general themes and categories of comments submitted by the community, which included a discussion of the comments urging that the Committee not adopt the review mechanism, as well as those comments urging that a review mechanism with an expanded scope should be adopted to address additional String Confusion Objections and Expert Determinations in general. Amy highlighted the reasons provided by some of the public commenters in support of their recommended positions, and the Committee engaged in a discussion of the public comments and the potential consequences associated with the actions recommended by the comments.

The Chair inquired about whether public comments were submitted by the applicants and registry operator that would be directly impacted if the review mechanism were adopted to address the perceived inconsistencies in the .CAR/.CARS and .CAM/.COM String Confusion Objection Expert Determinations. Amy reported on the comments received from those parties who would be directly impacted by the review mechanism. Chris Disspain asked whether the public comments presented a clear consensus on any one position.

The Committee engaged in a discussion about the development of the objection processes in the Applicant Guidebook, including the objection consolidation procedures noted in the Applicant Guidebook. George Sadowsky inquired whether there were policy matters implicated that may require some form of outreach to the [GNSO \(Generic Names Supporting](#)

Organization), and the Committee engaged in a discussion of the same.

The Committee requested that additional briefing materials be prepared in light of the discussion so that the matter could be acted upon at a subsequent meeting.

d. New gTLD (generic Top Level Domain) Auction Rules

Christine Willett provided an update to the Committee on the New gTLD (generic Top Level Domain) auction rules, noting that the auction rules were published in March 2014 and are consistent with the Applicant Guidebook. She highlighted some of the changes made to the auction rules in response to public comments, including rotating auction start times to better accommodate the fact that potential auction participants may be disbursed across different time zones. Christine noted that the Bidder's Agreement also was revised in response to public comments. She reported that as a next step, staff intended to publish a set of rules concerning indirect contention sets.

Christine provided an estimated timeline for auctions, and informed the Committee that the first auction was scheduled for 4 June 2014. She noted, however, that there were potentially some items that could impact the auction schedule, such as finalizing the name collision framework. Akram Atallah noted that there were alternative auction services being offered in the community.

George Sadowsky asked for clarification about how much of the auctions would be visible to the community on a real-time basis. Christine stated that the auction would be visible to the auction participants, but that the results would be published to the community. In response to questions from the Committee, Christine also provided additional clarity about what happens if an applicant defaults on payment of the bid.

e. New gTLD (generic Top Level Domain) Program Financial Update

The Committee did not consider this agenda item and decided that it should be considered at a subsequent meeting.

The Chair called the meeting to a close.

Published on 23 June 2014



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[RSS Feeds \(/en/news/rss\)](https://community.icann.org)



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EXHIBIT C-056

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GAC Advice re: Community Views on .HEALTH.....	p. 29-30
Report of Public Comments on Review Mechanism for String Confusion Objection Expert Determinations.....	p. 31-40
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ANNEX 1 to Resolution 2014.05.14.2

GAC Advice (Singapore, Buenos Aires, Durban, Beijing): Actions and Updates

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

Text superceded by Scorecard adopted by NGPC Resolution 2014.05.14.NG02: <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-14may14-en.pdf>

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**Summary of Applicant Responses to GAC Advice in the
Singapore Communiqué**

7 May 20142014



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Executive Summary

This report is intended to provide a summary of applicant responses to GAC Advice presented in the GAC Singapore Communiqué issued on 27 March 2014¹. Per Section 3.1 of the Applicant Guidebook, ICANN provided all applicants with 21 calendar days to submit a response to the GAC Advice for the ICANN Board's consideration. The deadline for responses was 2 May 2014.

Broadly, the applicants express their appreciation of the GAC's Advice, and have encouraged ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

Community applicants have commented on the reiteration of GAC Category 1 Safeguard Advice and the GAC's support of community applications. Community applicants have also indicated that community-based applications represent the best form of a binding commitment to long-term protections, and several have emphasized that they had such safeguards in place in their original applications (as submitted before the issuance of GAC Advice).

¹ The full list of applicant responses can be accessed at:
<http://newgtlds.icann.org/en/applicants/gac-advice/singapore49>



Solicitation of Responses

In the Singapore Communiqué, the GAC issued advice to the ICANN Board that could affect all applications. ICANN provided all applicants with the opportunity to respond. Responses from 8 applicants pertaining to 11 applications were received, and have been summarized in the “Summary of Responses ” section.

GAC Advice to the Board in the Singapore Communiqué

The GAC Advice to the Board in the Singapore Communiqué was organized as follows. Applicants were provided with the opportunity to respond to any categories that they chose.

1. Internet Assigned Numbers Authority (IANA) Functions: US Government Announcement
2. Safeguard Advice Applicable to all new gTLDs and Category 1 (consumer protection, sensitive strings and regulated markets) and Category 2 (restricted registration policies) Strings
3. Community Applications
4. Specific Strings
 - a. .spa
 - b. .amazon
 - c. .ram and .indians
 - d. .wine and .vin
5. Singular and Plural Versions of the Same String
6. WHOIS
7. Data Retention and Data Provision Waivers
8. Protection of Inter-Governmental Organisation (IGO) Names and Acronyms
9. Protection of Red Cross/Red Crescent Names
10. Accountability and Transparency
11. Tracking of Key Issues
12. Briefings on Compliance
13. NETmundial Meeting
14. High Level Meeting

Summary of Responses

CORP, INC, LLC, LLP

Dot Registry, LLC

Application IDs 1-880-39342 ([Response](#)), 1-880-35979 ([Response](#)), 1-880-17627 ([Response](#)), and 1-880-35508 ([Response](#))

The applicant commends the GAC for its “re-iteration of recommendations for Category 1 strings, which denotes the insufficient protections created by the non-binding nature of public interest commitments (PICS) and the necessity for pre-verification of registrant data for Category 1 strings.”

The applicant supports the GAC Advice on the preferential treatment of community applications.

The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué and to respond with “concrete, enforceable requirements that mandate verification that mitigates fraud and consumer harm in these sensitive strings.”

DESI

Desi Networks, LLC

Application ID 1-870-27617 ([Response](#))

The applicant acknowledges the GAC Advice.

GMBH

TLDDOT GmbH

Application ID 1-1273-63351 ([Response](#))

The applicant appreciates the GAC’s “re-iteration of recommendations for category 1 strings, which denotes the insufficient protections created by the non-binding nature of public interest commitments (PICS) and the necessity for pre-verification of registrant data for Category 1 strings.”

The applicant is working to ensure that safeguards for a corporate identifier such as .GMBH are implemented appropriately. The applicant suggests that other applicants who did not include specific policies and mechanisms in their applications or adhere to the GAC recommendations should not be awarded Category 1 strings.



The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

The applicant advises ICANN that it would be preferable for ICANN to not approve corporate identifier gTLDs, rather than approve gTLD applications that have been “upgraded” with change requests, Public Interest Commitments, and safeguards in order to comply with GAC Advice.

HOTEL

HOTEL Top-Level Domain S.a.r.l.
Application ID 1-1032-95136 ([Response](#))

The applicant encourages ICANN to provide the GAC with specific responses in regards to the concerns listed in the Singapore Communiqué.

The applicant advises ICANN that it would be “against competitive rules to allow applicants to upgrade their applications in order to comply with the GAC requirements.” As a community applicant, the applicant is committed to verifying and validating registrations in its proposed TLD.

The applicant agrees that allowing singular and plural version of the same strings could lead to consumer harm.

MED

HEXAP SAS
Application ID 1-1192-28569 ([Response](#))

The applicant asserts that it has policies in place that will “maximize transparency and build confidence”, and it agrees with the GAC to increase focus on community applications.

The applicant asserts that community applications and the accountability associated with them are the safest way to protect Internet users. The applicant describes the measures it intends to implement to be accountable to the community, including limiting registrations to practitioners, healthcare facilities and institutions, and excluding health-related businesses (such as insurance companies) and individuals.

The applicant points out that it has one of only two community health-related applications, and supports the GAC’s advice to increase the focus on community applications. “MED” has been identified as a sensitive string, and this application



includes specific safeguards that satisfy the requirements for accountability and transparency.

MUSIC

.music LLC

Application ID 1-959-51046 ([Response](#))

The applicant indicates that the safeguards in GAC Category 1 Advice were part of its application as originally submitted, reflecting its commitment to its community and to serving the public interest.

The applicant asks what mechanisms are/will be in place to ensure that the GAC's Advice is considered in regards to Community Priority Evaluation. The applicant notes that this means "not only following the established guidelines and scoring system as set out in the AGB, but also applying a holistic and 'common sense' approach to ensure applications with substantial and demonstrable community support (such as ours), do in fact receive preferential treatment."

The applicant also looks forward to the New gTLD Program Committee's response to question 4 of the Attachment to GAC Singapore Communiqué, regarding the rules for gTLD auctions.

RAM

Chrysler Group LLC

Application ID 1-2055-15880 ([Response](#))

The applicant is committed to addressing the government of India's concerns about the religious implications of the string "RAM." The applicant indicates that it is willing to meet with government representatives to discuss the resolution of the matter.

SPA

Asia Spa and Wellness Promotion Council Limited

Application ID 1-1309-81322 ([Response](#))

The applicant makes reference to Section 2.2.1.4.2 of the Applicant Guidebook, which provides that "an application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name" is considered a geographic name and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities. The applicant states that the remaining two applications for .SPA indicate that



the applicants intend to use the string “primarily for purposes associated with the city name’ (even if it is not for purposes associated with the city or its citizens).” The applicant has indicated that based on the GAC Advice, it is clear that the relevant government entity for the “SPA” application is the City of Spa. The applicant includes excerpts from both remaining applications for “SPA,” and asserts that the applications for .SPA meet the criteria for requiring evaluation from the Geographic Names Panel. The applicant indicates that the appropriate path forward is for ICANN to accept the GAC Advice and proceed with the Geographic Names evaluation as described in the Applicant Guidebook. The applicant is prepared to cooperate with this evaluation.

SPA

Foggy Sunset, LLC

Application ID 1-1619-92115 ([Response](#))

The applicant notes that the GAC has finalized its consideration of this string, and asserts that the applications should proceed through the standard string contention resolution procedures as defined in the Applicant Guidebook.

The applicant states that “.SPA” does not meet the criteria of a geographic name requiring support from the relevant government body, per Section 2.2.1.4.2. of the Applicant Guidebook.

The applicant asserts that it has made an effort to engage with the City of Spa to provide specific protections, and believes that “the city’s interests are well protected by the AGB requirements, the additional protections Donuts committed to for all of its TLDs, and the further safeguards Donuts voluntarily would provide for this TLD should it become the registry operator.”

In spite of “the GAC’s ‘welcoming’ of an agreement between one applicant and the City of Spa,” the applicant notes that “nothing in the AGB (Donuts’ contract with ICANN) empowers the ICANN Board to select a ‘winner’ in the case of competing applications based on the concerns of one government.”

VIN, WINE

Holly Shadow, LLC (a subsidiary of Dozen Donuts, LLC)

Application ID 1-1538-23177 ([Response](#))

June Station, LLC (a subsidiary of Dozen Donuts, LLC)

Application ID 1-1515-14214 ([Response](#))

The applicant notes that the “disposition of applications for .WINE and .VIN have been at issue for some time.” The applicant cites multiple communications and statements made by the GAC and by the ICANN Board’s New gTLD Program



Committee (NGPC). Based on the Board's 4 April 2014 resolution, the applicant notes that there is no reason to further delay the processing of these applications.

The applicant asserts that it will continue its negotiations with concerned members of the wine industry. However, these negotiations may continue after the applicant has executed Registry Agreements for one or both TLDs.

The applicant states that it respects the concerns that have been raised, but that the safeguards in place are more than sufficient.

The applicant also notes that "ICANN is likely not the appropriate venue to address complex trade negotiations on politically sensitive issues, such as the rights of Geographic Indicators."

The applicant encourages ICANN to continue processing these applications. The applicant believes that if the applications are processed, it will be more likely that an agreement between the registry operator and the wine makers can be reached.

REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2a

TITLE: GAC Advice on .AMAZON (and related IDNs)

Process for Consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws

Proposed Process:

Step 1: Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC's advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

Step 2: In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered “Bylaws Consultations”. The Board will provide written notice to the GAC (the “Board Notice”) stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board’s Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

Step 3: As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the “Bylaws

Consultation”). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

Step 4: Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

Step 5: During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

Step 6: After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board’s preliminary or interim decision. The Board’s final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board’s decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months.

The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

Step 7: If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site.

REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2a

TITLE: **GAC Advice on .AMAZON (and related IDNs)**

Timeline of GAC Advice on .AMAZON (and related IDNs)

- 20 November 2012: “[T]he Governments of Brazil and Peru (GAC Members), with full endorsement of Bolivia, Ecuador and Guyana (Amazonic non-GAC members) and also the Government of Argentina, would like to request that the ‘.AMAZON’ gTLD application be included in the GAC early warning process.”
- 3 March 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter notes that Amazon is supportive of the concept of public interest commitments (PIC) but was unable to submit a PIC at that time because the process had not yet been finalized.
- 12 March 2013: The Independent Objector [files three community objections](#) with the International Centre for Expertise of the International Chamber of Commerce (the “Centre”) concerning .AMAZON and related IDNs in Chinese and Japanese.
- 11 April 2013: In the [Beijing Communiqué](#), the GAC advises the Board not to proceed beyond Initial Evaluation for the applied-for strings .AMAZON and IDNs in Chinese and Japanese.
- 22 May 2013: ICANN [publishes](#) applicant responses to the GAC’s Beijing Communiqué, which includes the applicant response on the .AMAZON GAC advice.
- 4 June 2013: The NGPC [accepts](#) the advice in the Beijing Communiqué and determines that at that time, ICANN will not proceed beyond initial evaluation of the identified strings.
- 4 July 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter expresses Amazon’s willingness to work with Brazil and Peru, and provides public interest commitments that Amazon is willing to commit to in order to address the governments’ concerns.
- 18 July 2013: In the [Durban Communiqué](#), the GAC advises the Board that it has reached consensus on GAC Objection Advice according to Module 3.1 part I of the

Applicant Guidebook on the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591)

- 28 August 2013: ICANN publishes applicant responses to GAC advice, which includes the [applicant response](#) on .AMAZON (and related IDNs) GAC advice.
- 10 September 2013: The NGPC adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC notes that Amazon submitted a response to the advice in the Durban Communiqué, and given the volume of information presented, the NGPC proposed to consider the information and take action at a future meeting.
- 13 September 2013: [Letter](#) from Mr. Stefanos Tsimikalis (Attorney, Tsimikalis Kaloniarou). The letter notes that he has been following the issue with genuine interest, and suggests that “It cannot be disputed that the word Amazon is part of the Greek culture, and henceforth, of world culture and legacy. If any country had the right to object to Amazon’s application... that should be Greece.” The letter suggests that if ICANN follows the GAC’s advice it “would be acting as a judge of history and would be assigning quasi sovereign exclusivity on the name Amazon to Brazil and Peru, depriving the world of its cultural heritage.”
- 28 September 2013: the NGPC adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC notes that due to the complexity and uniqueness of the issues raised in the applicant’s response, and the volume of information submitted, the NGPC intends to further study and analyze the issues raised by this application and the GAC’s advice. The NGPC directs staff to prepare additional analysis regarding the advice and the issues raised in the applicant’s response.
- 4 October 2013: [Letter](#) from Mr. Ernesto H.F. Araújo (Chargé D’ Affaires, a.i., Brazilian Embassy). The letter notes that on 8 August 2013, the Committee on Foreign Affairs and National Defense of the Brazilian Senate approved a resolution requiring “the Brazilian Government to express to ICANN the Committee’s formal opposition to the registration of the gTLD ‘.amazon’ without the proper consent of the countries in whose territory the Amazon is located, among which Brazil.”

- 20 November 2013: In the [Buenos Aires Communiqué](#) the GAC requested an update on the current status of the implementation of the GAC's advice on .AMAZON (and related IDNs).
- 3 December 2013: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter details the steps Amazon has taken to meet with the concerned governments to discuss its applications for .AMAZON (and related IDNs).
- 24 December 2013: [Letter](#) from Mr. Fernando Rojas Samanez (Vice Minister of Foreign Affairs, Peru). The letter presents additional information concerning geographical protections in an effort to further advance the objections of Peru, Brazil and other countries objecting to the .AMAZON stings.
- 10 January 2014: [Letter](#) from Stacey King (Sr. Corporate Counsel – Amazon). The letter comments on the GAC's advice regarding .AMAZON, and reiterates its previous position on the matter.
- 27 January 2014: The Independent Objector's objections against .AMAZON (and related IDNs) are [dismissed](#) and the applicant (Amazon) prevails.
- 5 February 2014: The NGCP adopts another iteration of the [GAC-NGPC scorecard](#). The NGPC agreed to send an update to the GAC on its progress to address the .AMAZON (and related IDNs) GAC advice.
- 10 February 2014: In a [letter](#) to the GAC Chair, Ms. Heather Dryden, the NGPC provides an update on its progress to address the GAC's advice concerning .AMAZON (and related IDNs). The letter notes that ICANN has commissioned an independent, third party expert to provide additional advice on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.
- 3 March 2014: [Letter](#) from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter reiterates the position of the Peruvian government and requests that ICANN adopt a clear resolution in Singapore to responded to the GAC's advice.
- 25 March 2014: [Letter](#) from Ambassador Robby Ramlakhan (Secretary General, Amazon Cooperation Treaty Organization). The letter urges the Board to move

forward and accept the GAC's consensus advice that the applications for .AMAZON (and related IDNs) be rejected.

- 7 April 2014: The NGPC sends a letter to the [GAC](#) and to [Amazon](#) to provide a copy of the third party analysis to keep the parties informed and to welcome the submission of any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC's advice.
- 11 April 2014: [Letter](#) from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru). The letter comments on the independent, third party advice and requests that the NGPC reject the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Benedicto Fonseca Filho (Director, Department of Scientific and Technological Themes, Ministry of External Relations, Federative Republic of Brazil) and Mr. Virgilio Fernandes Almeida (National Secretary for Information Technology Policies, Ministry of Science, Technology and Innovation, Federative Republic of Brazil). The letter reiterates Brazil's objection to the applications for .AMAZON.
- 14 April 2014: Letter from Mr. Scott Hayden (Vice President, Intellectual Property – Amazon). The letter comments on the independent, third party advice and requests that the NGPC allow the applications for .AMAZON to continue to move forward.

REFERENCE MATERIALS – NGPC PAPER NO. 2014.05.14.2b

TITLE:

**GAC Advice regarding Community Views -
.HEALTH and health-related TLDs**

Agenda Item Not Considered.

Agenda Item Not Considered.

Report of Public Comments

Title:																																												
Publication Date:	24 April 2014																																											
Prepared By:	Christine Willett																																											
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Section I: General Overview and Next Steps																																												
<p>At the direction of the ICANN Board New gTLD Program Committee (NGPC), ICANN solicited public comment on a proposed review mechanism to address the perceived inconsistent Expert Determinations in certain New gTLD Program String Confusion Objection proceedings. If adopted, the proposed review mechanism will be limited to the String Confusion Objection Expert Determinations for .CAR/.CARS and .CAM/.COM.</p>																																												
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<p><i>At the time this report was prepared, a total of thirty-five (35) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.</i></p>																																												
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Uniregistry, Corp.	Bret Fausett	UNI
United TLD Holdco Ltd.	Statton Hammock	UNITED
Universal Postal Union	Paul Donohoe	UPU
Valideus Ltd	Brian Beckham	VAL
VeriSign, Inc.	Thomas Indelicarto	VSIGN

Individuals:

Name	Affiliation (if provided)	Initials
Rudi Fras		RF
Mike Gailer		MG
Jean Guillon		JG
Noreply		NO
Chris Penn		CP
s s		SS

Section III: Summary of Comments

***General Disclaimer:** This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The comments submitted during the public comment period generally fall into the following categories and themes, each of which is explained in more detail below:

- Do not adopt the Proposed Review Mechanism. (8 commenters)
- Adopt the Proposed Review Mechanism. (2 commenters)
- Adopt a Review Mechanism with an expanded scope. (5 commenters)
- Do not adopt the Proposed Review Mechanism or expand the scope. (3 commenters)
- Adopt some form of review, but not necessarily the Proposed Review Mechanism. (2 commenters)
- Recommended modifications to the framework principles of the Proposed Review Mechanism, if a review mechanism is adopted.

Do Not the Adopt Proposed Review Mechanism.

Eight commenters suggest that the NGPC should not create a review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations in this round of the New gTLD Program. These commenters argue that changing the rules after the fact would be unfair, would constitute a breach of contract, and may be creating top-down policy changes outside of the GNSO policy development process. These commenters suggest that applicants agreed to the process included in the Applicant Guidebook, which did not include this review mechanism, and applicants relied on these rules. Some commenters also expressed concern that adopting such a review mechanism may be a breach of ICANN's Bylaws. Additionally, commenters suggest that adopting the

review mechanism at this time would call into question all other objection/contention sets, which would serve to undermine many other parts of the New gTLD Program. Also, some commenters suggest that future rounds should include a review mechanism, although such a review mechanism may not be appropriate for this round.

“The ‘framework principles’ proposed are utterly absurd. And by what right are the NGPC involved? ... The NGPC is treading on hallowed ground of policy change. The GNSO have to tell them in no uncertain terms that they should stay off the heart of GNSO terrain.” RF

“The proposed appeal review materially prejudices our investment and we are obtaining formal legal advice on this matter. It is our understanding that a change of process as proposed would open up potential contractual claims around the application process itself based on the contractual terms to which all applicants signed up.... We strongly request that ICANN should reconsider the review proposals and honour the process which all application agreed to and therefore returning to an environment in which all applicants are treated equally and fairly.” DVP

“A right of appeal is a fundamental change to the [New gTLD Dispute Resolution] Procedure – which the Board simply did not have the due competence and authority to make.... Dot Agency Limited fully intends to make a Request for an Independent Review Panel under Article IV, Section 3 of the ICANN Bylaws, should the Framework Review be adopted for implementation by the NGPC....” FFM

“...[W]e do not believe there is a need for an entirely new review process intended solely to re-litigate two specific instances in which an objection proceeding resulted in a dubious ruling, when other inconsistencies (e.g., with the community objection proceedings) have not merited similar treatment. Without resorting to a new mechanism, there is already existing guidance for dealing with inconsistent string contention scenarios within the language of the Applicant Guidebook. As set forth in the Guidebook (and suggested in our previous public comment on auction rules), a reasonable solution for the .CAR/CARS and .CAM/COM strings would be to simply move all of the relevant applications into a single contention set for the purposes of the auction procedure, whether through direct or indirect contention. Such an approach is the fairest and most predictable manner in which to handle an imperfect situation, and certainly easier for ICANN to administer than a new review mechanism aimed at only two specific contention sets.” GOOG

“It is my formal request that ICANN cease these community discussions, which serve only as a point of distraction; and rather adhere to the guidelines discussed to exhaustion in the planning period. ICANN does not need an overhaul of its systems it simply needs to do what it promised initially. Evaluate not just CAM/COM AND CAR/CARS but all TLDs for Visual, Audial and Meaning as per set policies and guidelines.” CP

“In any future gTLD application rounds, MarkMonitor supports a widely applicable and reliable String Confusion Objection appeals mechanism. Consumer protection experts both within the

ICANN community as well as external to the ICANN community should develop objective criteria by which to judge string similarity in future rounds.” MM

“The Applicant Guidebook provided no mechanism for appeals, and all parties applied for their top-level domains under the express promise by ICANN, and the reasonable contractual expectation of the applicants, that decisions by the dispute resolution providers would be final. The proposal to further reconsider these decisions on what appears to be an arbitrary selection basis for such reconsideration is an invitation for all parties dissatisfied with outcomes to lobby for ad-hoc changes to the new TLD process.” UNI

“The Proposed Review, rather than addressing the core problem which has directly caused the inconsistent String Confusion Objections (“SCO”) Determinations, exacerbates the problem by artificially constraining the review to purposefully avoid recognizing the extent of the inconsistent SCO Determinations and its impact on the participations.” COMCON

Adopt the Proposed Review Mechanism.

Two commenters recommended that ICANN adopt the proposed review mechanism. These commenters suggest that ICANN’s Bylaws require it to address the perceived inconsistencies, and to allow the inconsistencies to stand would cause an unfair prejudice.

“Central to ICANN’s proposed review mechanism is the recognition that, consistent with its Bylaws, ICANN must administer its programs in a manner that is neutral, objective, and does not cause disparate treatment to any party unless justified by ‘substantial and reasonable cause....’ As a policy matter, where two or more expert panels considering the same strings, the same objector arguments, and the same standards reach diametrically different conclusions, it is a clear indication of an untenable outcome resulting in one or more applicants facing ‘disparate treatment’ that cannot be ‘justified by substantial and reasonable cause,’ in direct contravention of Art. II, § 3 of the ICANN Bylaws (Non-Discriminatory Treatment).” DCARS

“United TLD believes that review of inconsistent SCO Expert Determinations should be confined to those involving the EXACT SAME string. The .CAM/.COM decision affecting United TLD and the .CAR/.CARS decision affecting DERCars LLC are exceptional cases that have nothing to do with singular vs. plural confusion. ICANN has correctly identified these two circumstances as the only two truly inconsistent Expert Determinations....United TLD urges ICANN to implement the proposed review mechanism IMMEDIATELY so that the applicants for the exact same string can resolve contention and move forward in the program as all applicants have been substantially delayed as a result of the uncertainty caused by these two .CAR and .CAM SCO Expert Determinations.” UNITED

Adopt a Review Mechanism with an Expanded Scope.

Five of the comments submitted generally support the idea of a review mechanism but urge the NGPC

to expand the scope of the review mechanism beyond the two identified String Confusion Objections (.CAM/.COM and .CAR/.CARS). These commenters suggest that the proposed mechanism is too narrow as currently defined. The commenters express varying degrees to which the scope should be expanded. While some suggest that the scope be expanded to other String Confusion Objections, such as those related to .shop/.shopping, others recommend an even broader scope that would be widened to include “inconsistencies” in Community and Limited Public Interest Objections. Additionally, some commenters suggest that the NGPC to expand the scope of the review mechanism such that “inconsistencies” subject to review should include singular and plural versions of the same string.

“The ALAC supports the details of the process described, but recommends that it be widened to include cases such as the various .shop objections where the objected-to strings were not identical, but the results were just as inconsistent.” ALAC

“We generally are supportive of a limited review process to address inconsistent string confusion objection *outcomes* and not just inconsistent determinations.... [T]his limited review should be extended to include a third contention set where there is an incongruent outcome. In the .SHOP vs. .SHOPPING objection, the same panelist who found .SHOP to be confusion to a Japanese .IDN found in favor of the objector with regard to the Donuts’ .SHOPPING application.... Finally, we urge ICANN to undergo a similar review mechanism in cases of inconsistent outcomes with the Limited Public Interest and Community objections.” DONUTS

“The BC has repeatedly requested a broader appeals mechanism for new gTLD objections, in particular with respect to those involving singular and plural versions of the same generic TLD strings.... In light of this strong community sentiment in favor of a broader appeals process, the BC is disappointed with the limited scope of the present review mechanism proposed by ICANN. We continue to believe that a more comprehensive review is necessary for singular/plural string confusion objections....” BC

“[I]f a review process were to be created, Google supports the standing request from the Business Constituency for ICANN to: (1) Publish any evidence considered by expert panels, arbitration providers, and ICANN staff in its evaluation of string confusion determinations; and (2) Publish more specific objective criteria used to judge string similarity, while creating a broader appeal system to allow parties to challenge prior ICDR decisions on singular-plural TLDs.” GOOG

“The Board should expand their inquiry to ensure that the twin Policy goals of predictability and fairness are met. To do otherwise will impugn the integrity of the new gTLD process and program.... In particular, we recommend that: [t]he scope of inconsistent objections must be expanded and the Board should agree to take up the issue of inconsistencies in Community and Limited public interest objections.” RADIX

“...ICANN’s Proposal misses yet another opportunity to mitigate user confusion about which ICANN has been repeatedly warned but as yet continues to bedevil this program.... There is no

compelling rationale to exclude from appeal Versign's unsuccessful objections. If ICANN believes that the inconsistencies in the com/cam situation cannot stand, then all three decisions should be consolidated and reviewed on appeal and the appeal panel should be required to issue one ruling covering all three objections.... Verisign therefore joins with others such as the BC, the IPC and the GAC in calling on ICANN to revisit and reverse its decision to allow singular and plural versions of the same string to proceed to delegation." VSIGN

Do Not Adopt the Proposed Review Mechanism or Expand the Scope of the Proposed Review.

Three of the comments submitted suggest that the NGPC should either expand the scope of the proposed review mechanism to address other "inconsistencies", or do not adopt a review mechanism at all. These commenters generally seem to recommend an "all or nothing" approach.

"While the IPC appreciates the work ICANN has dedicated in proposing a review mechanism, we identify serious fairness concerns since only two contention sets would potentially be reviewed. Further, assuming *arguendo* that some form of appeal mechanism does move forward, we feel that key changes are necessary." IPC

"Whilst no one would deny that the objection process has given rise to some laughable results (shop and 通販 are confusingly similar?), how can they single out just two sets of strings for review? ICANN already absolved themselves of responsibility by asking third parties to make these sorts of determinations for them. Some may say that was a smart move. So why now are they doing exactly the opposite, by selecting just a couple of string confusion decisions for review, when panellists have made much worse decisions and been more inconsistent? Surely any review must be all or nothing?" JG

"A limited review which allows relief to only randomly-selected members of the ICANN community makes no sense. The Guidebook did not provide for a review process, we should all have a right of redress, or none at all." NO

Adopt Some Form of a Review, But Not Necessarily the Review Mechanism Proposed.

Two commenters suggest that some form of a review mechanism is needed, but these commenters do not necessarily advocate for the adoption of the review mechanism proposed. One of the comments outlines alternative review mechanisms that could be adopted by the NGPC.

"The entire String Confusion Objections had significant deficiencies and there have been a number of controversial decisions when looking at all the decisions. Therefore, ICANN together with ICDR and independent experts must review all decisions and define clear rules under which parties concerned may apply for an appeal of their decision." The commenter provides rules for an appeal based on the percentage of visual similarity as determined by the SWORD tool. HTLD

"I would like to voice my opinion that the .CAM gtld will be confusing with the existing .COM

gTLD and therefore I hope that ICANN will do the right thing (for once) and refuse the application for .CAM.” MG

Suggested Modifications to the Proposed Review Mechanism, If Adopted.

Various comments submitted during the public comment forum suggest that the NGPC modify the framework principles of the Proposed Review Mechanism, if the NGPC decides to move forward with adopting a review mechanism. Some of the commenters note that they are not advocating for approval of the review mechanism, but merely suggesting improvements if the NGPC is inclined to take action to adopt the Proposed Review Mechanism. The suggestions for modifications to the framework principles generally focus on the following: (1) the scope of the Proposed Review Mechanism, (2) the applicable standard of review, (3) the parties who have standing to use the Proposed Review Mechanism, and (4) the composition of the Panel of Last Resort.

Scope

Comments on expanding the scope of the framework principles included in the Proposed Review Mechanism are addressed above.

Applicable Standard of Review

The proposed standard of appellate review is flawed in that it focuses on the subjective reasonableness of the underlying decision as determined by application of the Applicant Guidebook and procedural rules.... we believe strongly that the clearly erroneous standard of appellate review is more appropriate.” GOOG

“United TLD proposes adding the following language to the standard of review:

Could the Expert Panel have reasonably come to the decision reached on the underlying SCO through an appropriate application of the standard of review as set forth in the Applicant Guidebook and procedural rules and not unfairly prejudice any applicant by being inconsistent with other SCO determinations for the exact same string? UNITED

“The appropriate common law standard of appellate review for such factual determinations is the clearly erroneous standard—a highly deferential standard.... Conversely, the standard proposed by ICANN appears to subjectively dissect the reasonableness of the determination, and it seemingly lacks any real deference to the initial panel.” IPC

“Members of the Intellectual Property Constituency (IPC) suggested that ICANN’s proposed standard of review be changed and a “clearly erroneous” standard be adopted for the review by the Panel of Last Resort. Applying such a standard is wholly misplaced given that review is not an appeal process but ultimately, a review of ICANN’s compliance with its bylaws and the Applicant Guidebook.” UNITED

“...the standard of review should not be merely whether it was reasonable for a panelist to have reached that decision. Rather, the standard should include whether it is reasonable to have inconsistent outcomes in the same contention set.... If any one .CAM applicant is permitted to proceed, both .CAM and .COM will be active TLDs. Hence, any confusion on the part of the public between .CAM and .COM will exist. As such, the review should look at the reasonableness of the outcome in light of the other outcomes and the end result.” DONUTS

Standing

“We further join with the comments of the BC and the IPC insofar as they request that ICANN’s Proposal be modified at least to permit the objectors an equal right to appellate review as the applicants.” VSIGN

“Fundamental principles of fairness and due process dictate that both parties in a dispute have an equal right to appeal an unfavorable determination.... [T]he BC urges ICANN to allow both losing objectors and the applicants to have standing to appeal the results of an inconsistent ICDR decision.” BC

“United TLD supports the recommendation made by Donuts that only losing applicants be allowed to seek redress under the review mechanism. To allow objectors to file for review would amount to allowing a second round of objections and effectively change the AGB in a way that materially harms the applicants.” UNITED

“Fundamental principles of fairness dictate that either party in a dispute have the right to appeal an unfavorable determination. Vesting appellate discretion solely with ‘Losing Applicant[s]’ creates an impermissible presumption that only cases where objectors were successful were wrongly decided and are somehow problematic. Rather, convention and equity dictate that both losing objectors and applicants have the right to appeal unfavorable decisions.” GOOG

“If the Board decides to add an appeal mechanism not contemplated by the Applicant Guidebook, the principle that makes the appeal available only to the ‘applicant for the application that was objected to in the underlying SCO and lost’ should be adopted subject to appropriate opportunity for comment, and not decided as a ‘process detail.’” UNI

Panel of Last Resort

“[A] ny Panel of Last Resort should be composed entirely of arbitrators with demonstrated experience in new gTLD program string confusion objections—and ideally, arbitrators who also have some degree of experience in the relevant target industries, such as the automotive or hospitality industries.” GOOG

“[T]he BC proposes that any review or appeals panel be comprised entirely of arbitrators with specific demonstrated experience in the new gTLD program string confusion objections. To the

extent that any arbitrators also have some degree of experience in the relevant target industries, such as the automotive (e.g., for .CAR/.CARS) or hospitality industries (e.g., for .HOTEL/.HOTELS), such qualifications would also be preferable.

“United TLD disagrees with ICANN’s view that only two potential outcomes may occur.... It seems clear that the only two potential outcomes should be these: 1) that the Panel determines that the strings at issue are confusingly similar in all three applications or, 2) the strings are not similar, for all three applications. These are the only outcomes for a review if ICANN wishes to avoid prejudicing any one applicant.” UNITED

“...[T]here will have to be clear guidelines offered on what standards of evidence and burden of proof apply - there will have to be a review of the case law to date and a serious critical effort made to analyse the decisions, draw out the common themes and to agree on the correct judicial approach. This is a task which should clearly not be entrusted to the existing dispute resolution service providers, but to an independently convened panel of academics who understand the rules of evidence and how they should be applied in a global context.” NO

Other Comments.

“ICANN’s recognition of community concern over what it has characterized as a ‘limited universe ...limited to two circumstances’ of so-called inconsistent Objection determinations, coupled with its own proposal for a Review Mechanism, highlights the need for a formal appeals process for future new gTLD application rounds (if nothing more than to avoid situations such as the present where a makeshift post hoc review process is under consideration).” (A footnote indicates that Valideus does not “mean to suggest that the concerns herein should be seen as inapplicable to the current objection process; [Valideus] is aware however of the complexity of addressing these concerns in the current round.”) VAL

“I want to be clear, however, that ‘consistent’ application of the confusingly similar standard DOES NOT require the ‘same’ outcome for all applications for the exact match for a particular string. If that were the case, then the dispute resolution panels would be required to evaluate the likelihood of confusion without regard to each applicant's unique plan for a gTLD string and their arguments articulating why such plans would not cause confusion. That would be a huge mistake. In fact, the proposed use of a new gTLD is highly relevant to the question of whether or not there is a likelihood of confusion. Indeed, it is to be expected that expert panels might reasonably conclude, as has apparently happened, that the string “.cam” is confusingly similar to ‘.com’ in one case but not in another.... In fact, the complained-of inconsistency in other cases appears to arise from the panel's failure to actually take account of the context in which a proposed gTLD would operate. Examples include translation cases where the different markets were likely not considered.” NEU

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

After reviewing feedback from the public comment forum, the NGPC will consider options to address the perceived inconsistent String Confusion Objection Expert Determinations, including whether to allow the Expert Determinations to stand as is, and whether or not to adopt the proposed review mechanism. The summary of public comments will be included in the briefing materials as part of the NGPC's deliberations on this matter.

**Pages 41/47 - 47/47 Removed.
Agenda Item Not Considered.**

EXHIBIT C-057

2014-05-14-TOC-Cmte Papers.docx

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Report of Public Comments on Review Mechanism for String Confusion
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2014-05-14-NGPC Agenda.docx

NGPC Meeting Agenda – 14 May 2014 – 2 hours

Topic	Shepherd
Consent Agenda	
1. Approval of Minutes from March 22, March 26 and 3-4 April 2014	John Jeffrey
Main Agenda	
2. GAC Advice	Disspain / Hedlund
a) .Amazon	
b) Community applications (.health)	
c) IGO Protections	
d) Singular/Plural Strings	
e) .ram/ .indians	
f) RCRC Names	
g) .spa	
h) .wine/.vin	
i) Written briefing - safeguards	
j) IOC/RC Protections	
k) Cat 2 Safeguards – Exclusive Access	
3. Perceived Inconsistent String Confusion Expert Determinations – Review Mechanism	Stathos
4. New gTLD Auction Rules	Willett
5. New gTLD Program Financial Update	Willett

**2014-05-14-2-NGPC Paper-Adopting Scorecard of
Remaining GAC Advice.docx**

ICANN NGPC PAPER NO. 2014.05.14.2

TITLE: **Remaining Items from Beijing, Durban, Buenos Aires, and Singapore GAC Advice: Updates and Actions**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

The Governmental Advisory Committee (GAC) delivered advice on the New gTLD Program in its Beijing Communiqué issued 11 April 2013, its Durban Communiqué issued 18 July 2013, its Buenos Aires Communiqué issued 20 November 2013, and its Singapore Communiqué issued 27 March 2014 (as amended 16 April 2014). Over the past several months, the NGPC developed and adopted a series of scorecards to respond to the GAC's advice. At this time, the NGPC is being asked to consider adopting another iteration of the scorecard to continue to resolve the remaining items from the Beijing, Durban, and Buenos Aires GAC advice, and to address the new items of GAC advice in the Singapore Communiqué.

The scorecard provides updates on the NGPC's progress, and where appropriate, includes actions to be undertaken to continue to make progress on resolving the open items of GAC advice.

Consistent with the Applicant Guidebook, ICANN has notified relevant applicants of strings named in the Buenos Aires Communiqué of the GAC advice, and has provided at least 21 days for those applicants to submit responses to the NGPC for consideration. The applicants submitted comments by 2 May 2014, which are publically available for review on the New gTLD microsite <<http://newgtlds.icann.org/en/applicants/gac-advice/singapore49>>. A summary of the applicant responses is included in the Reference Materials to this paper.

With the adoption of this scorecard, only a handful of GAC advice items would remain for the NGPC to resolve over the coming months, including GAC advice on the following:

1. Particular strings: .RAM, .INDIANS, .ISLAM, .HALAL
2. Second-level IGO and Red Cross/Red Crescent protections
3. Category 2 Safeguard advice

The NGPC may consider additional iterations of the scorecard at subsequent meetings as it continues to address the remaining items of GAC advice.

STAFF RECOMMENDATION:

Staff recommends the NGPC adopt the scorecard to address open items from Beijing, Durban, Buenos Aires and Singapore GAC advice as presented in the attached scorecard so that additional new gTLD applications are able to continue to move forward as soon as possible.

PROPOSED RESOLUTION:

Whereas, the GAC met during the ICANN 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC met during the ICANN 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC met during the ICANN 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014.

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC's advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013 and 5 February 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, and new advice in the Singapore Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program.

Resolved (2014.05.14.NGxx), the NGPC adopts the scorecard titled "GAC Advice (Beijing, Durban, Buenos Aires and Singapore): Actions and Updates" (14 May 2014)", attached as Annex 1 to this Resolution, in response to open items of Beijing, Durban, Buenos Aires and Singapore GAC advice as presented in the scorecard.

PROPOSED RATIONALE:

Article XI, Section 2.1 of the ICANN Bylaws

<<http://www.icann.org/en/about/governance/bylaws-XI>> permit the GAC to "put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies." The GAC issued advice to the Board on the New gTLD Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, and its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014). The ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the polices. If the Board decides to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow the advice. The Board and the GAC will then try in good faith to find a mutually acceptable solution. If no solution can be found, the Board will state in its final decision why the GAC advice was not followed.

The NGPC has previously addressed items of the GAC's Beijing, Durban, and Buenos Aires advice, but there are some items that the NGPC continues to work through. Additionally, the GAC issued new advice in its Singapore Communiqué that relates to the New gTLD Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, and Buenos Aires GAC advice, and new items of advice from Singapore as described in the attached scorecard dated 15 May 2014.

As part of its consideration of the GAC advice, ICANN posted the GAC advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC advice was posted on 18 April 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>>, the Durban GAC advice was posted on 1 August 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>, the Buenos Aires GAC advice was posted on 11 December 2013, and the Singapore advice was posted on 11 April 2014. The complete set of applicant responses are provided at: <<http://newgtlds.icann.org/en/applicants/gac-advice/>>.

In addition, on 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN could implement the GAC's safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC advice.

As part of its deliberations, the NGPC reviewed various materials, including, but not limited to, the following materials and documents:

- GAC Beijing Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130718.pdf?version=1&modificationDate=1375787122000&api=v2

- GAC Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_20130717.pdf?version=1&modificationDate=1374215119858&api=v2
- GAC Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_20131120.pdf?version=1&modificationDate=1385055905332&api=v2
- GAC Singapore Communiqué (as amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_20140327%5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2
- Applicant responses to 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>

In adopting its response to remaining items of Beijing, Durban, and Buenos Aires GAC advice, and the new Singapore advice, the NGPC considered the applicant comments submitted, the GAC's advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN Bylaws. The adoption of the GAC advice as provided in the attached scorecard will assist with resolving the GAC advice in manner that permits the greatest number of new gTLD applications to continue to move forward as soon as possible.

There are no foreseen fiscal impacts associated with the adoption of this resolution, but fiscal impacts of the possible solutions discussed will be further analysed if adopted. Approval of the resolution will not impact security, stability or resiliency issues relating to the DNS.

As part of ICANN's organizational administrative function, ICANN posted the Singapore Communiqué and officially notified applicants of the advice on 11 April 2014. The Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

Signature Block:

Submitted by: Jamie Hedlund

Position: Advisor to the President

Date Noted: 7 May 2014

Email: jamie.hedlund@icann.org

2014-05-14-2a-NGPC Paper-.AMAZON.docx

ICANN NGPC PAPER NO. 2014.05.14.2a

TITLE: **GAC Advice on .AMAZON (and related IDNs)**

PROPOSED ACTION: **For Resolution**

EXECUTIVE SUMMARY:

In its Durban Communiqué, the GAC advised the ICANN Board that it is the consensus of the GAC that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) should not proceed. The New gTLD Applicant Guidebook (AGB) provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (AGB § 3.1) As provided in AGB § 3.1, Amazon EU S.à r.l. (“Amazon”), the applicant of .AMAZON (and related IDNs) was provided an opportunity to submit a response to the ICANN Board to respond to GAC advice. In its response to the Board, Amazon asserted that the GAC advice should be rejected because: (1) it is inconsistent with international law; (2) the acceptance of GAC advice would be non-transparent and discriminatory, which conflicts with ICANN’s governing documents; and (3) the GAC Advice contravenes policy recommendations implemented within the Applicant Guidebook and achieved through international consensus over many years.

In light of the GAC advice and Amazon’s response, the NGPC decided to further study and analyze the issues raised by the applicant and the GAC advice, and in a recent iteration of the GAC-NGPC Scorecard adopted by the NGPC on 5 February 2014 noted that “ICANN has commissioned an independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.” The analysis, which is included in the Reference Materials to this paper, was provided to the GAC as well as Amazon on 7 April 2014. ICANN provided the analysis to keep the parties informed and noted that it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the GAC’s advice.

At this time, the NGPC is being asked to adopt a resolution addressing the GAC's advice on AMAZON (and related IDNs). During its meeting on 29 April 2014, the NGPC discussed various options for responding to the GAC's advice in light of all of the information in the record, and refined its list of possible options to address the advice to the following:

1. Accepting the GAC advice concerning .AMAZON (and related IDNs) and implementing the advice by placing the applications on hold [indefinitely], recognizing that that Amazon and the concerned governments may wish to consider continuing further discussions to address noted issues and concerns about delegating .AMAZON (and related IDNs) to Amazon.
2. Without accepting or rejecting the GAC advice concerning .AMAZON (and related IDNs), placing the applications at issue on hold to allow an opportunity for Amazon and the concerned governments to resolve the noted concerns. The NGPC could state that the applications are on hold indefinitely, or signal that the NGPC intends to make a final decision at the ICANN Meeting in London or at its first meeting after the ICANN Meeting in London (to accommodate any discussions that may potentially take place in London).
3. Rejecting the GAC advice concerning .AMAZON (and related IDNs). As required by the ICANN Bylaws, in the event that the ICANN Board determines to take an action that is not consistent with the GAC advice, it must inform the GAC and state the reasons why it decided not to follow that advice. The GAC and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The ICANN Board-GAC Recommendation Implementation Working Group (BGRI-WG) has developed a procedure for any consultations that might be needed if the Board determines to take an action that is not consistent with GAC advice. The procedure was approved by the BGRI-WG in Beijing and would be used for any consultation on this GAC advice. The procedure says that the consultation process should conclude within six months, but that the GAC and the Board can agree to a

different timetable. The consultation process is included in the Reference Materials to this paper.

The Reference Materials to this paper include a timeline of key events and documents related to this matter. Additionally, proposed resolutions are attached to this paper for the NGPC's consideration.

Signature Block:

Submitted by: Jamie Hedlund

Position: Advisor to the President

Date Noted: 6 May 2014

Email: jamie.hedlund@icann.org

Pages 16/49 - 32/49 Removed. Text Superceded by NGPC Resolution 2014.05.14.NG 03: <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>

**2014-05-14-2b-NGPC Paper-Community Views-
.HEALTH.docx**

ICANN NGPC PAPER NO. 2014.05.14.2b

TITLE: GAC Advice regarding Community Views -
.HEALTH and health-related TLDs

PROPOSED ACTION: For Discussion

EXECUTIVE SUMMARY:

Agenda Item Not Considered.

Agenda Item Not Considered.

Agenda Item Not Considered.

**2014-05-14-3a-NGPC Paper-SCO Review
Mechanism.docx**

ICANN NGPC PAPER NO. 2014.05.14.3a

TITLE: **Report of Public Comments on Review Mechanism
for String Confusion Objection Expert
Determinations**

PROPOSED ACTION: **For Discussion**

EXECUTIVE SUMMARY:

At its 5 February 2014 meeting, the ICANN Board New gTLD Program Committee (NGPC) took action to direct the ICANN President and CEO, or his designee, to initiate a public comment period on framework principles of a potential review mechanism to address the perceived inconsistent String Confusion Objection Expert Determinations (the “SCO Review Mechanism”). If adopted, the SCO Review Mechanism would constitute a change to the String Confusion Objection process in the New gTLD Applicant Guidebook.

The public comment period on the proposed SCO Review Mechanism closed on 3 April 2014, and a summary of the comments has been publically posted, and included in the Reference Materials to this paper. Thirty-five comments were submitted during the public comment forum. At this time, the NGPC is being asked to review and analyze the public comments submitted and to discuss its next steps.

As presented in the summary of public comments, a few themes can be observed from the comments submitted:

1. ***Do Not the Adopt Proposed Review Mechanism.*** Eight commenters suggest that the NGPC should not create a review mechanism to address perceived inconsistent String Confusion Objection Expert Determinations in this round of the New gTLD Program. These commenters argue that changing the rules after the fact would be unfair, would constitute a breach of contract, and may be creating top-down policy changes outside of the GNSO policy development process. These commenters suggest that applicants agreed to the process included

in the Applicant Guidebook, which did not include this review mechanism, and applicants relied on these rules. Some commenters also expressed concern that adopting such a review mechanism may be a breach of ICANN's Bylaws. Additionally, commenters suggest that adopting the review mechanism at this time would call into question all other objection/contention sets, which would serve to undermine many other parts of the New gTLD Program. Also, some commenters suggest that future rounds should include a review mechanism, although such a review mechanism may not be appropriate for this round. (Commenters that fall into this category include: several individual community members, Commercial Connect, Uniregistry, Google, Domain Venture Partners and Famous Four Media.)

2. ***Adopt the Proposed Review Mechanism.*** Two commenters recommended that ICANN adopt the proposed review mechanism. These commenters suggest that ICANN's Bylaws require it to address the perceived inconsistencies, and to allow the inconsistencies to stand would cause an unfair prejudice. (Commenters that fall into this category include: DerCars and United TLD.)

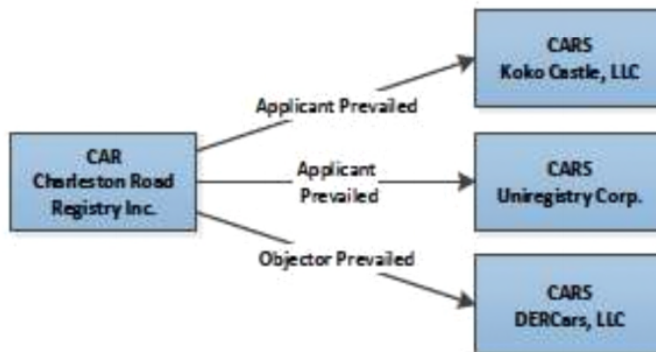
3. ***Adopt a Review Mechanism with an Expanded Scope.*** Five of the comments submitted generally support the idea of a review mechanism but urge the NGPC to expand the scope of the review mechanism beyond the two identified String Confusion Objections (.CAM/.COM and .CAR/.CARS). These commenters suggest that the proposed mechanism is too narrow as currently defined. The commenters express varying degrees to which the scope should be expanded. While some suggest that the scope be expanded to other String Confusion Objections, such as those related to .shop/.shopping, others recommend an even broader scope that would be widened to include "inconsistencies" in Community and Limited Public Interest Objections. Additionally, some commenters urging the NGPC to expand the scope of the review mechanism suggest that "inconsistencies" subject to review should include singular and plural versions of the same string. (Commenters that fall into this category include: ALAC, Donuts, Radix, GNSO Business Constituency, and VeriSign.)

4. ***Do Not Adopt the Proposed Review Mechanism or Expand the Scope of the Proposed Review Mechanism*** . Three of the comments submitted suggest that the NGPC should either expand the scope of the proposed review mechanism to address other “inconsistencies”, or do not adopt a review mechanism at all. These commenters generally seem to recommend an “all or nothing” approach. (Commenters in this category include the Intellectual Property Constituency and individual commenters.)
5. ***Adopt Some Form of a Review, But Not Necessarily the Review Mechanism Proposed***. Two commenters suggest that some form of a review mechanism is needed, but these commenters do not necessarily advocate for the adoption of the review mechanism proposed. One of the comments outlines alternative review mechanisms that could be adopted by the NGPC. This alternative approach is based on using the SWORD tool. (Commenters in this category include an individual and Hotel Top-Level-Domain).
6. ***Suggested Modifications to the Proposed Review Mechanism, If Adopted***. Various comments submitted during the public comment forum suggest that the NGPC modify the framework principles of the Propose Review Mechanism, if the NGPC decides to move forward with adopting a review mechanism. Some of the commenters note that they are not advocating for approval of the review mechanism, but merely suggesting improvements if the NGPC is inclined to take action to adopt the Proposed Review Mechanism. The suggestions for modifications to the framework principles generally focus on the following: (1) the scope of the Proposed Review Mechanism, (2) the applicable standard of review, (3) the parties who have standing to use the Proposed Review Mechanism, and (4) the composition of the Panel of Last Resort.

The other comments submitted did not take a clear position one way or the other on whether the NGPC should adopt the SCO Review Mechanism.

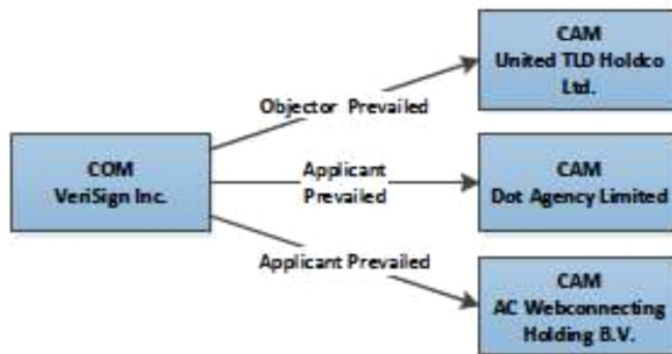
It should also be noted that some of the applicants for strings that would be directly impacted if the review mechanism is adopted provided comments in the public comment forum. Specifically:

- In the .CAR/.CARS String Confusion Objection set, Google (Charleston Road Registry Inc.), Uniregistry Corp., and DERCars, LLC submitted comments. As highlighted in the Reference Materials, Google asserts that there is no need for an entirely new review process intended “solely to re-litigate two specific instances in which an objection proceeding resulted in a dubious ruling.” If, however, the NGPC adopts the review mechanism, Google suggests some modifications to the framework principles. Uniregistry Corp. highlights that the AGB did not provide a mechanism for appeals, and all parties who applied for TLDs relied on the promise that decisions by the dispute resolution service providers would be final. Uniregistry also suggests some revisions to the framework principles, if the NGPC decides to adopt a review mechanism. DERCars expresses general support for the review mechanism, but believes the NGPC should make a few clarifications concerning the framework principles.



- In the .COM/.CAM String Confusion Objection set, United TLD Holdco Ltd., Dot Agency Limited and VeriSign, Inc. provided comments. As highlighted in the

Reference Materials, United TLD generally supports the proposed review mechanism, but proposes modifications to the framework principles. Dot Agency Limited asserts that amending the amending the New gTLD Program rules post event to allow an appeal is a breach of process under ICANN’s own guidelines, and also legally. VeriSign suggests that the Proposed Review Mechanism “misses yet another opportunity to mitigate user confusion about which ICANN has been repeatedly warned...” VeriSign asserts that if ICANN believes that the “inconsistencies” in the .CAM/.COM situation cannot stand, then all three of the decisions should be reviewed.



STAFF RECOMMENDATION:

This paper is provided for discussion. Staff notes that the public comments do not clearly advocate one position over another, but highlight concerns and competing interests that require careful consideration. In light of the comments, staff notes that not changing the Applicant Guidebook at this time to adopt the proposed review mechanism may present the better option, but awaits further discussion, direction and input from the NGPC.

Signature Block:

Submitted by: Amy Stathos

Position: Deputy General Counsel

Date Noted: 8 May 2014

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2014-05-14-4a-NGPC Paper-Auction Rules Update.docx

ICANN New gTLD Program Committee PAPER NO. 2014.05.14.4a

TITLE: **Briefing on New gTLD Program Auctions**

PROPOSED ACTION: **For Information**

EXECUTIVE SUMMARY:

This paper briefly describes some of the key features of the new gTLD program auctions procedures, the consistency of those procedures with the Applicant Guidebook (AGB), and provides an overview on how the auction rules and associated operational procedures were developed through community consultations.

Contention sets are groups of applications for identical or confusingly similar gTLD strings. Contention sets must be resolved prior to the execution of a Registry Agreement for gTLD string. An ICANN facilitated auction is a mechanism of last resort for resolving String Contention Sets, as described in section 4.3 of the [AGB](#).

The AGB defined a “general introduction and preliminary” set of procedures including an ascending clock auction methodology and prescribed that a detailed set of Auction Rules would be made available prior to commencement of the auctions. Over the past eight months ICANN staff consulted with an experienced auction firm, Power Auctions LLC (Power Auctions), and with the ICANN community on the development of a set of detailed Auction Rules, as well as on the operational logistics to coordinate and execute auctions. In March 2014, after the conclusion of public comment process, a set of Auction Rules was published. After further discussions during ICANN 49, the Auctions Rules were updated to address the remaining concerns of potential participants <http://newgtlds.icann.org/en/applicants/auctions/rules-03apr14-en.pdf>. ICANN staff and Power Auctions took great care to ensure the Auction Rules were consistent with the descriptions of the auction procedures contained in the 4 June 2012 version of the AGB and that they incorporated the feedback of the community.

Consistent with the Applicant Guidebook

A key guiding principle of the Auction procedure development was to ensure the Auction Rules and any associated procedures were consistent with the descriptions of the auctions contained in the 4 June 2012 version of the AGB. For example, the following key elements of the Auctions are contained in both the Auction Rules and the AGB.

- Auctions for multiple contention sets will take place simultaneously.
- Auctions will be conducted over the internet.
- Auctions will utilize the Ascending Clock Auction Method.
- Applicants must sign a Bidder Agreement to participate in the Auction.
- Applicants must submit a deposit that will equal to 10% of their bidding limit for a particular application. There is an option to submit a \$2M USD deposit that will grant an application unlimited bidding limit.
- The durations of the bidding rounds and recesses between bidding rounds are consistent with the ranges specified in the AGB.
- Winners must submit final payment within 20 business days of the Auction; failure to do so will result in the applicant being declared in default.
- The penalty for default is equal to 10% of the winning price. In the event of default the next highest bidder will be offered the rights to the string.
- Winners must execute a registry agreement within 90 days of winning the auction

Developed the Auction process through Community Consultation

ICANN staff consulted with the community, including new gTLD applicants, to solicit input and develop all aspects of the Auction process including the Auction Rules, the Bidder's Agreement and many of the features of the process. A preliminary set of Auction Rules was published on 31 October 2013. Staff presented these rules to the community via a webinar as well as presentation at ICANN 48 in Buenos Aires. Feedback and suggestions received were incorporated into a Final Draft set of Auction rules, the Draft Bidder's Agreement, and a Draft Auction Schedule, published for Public Comment on 17 December 2013. The public comment period concluded on 4 February 2014. Staff reviewed and analyzed the input received during the public comment period

and published an operational set of Auction Rules and Bidder's Agreement in early March. At the ICANN 49 Meeting in Singapore the community identified terms and conditions changes that had been mentioned in the public comments but were not incorporated. After several discussions with the community, an agreement was reached and the documents were updated in early April.

Summary of community feedback

ICANN received a great deal of feedback on the Auction Rules from the community over the last eight months. Many of the items where feedback was received that did not conflict with the AGB have been incorporated into the current process. Feedback during the public comment period generally fell into the following categories:

1. The use of Auctions or the Ascending Clock Auction method prescribed in the AGB to resolve string contention.

Some comments suggested eliminating Auctions as the last-resort contention resolution method, while others suggested alternative types of auctions in lieu of the ascending-clock auction

Response: Numerous methods of contention resolution were considered during the development of the AGB. ICANN does not intend to modify the AGB at this critical juncture and has finalized the rules to move forward with ascending clock auctions.

2. Comments relating to timing, scheduling and Auction logistics.

The New TLD Applicants Group (NTAG) and several individual applicants comments requested a predictable schedule, and the flexibility to advance or postpone an auction in the event of unanimous consent from the other members of the contention set. Other commenters urged ICANN to complete all Auctions within one year of the first auction or faster. A comment expressed the opinion that a fixed auction start time (16.00 UTC) was unfair to auction participants in the Asia Pacific Region.

Response: ICANN has defined a schedule to conduct auctions at a predictable pace. Presently, plans call for auctions of up to twenty (20) contention sets per month. Additionally the process accommodates applicants requesting to postpone or advance their auction dates. ICANN and the Auction provider have identified three (3) Auction start times, which will be rotated each month to better accommodate auction participants from around the world. ICANN received positive feedback at the ICANN 49 meeting in Singapore that the plan meets the needs of the community.

3. ***Suggestions to modify details of the Auction Rules and the Bidder's Agreement.***

Various suggestions were made to clarify the rules around anti-collusion, changes to rules, remedies for violation of rules, and indemnification. A few comments including those from the NTAG suggest that the winner of an auction be given 9 months rather than 90 days, as per the AGB, to sign a Registry Agreement.

Response: ICANN incorporated many of the suggestions to improve and clarify the terms and conditions of the auction rules and received positive feedback from the community that their concerns have been adequately addressed. ICANN did not extend the 90-day period within which an auction winner must sign a Registry Agreement, as the AGB deliberately identifies a shortened timeline for contract execution of contended strings versus non-contended strings.

4. ***The use of Auction proceeds***

A few commenters urged ICANN to develop a plan for the use of Auction proceeds.

Response: The ICANN Board will engage with the ICANN community to define an appropriate use of Auction proceeds. Beginning the planning process for these funds is premature as the magnitude of the proceeds is unknown at this time and will be difficult to forecast until several months of Auctions have been completed.

5. *The handling of contention sets with indirect contention relationships.*

Some comments suggested that ICANN publish the auction rules for Indirect Contention sets before holding any Auction events.

Response: While ICANN appreciates this perspective, rules for Indirect contention set Auctions are anticipated to pertain to a maximum of five (5) contention sets out of one-hundred eighty (180) remaining unresolved sets. Staff will continue work to finalize indirect auction rules while moving forward with auctions for the remaining one hundred seventy five (175) direct content sets.

Anticipated Auction Timeline

- Early May 2014 – Confirm participants for the first Auction event
- Mid May 2014 – Publish an update on Auction Rules for indirect contention sets
- 4 June 2014 - Conduct first Auctions

STAFF RECOMMENDATION:

No further action is recommended at this time.

Signature Block:

Submitted by: Christine A. Willett

Position: Vice President, GDD Operations

Date Noted: 22 April 2014

Email: christine.willett@icann.org

EXHIBIT C-058

Our ref FPE/mne/129055

Flip Petition
Contact Information Redacted

23 May 2014

To the attention of Mr. Cherine Chalaby
Chair, ICANN New gTLD Program Committee (NGPC)
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA

By regular mail and by e-mail: didp@icann.org

DIDP Request

Dear Sir,

Pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), I hereby request on behalf of Amazon EU S.à.r.l. ('Amazon') the documents described below.

Relevant Background

Amazon is the applicant for the new gTLDs .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591) (collectively, the 'Amazon Applications') among others. On 14 May 2014, the NGPC approved resolution 2014.05.14.NG03, deciding that the Amazon Applications should not proceed (hereinafter, the 'Decision').

The rationale for the Decision states that the NGPC considered several significant factors and that the NGPC had to balance the competing interests of each factor to arrive at a decision. The NGPC listed a selection of factors that it found to be significant. However, it is not apparent how the NGPC balanced the competing interests and what other factors the NGPC found to be significant. In addition, the NGPC itself notes that its decision is based on the advice of the GAC, an ICANN-created advisory committee.

Information Requested

Accordingly, Amazon respectfully requests that ICANN produce all documents directly and indirectly relating to (1) the balance of the competing interests of each factor and (2) the GAC's advice in relation to the Amazon Applications, including but not limited to:

1. All communications between individual members of ICANN's Board and GAC representatives or other government officials acting as GAC representatives directly or indirectly relating to any of the Amazon Applications;

2. All communications between ICANN's Board and the GAC directly or indirectly relating to any of the Amazon Applications;
3. All communications between individual members of ICANN's Board and ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
4. All communications between individual members of ICANN's Staff directly or indirectly relating to any of the Amazon Applications;
5. All communications between individual members of ICANN's Board directly or indirectly relating to any of the Amazon Applications;
6. All communications between individual members of ICANN Staff and the Independent Expert M. Jerome Passa directly or indirectly relating to any of the Amazon Applications;
7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;
8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;
9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;
10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;
11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;
12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;
13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;
14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

The information requested herein is not publicly available, and is therefore a proper subject for a DIDP Request.

The information does not meet any of the defined conditions for nondisclosure:

- The information was not provided by or to a government or international organization. At most, it was provided by a holder of an elected governmental office, or a person who is employed by such government, public authority, or multinational governmental or treaty organization. The GAC itself is not a government or international organization, but an advisory committee set up under ICANN. Their communications in relation to the Amazon Applications as well as communications by other government officials in relation to the Amazon Applications are not sensitive to governments, but relate to whether or not a public resource – the applied-for gTLDs in the DNS – should be allocated. As this decision has an impact on applicants, the concerned applicants have a right to know how the Decision was made;

- The information is not likely to compromise the integrity of ICANN's deliberative or decision-making process. Indeed, ICANN is required by its Articles of Incorporation and Bylaws to "operate to the maximum extent feasible in an open and transparent manner", including by "employing open and transparent policy development mechanisms" and "making decisions by applying documented policies neutrally and objectively". Without full transparency about the Decision that was taken outside the scope of any established policy, ICANN would seriously compromise the integrity of its deliberative or decision-making process. Disclosing the requested information can only improve ICANN's deliberative and decision-making process. As a result, there can be no justification for refusing to publish the requested documents;
- The information is not likely to compromise the integrity of the deliberative or decision-making process between ICANN and its constituencies or other entities, for the same reasons as noted above;
- The information is unrelated to any personnel, medical, contractual, remuneration, or similar records;
- The information is not likely to impermissibly prejudice any parties' commercial, financial, or competitive interests. Additionally, to the extent that any requested document contains such information, and the information is unrelated to the Amazon Applications (for example, any financial or contract information related to consulting services), such information can be redacted before the publication of the documents;
- The information is not confidential business information or internal policies or procedures;
- The information will not endanger the life, health, or safety of any individual nor prejudice the administration of justice;
- The information is not subject to attorney-client privilege;
- The information is not drafts of communications;
- The information is not related in any way to the security or stability of the Internet;
- The information is not trade secrets or financial information;
- The information request is reasonable, not excessive or overly burdensome, compliance is feasible, and there is no abuse.

Finally, to the extent any of the information does fall into one of the defined conditions for non-disclosure, ICANN should nonetheless disclose the information, as the public interest in disclosing the information outweighs any harm that might be caused by disclosure. Indeed, there can be no harm from disclosing the information, as the ICANN community is entitled to know the standards by which ICANN (together with any consultants) makes decisions that determine what new gTLDs will be added to the Internet. ICANN's transparency obligation, described by ICANN's own Bylaws and Articles of Incorporation, require publication of information related to the process, facts, and analysis used by (individual members of) the NGPC in making the Decision.

Moreover, unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies. Additionally, future applicants will have no reliable guidance for determining if an application which meets all criteria set forth in the multistakeholder created

policy will not be subjected to discretionary powers that the ICANN Board assigns to itself, which will result in significant waste of money and time in the submission of applications with no fair chance of success.

Conclusion

In short, because there is no "compelling reason for confidentiality" and numerous compelling reasons for publication, and because publication is required by ICANN's own Bylaws and Articles of Incorporation, Amazon urges the publication of the requested information, including in particular the specific documents described above

Yours sincerely,



Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

EXHIBIT C-059

Reconsideration Request Form

Version of 11 April 2013

ICANN's Board Governance Committee is responsible for receiving requests for reconsideration from any person or entity that has been materially affected by any ICANN staff action or inaction if such affected person or entity believes the action contradicts established ICANN policies, or by actions or inactions of the Board that such affected person or entity believes has been taken without consideration of material information. Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <http://www.icann.org/en/general/bylaws.htm#IV> and <http://www.icann.org/en/committees/board-governance/>.

This form is provided to assist a Requester in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requesters may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12 point font.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requester Information

Name: Amazon EU S.à.r.l.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

C/o:

Name: Flip Petillion, Crowell & Moring LLP

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact information Redacted

(Note: ICANN will post the Requester's name on the Reconsideration Request page at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>. Requestors address, email and phone number will be removed from the posting.)

2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

(Provide as much detail as available, such as date of Board meeting, reference to Board resolution, etc. You may provide documents. All documentation provided will be made part of the public record.)

Amazon EU S.à.r.l (hereinafter 'Amazon') seeks reconsideration of both actions and inactions of ICANN's Board of Directors. The specific actions/inactions of the Board are set forth in more detail below, specifically in response to Questions 8 and 10, and relate to the Board New gTLD Program Committee's ('NGPC') Resolution 2014.05.14.NG03, approved on May 14, 2014 and published on May 16, 2014 (hereinafter, the 'Decision'), attached as **Annex 1**. In sum, the Affirmation of Commitments, Article 7, requires "*ICANN commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.*" The NGPC itself notes at the outset of its Decision that the GAC, an advisory committee created by and for ICANN and thus falling within the same governing principles as all other ICANN-created entities, provided no thorough or reasoned explanation of its decision. Instead of rejecting the GAC Advice or conducting its own investigation to determine and record the rationale in a transparent manner,

as is the duty of the Board of Directors, the NGPC instead relied upon the specific statements of two interested governments as the consensus opinion of the GAC. The NGPC (1) failed to take into consideration material information, (2) relied on false and inaccurate information, (3) failed to take material action, and (4) took actions in clear violation of ICANN's obligations under its Articles of Incorporation, Bylaws, Affirmation of Commitments and established policies.

4. Date of action/inaction:

(Note: If Board action, this is usually the first date that the Board posted its resolution and rationale for the resolution or for inaction, the date the Board considered an item at a meeting.)

On May 16, 2014 at 21:12 PDT (May 17, 2014 at 4:12AM UTC) the Board published the Decision apparently taken on May 14, 2014 (Annex 2).

5. On what date did you become aware of the action or that action would not be taken?

(Provide the date you learned of the action/that action would not be taken. If more than fifteen days has passed from when the action was taken or not taken to when you learned of the action or inaction, please provide discussion of the gap of time.)

Amazon learned of the Decision on Friday May 16, 2014 at 21:20 PDT.

6. Describe how you believe you are materially affected by the action or inaction:

Amazon applied for the gTLD strings .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591) (collectively, the 'Amazon Applications' or 'Applications' or '.AMAZON gTLDs'). By accepting ICANN's Governmental Advisory Committee's ("GAC") untimely advice against the Applications, ICANN's Board of Director's New gTLD Program Committee ("NGPC") prevents Amazon from operating and

benefiting from the applied for .AMAZON gTLDs strings in connection with Amazon's globally well-known trade name and trademarks – in which Amazon has invested significant resources – and interferes with Amazon's legally protected rights in a discriminatory manner. Preventing Amazon from operating the applied for .AMAZON gTLDs in connection with its globally well-known trade name and trademarks, while allowing others to proceed, creates serious harm for a company operating primarily on the Internet.

As with other companies, Amazon places paramount importance on protecting one of its most valuable assets – its trademark “AMAZON” –. Amazon's AMAZON trademarks are registered, along with AMAZON-formative marks such as AMAZON.COM, AMAZON and Design, 亚马逊, and アマゾン (collectively “AMAZON Marks”), more than 1300 times in over 149 countries world-wide. This includes registrations for AMAZON Marks in the trademark offices and ccTLDs of Brazil, Peru, and the other regions that claim Amazon should not be allowed to use its global mark as a gTLD. The Decision has the effect of creating a new international legal rubric that interferes with existing international and national laws that protect Amazon and the AMAZON Marks. Allowing the GAC to create far-reaching new rules and non-transparent policies on the back of a single applicant seriously undermines ICANN's multistakeholder model and the GNSO policy development process.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

ICANN's failure to follow the policies created by the GNSO as well as its own Bylaws, Articles of Incorporation, and the Affirmation of Commitments

creates inconsistency, injects unfairness and a lack of transparency in the process, and calls into question the fairness of the gTLD program as a whole. The Decision creates dangerous precedence that will embolden other governments and future Boards to circumvent or ignore proper legal processes and multi-stakeholder created policy, with no accountability for their actions. Such action will inevitably have a chilling effect on new entrants into the gTLD space.

In addition, the Decision goes against the core objectives of the new gTLD program: opening up the top level of the Internet's namespace to foster diversity and to encourage competition for the benefit of Internet users across the globe. Rejecting the Amazon Applications unjustifiably limits both of these objectives.

8. Detail of Board or Staff Action – Required Information

Staff Action: If your request is in regards to a staff action or inaction, please provide a detailed explanation of the facts as you understand they were provided to staff prior to the action/inaction presented to the staff and the reasons why the staff's action or inaction was inconsistent with established ICANN policy(ies). Please identify the policy(ies) with which the action/inaction was inconsistent. The policies that are eligible to serve as the basis for a Request for Reconsideration are those that are approved by the ICANN Board (after input from the community) that impact the community in some way. When reviewing staff action, the outcomes of prior Requests for Reconsideration challenging the same or substantially similar action/inaction as inconsistent with established ICANN policy(ies) shall be of precedential value.

Board action: If your request is in regards to a Board action or inaction, please provide a detailed explanation of the material information not considered by the Board. If that information was not presented to the Board, provide the reasons why you did not submit the material information to the Board before it acted or failed to act. "Material information" means any information that is material to the decision.

If your request is in regards to a Board action or inaction that you believe is based upon inaccurate, false, or misleading materials presented to the Board and those materials formed the basis for the Board action or inaction being challenged, provide a detailed explanation as to whether an opportunity existed to correct the material considered by the Board. If there was an opportunity to do

so, provide the reasons that you did not provide submit corrections to the Board before it acted or failed to act.

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration. Please keep this guidance in mind when submitting requests.

Provide the Required Detailed Explanation here:

(You may attach additional sheets as necessary.)

As will be demonstrated in greater detail below, the NGPC (1) disregarded material information, (2) relied on false and inaccurate material information, (3) failed to take material action, and (4) took action in violation of GNSO-created policy and ICANN's own Articles of Incorporation, Bylaws and Affirmation of Commitments.

I. The NGPC Failed to Deny GAC Advice that was Not Timely Submitted Per the Applicant Guidebook

The NGPC acknowledges that its decision to reject the Applications is based on the GAC Advice issued by the GAC from the Durban Communique. *"Whereas, the GAC met during the ICANN 47 meeting in Durban and issued a Communique on 18 July 2013[.] Whereas, the GAC advised the ICANN Board in its Durban Communique that the GAC reached 'consensus on GAC Objection Advice according to Module 3.1 part I of the Applicant Guidebook[.]"*

The Applicant Guidebook ('AGB') states, *"to be considered by the Board during the evaluation process, the GAC Advice on new gTLDs must be submitted by the close of the objection filing period."* (AGB, § 1.1.2.7; §3.1) ICANN's objection filing period closed on 13 March 2013.

The GAC issued its first Advice in relation to new gTLD applicants almost a month after the close of the objection filing period, on April 11, 2013 in its Beijing Communique. At that time the GAC was able to obtain consensus advice against two applications, but failed in its attempts to get consensus advice against the Amazon Applications. The GAC listed the Amazon Applications along with other strings such as .SPA, .WINE and .VIN, which the GAC identified as "*gTLD strings where further GAC consideration may be warranted*". At that point, the NGPC should have treated the GAC advice found in the Beijing Communique as it has otherwise treated advice against .SPA, .WINE and .VIN, as unable to obtain consensus. There was no basis for the GAC to postpone its attempts to reach consensus until after the close of the objection period, and certainly not until after the Beijing Advice. Similarly, there is no basis for the GAC to fail to report its unsuccessful attempts to obtain consensus advice against the Amazon Applications, and then to allow a second vote at another meeting several months later.

The failure of the GAC to provide timely advice was first put forward to the NGPC in Amazon's 10 May 2013 Response to the Beijing Advice. The NGPC has continuously failed to address the impact of accepting GAC Advice submitted in an untimely manner in violation of the AGB as part of its overall deliberations.

II. The NGPC Failed to Show Why the GAC Advice is "Exceptional" Per the Applicant Guidebook

Not only is the GAC's Durban Advice untimely (*supra*), there is nothing in the GAC Advice or NGPC Resolution explaining why the Board believes that the circumstances under which the Applications were filed or their content is

“exceptional.” Section 5.1 of the AGB states, “[u]nder exceptional circumstances, the Board may individually consider a gTLD application.”

All three of Amazon’s Applications passed initial evaluation, including the geographic review panel. All three successfully defended against community objections brought by the Independent Objector (who made the same arguments put forth by the Governments of Peru and Brazil to the GAC). No timely consensus advice was issued and, as noted by the NGPC, no clarification was given as to the rationale for the untimely advice.

The NGPC fails to explain why the facts in this case are “exceptional” – or “so exceptional as to move the NGPC to individually consider the Amazon Applications” – as opposed to those found in other similarly situated applications. As this creates disparate treatment with other applications, this cannot be considered immaterial.

III. The NGPC Failed to Apply the Appropriate GAC Governing Principles to the GAC Advice

The NGPC claims the AGB provides that GAC Advice creates “a strong presumption for the ICANN Board that the application should not proceed.”

Amazon refutes that the GAC had the right, under the AGB as created by the ICANN community (described in detail in Amazon’s August 23, 2013 Response to the ICANN Board of Directors on the GAC Durban Advice), to object to the Amazon Applications based on the 2007 GAC Principles. For the sake of argument, however, even if the GAC did have the right to make this objection, the only GAC Advice that can be taken into account under the rules of the AGB is, arguably, the Beijing GAC Advice from April 2013. And, as already

noted, under the Beijing GAC Advice, the NGPC should have treated the Amazon Applications in the same manner it treated the applications for .SPA, .WINE and .VIN (or should have allowed the Amazon Applications to proceed as no consensus was reached against these applications).

The Durban GAC Advice, therefore, should be reviewed by the NGPC as it would review any other GAC Advice. As noted by the NGPC in the Decision, *"the ICANN Bylaws require the Board to take into account the GAC's advice on public policy matters in the formulation and adoption of the policies."* In other words, ICANN's Bylaws do not apply a "strong presumption" to GAC Advice – particularly GAC Advice that does not contain a detailed explanation of how the advice affects public policy or the reasons for the "consensus" advice.

As a result the NGPC failed to apply the appropriate principles governing the review of GAC Advice.

And even if the GAC Advice created a strong presumption, *quod non*, this does not prevent the NGPC from rejecting the GAC Advice, provided the NGPC gives *"a rationale for doing so"* (AGB, §1.1.2.7). As demonstrated by Amazon in its response to the Durban communiqué and in its subsequent communications, accepting the GAC Advice would violate various provisions of ICANN's Bylaws, Articles of Incorporation and Affirmation of Commitments. Not only did Amazon provide the NGPC with a rationale for rejecting the GAC Advice, it showed that the NGPC had no choice but to reject the GAC Advice. As a result, any presumption that could have been created by the GAC Advice was clearly rebutted by Amazon's communications (which the NGPC failed to consider).

IV. The NGPC Improperly Reviewed an Early Warning as Rationale for GAC Advice

The Decision states “[a]lthough the NGPC does not have the benefit of the rationale relied upon by the GAC in issuing its consensus advice in the Durban Communique on the applications for .AMAZON (and related IDNs) the NGPC considered the reason/rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru[.]” An Early Warning is not GAC rationale for consensus GAC Advice. The AGB is clear that an Early Warning is “a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application.” (AGB, §1.1.2.4) In addition, “GAC Consensus is not required for a GAC Early Warning to be issued.” (Id. (emphasis added)) Finally, an Early Warning is not even required before the GAC can issue consensus advice.

The rationale provided in the Early Warning and relied upon by the NGPC reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC. The NGPC should not have relied upon the Early Warning in making its Decision and, should, instead, have conducted further inquiry of the GAC as to the basis and reason for the consensus advice. The NGPC’s failure to perform this inquiry, is an unjustified refusal to consider material information. In addition, by relying on the opinions of two governments as representative of the consensus of the GAC, the NGPC is inaccurately

presenting this information and is relying on the false premise that this information contains the rationale for the GAC Advice.

V. The NGPC Took the Advice of Two Governments in Violation of the Applicant Guidebook and ICANN Bylaws and Articles of Incorporation and Failed to Consider Material Information

The Decision states that *"the concerns raised by the relevant parties highlight the difficulty of the issue."* In the matter of the NGPC's review of GAC consensus advice, however, the only relevant parties are the GAC and Amazon. Instead of considering the GAC rationale or, in its absence making the appropriate inquiry into the rationale, the NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC members.

The GAC has not expressed any explanation of how or why it arrived at its late consensus opinion that the Amazon Applications should not proceed. The GAC website states that "the GAC produces various kinds of written advice for communication to the Board, including: 1) letters signed by the GAC Chair on behalf of the GAC; and 2) communiques and submissions endorsed by the GAC at face-to-face GAC meetings." In addition, Article XII of the GAC's Operating Principles states, *"[a]dvice from the GAC to the ICANN Board shall be communicated through the Chair."* The only communications regarding consensus advice from the GAC itself are contained in the Beijing, Durban, Buenos Aires and Singapore Communiques.

Two individual countries, Brazil and Peru, who have representatives within the GAC, expressed concerns with the .AMAZON application as reflected in an

Early Warning (**Annex 3**). No Early Warning was expressed in relation to .アマゾン or .亚马逊. But as noted above, an Early Warning represents only notice to an Applicant that a government may have concerns with a particular application – nothing more.

In addition, the NGPC also considered and relied upon letters submitted to the NGPC by representatives of the Governments of Brazil and Peru, at least one of which misstates the facts (*infra*).

Similarly, on April 7, 2014 the NGPC sent both Amazon and the GAC a copy of M. Jerome Passa's Expert Report for comment. The NGPC specifically asks the GAC and Amazon to provide comment on the report for the NGPC deliberations. The GAC did not provide comment, however both representatives from Brazil and Peru submitted correspondence on behalf of their individual governments. The opinions of the two governments – again, as opposed to the opinion of ICANN's GAC – were considered in this process. Amazon's response was not considered (*infra*).

This begs the question why, if the NGPC is to consider the submissions by individual third-parties, it did not seek out the opinions of other governments (*infra*) or take into account the volume of public comments made to the Board in Durban in opposition to the GAC Advice? These comments represent many individuals, organizations, business interests, stakeholder groups, and others in opposition to the GAC Advice on the Applications. (**Annex 4**) Nothing in the Decision suggests the NGPC considered comments submitted to the Board by the ICANN Community as part of ICANN's formal comment process.

As set forth in detail in Amazon's GAC Advice Response, the Governments of Brazil and Peru had the opportunity to make their individual case against Amazon's Applications through the proper channel set forth in the AGB, which was to file a Community Objection against the Applications (as the Government of Argentina did with .PATAGONIA). Brazil and Peru chose not to file an objection, but instead the NGPC has allowed Brazil and Peru to file a *de facto* objection that is clearly not allowed by the AGB and which is not based on objective criteria. In fact, it is not based on any criteria at all. This denied Amazon the benefit of an independent panelist's review of the Governments claims, as provided for in the AGB and in violation of GNSO and Board approved policy. Had Brazil or Peru chosen to object to the Amazon Applications on the basis of the AGB criteria, such objection would have failed, as is shown by the independent panelist's rejection of the Community Objection in ICC Decision Case No. Exp/396/ICANN/13 (*infra*).

VI. The NGPC Relied on False and Inaccurate Material Information

The NGPC considered letters submitted to the NGPC by representatives of the Governments of Brazil and Peru. These letters do not represent the consensus opinion of the GAC, but rather the opinion of two Governments in particular. The letter dated April, 11 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru) – which the NGPC indicates was considered as part of the NGPC's deliberations – even misstates the existence of the term 'Amazon on the ISO-3166 lists'. It states (**Annex 5**):

"4. The Durban communique voices the opinion of the community of countries that integrate the ICANN. Such

communiqué reiterates the rights of the countries to intervene in claims that include words that represent a geographical location of their own – which by the way in this case, is recognized by ISO codification – in particular when such terms evoke strategic, historical and cultural values for the eight countries of the Amazon basin and their people.”

None of the applied for strings in the Amazon Applications are recognized by relevant ISO codification. (The GAC representative for Peru made a similar misstatement before the GAC vote in Durban. “[Amazon] has been allotted the three-digit code number. So it is in that 3166-2 list.” (<http://durban47.icann.org/meetings/durban2013/transcript-gac-plenary-16jul13-en.pdf>).) In addition, and as demonstrated again below, the Durban communiqué does not “*voice the opinion of the community of countries that integrate the ICANN*”.

As a result, the abovementioned letter contains false and inaccurate information. It misleads its readers as to the content of relevant ISO codification.

The NGPC states that it has considered this letter, but failed to identify any false and inaccurate information contained in this letter. In conclusion, the NGPC relied on false and inaccurate information in making its Decision. This is an express ground for reconsideration under Article IV(2)(c) of the Bylaws.

VII. The NGPC Failed to Consider Material Information From the US Government

The NGPC failed to consider material information provided by the United States Government. In its July 2013 statement on the decision to remain neutral in the GAC deliberations on the Applications, the United States Government states:

“The United States affirms our support for the free flow of information and freedom of expression and does not view sovereignty as a valid basis for objecting to the use of terms, and we have concerns about the effect of such claims on the integrity of the process. We considered that the GAC was of the same mind when it accepted ICANN’s definition of geographic names in February 2011 and agreed that any potential confusion with a geographic name could be mitigated through agreement between the applicant and the concerned government. In addition, the United States is not aware of an international consensus that recognizes inherent governmental rights in geographic terms.”
(Annex 6)

The Statement goes on to note that the rules found in the AGB do not “specifically prohibit or condition” strings such as Amazon’s. **(Annex 6)**

Nothing in the United States Government’s statement implies that the United States agreed to GAC Consensus Advice based on its concerns that the Applications would harm the public interest, as the NGPC suggests was the GAC rationale based on the Early Warning. Quite the contrary, the United States Government suggests the pending GAC Advice may in fact result in limitations on free expression.

The statement from the U.S. Government calls into direct question the belief that the Durban Advice is clearly representative of the consensus adoption by the entire GAC of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence. The letter infers, instead, that the GAC process is being used to create rights in government otherwise unsupported by international law. This statement should raise additional concerns by the NGPC that the GAC Advice – even if, for sake of argument, it should be given a “strong presumption” – in fact violates ICANN’s Bylaws and Articles of Incorporation. In addition, this statement makes clear that any GAC consensus advice was not based on strict

agreement with the opinions of Brazil and Peru on why the Applications should or should not be allowed to proceed. The NGPC failed to conduct an inquiry as to how and why the GAC arrived at consensus advice, which would allow the NGPC to make an informed determination as to whether or not the GAC advice is “exceptional” as required by the AGB.

VIII. The NGPC Failed to Consider the Expert Determination in ICC Decision Case No. Exp/396/ICANN/13

Despite awareness that the Community Objection process is the appropriate avenue designated by ICANN for individual governments wanting to contest geographic terms not included in the Applicant Guidebook, no representative from Brazil or Peru (or any of the other Amazonia region countries, the OTCA or any other country) filed a Community Objection. Instead, a third party – the “Independent Objector” (the ‘IO’, who represented the Government of Peru at the time he was contracted with by ICANN) – filed a Community Objection on behalf of the region.

The Expert Panelist assigned to make a determination in this case rejected the IO’s objection in ICC Decision Case No. Exp/396/ICANN/13 (the ‘Expert Determination’) and *inter alia* considered that “*Amazon’ has been used as a brand, trademark and domain name for nearly two decades also in the States arguably forming part of the Amazon Community. It is even registered in those States. There is no evidence, or even allegation, that this has caused any harm to the Amazon Community’s interest, or has led to a loss of reputation linked to the name of the region or community or to any other form of damage*” (Annex 7, para. 102). The Expert considered that “*there is no evidence either*

that internet users will be incapable of appreciating the difference between the Amazon group and its activities and the Amazon River and the Amazon Community, or that Amazonia and its specificities and importance for the world will be removed from public consciousness, with the dire consequences emphasized by the IO. Were a dedicated gTLD considered essential for the interests of the Amazon Community, other equally evocative strings would presumably be available. 'Amazonia' springs to mind" (Annex 7, para. 103). Amazon has made it clear that it would not object to the strings .AMAZONIA, .AMAZONAS or .AMAZONICA.

The NGPC's Decision, however, did not consider the Expert Determination and fails to consider that: 1) the GAC was involved in a community-derived process and resulting policy that provided the specific avenue of a filing of a Community Objection for individual governments and/or interested parties to address localized concerns with applied-for strings that did not require government support; 2) the Brazilian and Peruvian Governments chose not to raise a Community Objection against the Amazon Applications, which did not require government support; and 3) such Community Objection would have been deemed to fail if they did, since the criteria for objecting would not have been met, as is demonstrated by the Expert Determination.

This is all material information – directly rebutting the claims made by the Governments of Brazil and Peru upon which the NGPC relies – that was disregarded by the NGPC in reaching its Decision despite being available to it.

The Expert Determination shows that there was no reason for the NGPC to accept the GAC Advice and all reason to reject the GAC Advice.

IX. The NGPC Failed to Consider the Expert Report and the Request for Additional Studies

ICANN commissioned a single legal opinion by an independent third party expert, M. Jérôme Passa ('Expert Report') (**Annex 8**).

The NGPC states that it has considered the Expert Report. However, the NGPC fails to address how it took the Expert Report into account in reaching its Decision. In addition, the NGPC failed to consider Amazon's request for additional studies.

On April 7, 2014, ICANN provided the Expert Report to Amazon and noted that "*it welcomed any additional information that the parties believed to be relevant to the NGPC in making its final decision on the [GAC Advice]*" (**Annex 1**). In a letter dated April 14, 2014 from Amazon's Vice President, Intellectual Property, M. Scott Hayden, Amazon raised the issue that the Expert Report was limited in scope, as it only dealt with legal principles of intellectual property. The Expert Report did not address the other principles of international law raised by Amazon in its Response to the GAC's Durban Advice nor the fundamental principles of ICANN's Bylaws and Articles of Incorporation that require ICANN – and the GAC, which was created by and operates under these governing documents – to follow its policies in accordance with relevant international law.

Of particular concern to Amazon is ICANN Staff's apparent instructions to the Independent Expert to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the

term 'Amazon' or whether ICANN was 'obliged' to grant .AMAZON based on pre-existing trademark registrations. These are not, however, the questions Amazon requested ICANN seek independent advice on (nor are they the claims made by Amazon). The real question is whether, by accepting the GAC advice, which is not rooted in any existing law, ICANN would be violating either national international law.

Despite Amazon's requests that ICANN conduct this analysis, there are no indications that ICANN even considered commissioning additional studies to analyze the other relevant principles of international law raised by Amazon. To the contrary, the fact that ICANN did not act on these requests – as demonstrated above, in Amazon's response to the GAC Advice (Annex 9) and in M. Scott Hayden's letter (Annex 10) – shows that ICANN failed to consider this material information and failed to take specific action necessary for it to make a balanced determination on whether or not GAC Advice is in contravention with ICANN's governing documents, including Articles I(2), II(3) and III(1) of ICANN's Bylaws, Article 4 of ICANN's Articles of Incorporation, or Sections 4, 5, 7 and 9.3 of the Affirmation of Commitments.

X. The NGPC Failed to Consider Its Fundamental Obligations Under the ICANN Bylaws and Articles of Incorporation

The Decision does not take Articles I(2), II(3) and III(1) of ICANN's Bylaws, Article 4 of ICANN's Articles of Incorporation, or Sections 4, 5, 7 and 9.3 of the Affirmation of Commitments into account. In addition, and as evidenced by each of Amazon's responses in this matter, the failure of the Board to reject GAC

Advice violates GNSO policy that (1) all new gTLD registry applicants should be evaluated against transparent and predictable criteria, fully available to applicants prior to the submission of applications (Council Policy Recommendation 1); and (2) there must be a clear and pre-published application process using objective and measurable criteria (Council Policy Recommendation 9).

By way of example, the AGB is clear about what types of strings are blocked and/or require government approval to proceed. The AGB does not give the Board and/or the GAC carte blanche discretion – without a legitimate reason – to override this GNSO created policy. Among the factors cited to in the Decision is the Early Warning’s claim that one of the Applications “matches part of the name, in English, of the ‘Amazon Cooperation Treaty Organization’, an international organization[.]” The AGB does not, however, give the NGPC or the Board the right to object to an applied for string because it represents part of the name of an international organization in any language.

Under this logic, the GAC could reject an application for .UNITED because the word “united” is found in the trade name of the United Nations. The GAC could similarly reject .VERMELHO or .RED because the word “red” is contained in the trade name of the ‘Red Cross’. If the NGPC accepts this argument as legitimate, as it appears to have accepted in its Decision, the NGPC is in clear violation of ICANN’s governing documents and GNSO-created policy.

Compliance with ICANN’s obligations under its Bylaws and Articles of Incorporation cannot be seen as ‘not significant’ or as information that is ‘not

material'. If the NGPC wishes to revise the AGB, it should have suspended all applications and opened the consensus building process again to prevent these principles from being violated. At a minimum, the NGPC should have sought comment from the GNSO as to whether or not the changes proposed by the untimely GAC Advice are in violation of GNSO Policy as claimed by Amazon in its many filings. Such action is not unknown to the NGPC, which sought this very input from the GNSO in connection with the unrelated Specification 13 as recently as March 2014. The NGPC should not consider its obligation to the GNSO, or the GNSO's role, as discretionary.

XI. The NGPC Failed to Consider the Fiscal Implications of Its Decision

The NGPC states there are no foreseen fiscal impacts to ICANN associated with its Decision. As stated above, however, the NGPC (1) failed to conduct an investigation into the question of whether or not ICANN violates national and/or international law by refusing the Amazon Applications; (2) failed to conduct itself in a transparent and accountable manner, as required by its Affirmation of Commitments, Bylaws, and Articles of Incorporation; and (3) made a Decision after ignoring available material information, mistakenly relied on correspondence from interested third-parties as equivalent to the GAC, and failed to conduct a thorough review of and inquiry into the "international legal and policy principles" consensus GAC advice is supposedly based upon.

Should it be determined that the Decision in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal

impacts on ICANN, not to mention the impact on ICANN's reputation as a neutral, transparent, and accountable multi-stakeholder organization. The NGPC failed to make the appropriate inquiry into the fiscal impact of its decision.

9. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

Amazon asks ICANN to reverse Resolution 2014.05.14.NG03, to direct the NGPC to reject the GAC advice identified in the GAC Register of Advice as 2013-07-18-Obj-Amazon, and to direct the President and CEO, or his designee, that the applications for .AMAZON (application number 1-1315-58086) and related IDNs in Japanese (application number 1-1318-83995) and Chinese (application number 1-1318-5591) filed by Amazon EU S.à r.l. should proceed.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

(Include in this discussion how the action or inaction complained of has resulted in material harm and adverse impact. To demonstrate material harm and adverse impact, Requester must be able to demonstrate well-known requirements: there must be a loss or injury suffered (financial or non-financial) that is a directly and causally connected to the Board or staff action or inaction that is the basis of the Request for Reconsideration. The requestor must be able to set out the loss or injury and the direct nature of that harm in specific and particular details. The relief requested from the BGC must be capable of reversing the harm alleged by Requester. Injury or harm caused by third parties as a result of acting in line with the Board's decision is not a sufficient ground for reconsideration. Similarly, injury or harm that is only of a sufficient magnitude because it was exacerbated by the actions of a third party is also not a sufficient ground for reconsideration.)

I. The NGPC Failure to Consider Material Information Harmed Amazon

As demonstrated above, the NGPC failed to consider material information, including fundamental principles of International law and of ICANN's own Bylaws and Articles of Incorporation. ICANN also failed to make a fair application of its own policies, developed through years of multistakeholder-created consensus.

ICANN not only failed to consider material information, ICANN's failure resulted in (1) the NGPC adopting a resolution that violates the abovementioned fundamental principles, (2) creates disparate treatment without any justified cause, and (3) directly harms Amazon.

Indeed, Amazon has made its investment in the gTLD program with a view to acquire and operate the gTLDs identified in the Amazon Applications. These investments were made because Amazon believes the operation of these gTLDs will allow Amazon to better communicate with the Internet user and to benefit from the opportunities that a proprietary brand TLD gives to Amazon. The Decision does not allow Amazon to proceed with its applications for strings that reflect its globally protected trade name and trademarks. The Decision blocks the applications for strings otherwise permitted for registration by ICANN's policy as outlined in the Applicant Guidebook. In addition, Amazon has invested significant time and effort in defending the Amazon Applications against unreasoned GAC Advice, which asks the Board to supersede the community-derived process and policy in contravention with ICANN's Bylaws and Articles of Incorporation. As a result of this GAC Advice, the Amazon Applications have suffered unnecessary delays and are currently experiencing further delays because of the Decision.

II. The requested relief reverses most of the harm

Although the requested relief in this Reconsideration Request does not compensate for the lost time and effort, it reverses most of the harm in that the relief allows Amazon to proceed with operating safe and secure gTLDs, using the trademark and trade name users trust and recognize due to the goodwill Amazon has created in the online space, for the benefit of its consumers globally.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

1. NGPC Resolution 2014.05.14.NG03
2. Communication on May 16, 2014 by ICANN indicating the timestamp of the publication of NGPC Resolution 2014.05.14.NG03
3. GAC Early Warning by the GAC representative of Peru and the GAC representative of Brazil
4. Examples of public comments made to the Board in Durban in opposition to the GAC Advice
5. Letter dated April 11, 2014 from Mr. Fernando Rojas Samané (Vice Minister of Foreign Affairs, Peru)
6. U.S. Statement on Geographic Names in Advance of ICANN Durban Meeting, July 2013

7. ICC Decision Case No. Exp/398/ICANN/13
8. Legal opinion by M. Jérôme Passa
9. Amazon's GAC Advice Response
10. Letter dated April 14, 2014 from M. Scott Hayden

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.



May 29, 2014

Signature

Date



May 29, 2014

To the attention of the members of the
ICANN Board Governance Committee
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

By e-mail: reconsideration@icann.org

Request for Reconsideration of the Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l..

Dear Sir,

Please find attached a Reconsideration Request relating to the Decision of May 14, 2014, submitted on behalf of Amazon EU S.à.r.l.

This Reconsideration Request is submitted to you in your capacity of members of the ICANN Board Governance Committee, within the 15-day window of opportunity to submit such a request.

Yours sincerely,

A handwritten signature in black ink that reads "Flip Petillion".

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

EXHIBIT C-060



June 3, 2014

To the attention of the members of the
ICANN Board Governance Committee
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

By e-mail: reconsideration@icann.org

Request for Reconsideration of the Decision of August 21, 2013 Materially Affecting Amazon EU S.à.r.l..

Dear Mr. Tonkin and Members of the Board Governance Committee,

I write to the Board Governance Committee ("BGC") further to Amazon E.U. S.a.r.l.'s ("Amazon") Request for Reconsideration of the New gTLD Program Committee's May 14, 2014 Resolution that prevents the applications for .AMAZON and IDN equivalents (the "Amazon Applications") from proceeding. Amazon asks for clarification as to how the BGC – which is preparing a recommendation to the Board – will address the review. Quite in contrast with the Requests for Reconsideration that relate to a Staff action, Amazon's current request implies a review of an ICANN Board decision. In brief, BGC members are now asked to review and consider a decision in which the majority of BGC members were involved and with which they agreed. Amazon is wondering how this issue will be addressed.

In addition, one BGC member (who is currently a non-voting member of the BGC) may have a conflict as his company is the backend registry provider of record for three of Amazon's applications (unrelated to the applications at issue here) (and for the record, we are not questioning whether this member will declare a potential conflict, but rather its effect on the process). This leaves only one member of the BGC without apparent relationship to the parties involved or prior involvement in this matter.

Similarly, my client requests clarification on how the BGC will make a recommendation on the merits of the Request for Reconsideration. Will this recommendation be addressed to the full Board of Directors, the Board of Directors without the NGPC members (who took part in the decision), or will the NGPC be asked to make a determination on a Request for Reconsideration concerning the NGPC's own actions)?

Finally, my client asks the BGC for clarifications on how it will be administering the conflicts review as the BGC is also responsible for making a determination regarding potential conflicts.

Yours sincerely,

A handwritten signature in black ink that reads "Flip Petillion". The signature is written in a cursive, slightly slanted style.

Flip Petillion
Crowell & Moring LLP
Contact Information Redacted

EXHIBIT C-061

The protection of geographic names in the new gTLDs process

1. Mandate

During the 47 ICANN meeting in Durban the GAC recommended that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs, as stated in section 7. a. GAC Durban Communiqué.

This document describes suggested steps in order to refine, for future rounds, procedures to be followed by applicants and changes to the Applicant Guide Book with regard to the protection of geographic names.

2. Background

The GAC of ICANN worked several months during 2006 and 2007 in the document called "GAC principles regarding new gTLDs" that was finalized by the GAC during the Lisbon ICANN meeting in 2007.

Full document can be found in this link:

<http://archive.icann.org/en/topics/new-gtlds/gac-principles-regarding-new-gtlds-28mar07-en.pdf>

Special attention was given to names with national, cultural, geographic and religious significance, as stated in the mentioned document:

- New gTLDs should respect national sensitivities regarding terms with national, cultural, geographic and religious significance
- New gTLDs should not prejudice the application of the principle of national sovereignty
- Internet naming system is a public resource and it must be administered in the public and common interest

Also other important reference in paragraph 2.2 of the same document:

- ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities

These concerns were captured in the Applicant Guidebook ("AGB")

The AGB is a document that was always available for public comments and created in a bottom up process by the GNSO council and then reviewed by the whole community, including private companies and commercial brand owners.

Full text of the AGB can be found in this link:

<http://newgtlds.icann.org/en/applicants/agb>

In the case of geographic names, the Applicant Guidebook establishes what a geographic name is:

- Capital city names
- City names where applicants declare that they intend to use the gTLD for purposes associated with the city name
- Sub-national place names listed in the ISO 3166-2
- Regional names appearing on the list of UNESCO regions
- Regional names on the UN's "Composition of macro geographical (continental) regions, geographical sub-regions, selected economic and other groupings"

Although these definitions of what is a geo name include approx. 5.000 names, it does not cover all the possible geo names in the world.

For this precise reason and in the event of any doubt or concern, the AGB establishes that:

"It is in the applicant's interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements"

These consultations did not happen with some geographic names requested by applicants in the first round of newgTLDs.

The AGB establishes ways in which governments can express concerns related with community, geographic, religious or other scripts. These processes are all explained in the AGB:

- Early warning: message sent to the applicant expressing concerns of one or more governments.
- GAC Advice: message sent from the GAC to the Board expressing concerns from the GAC related with one string.
- Objection: Independent Objector - Governments – Private – ALAC

Finally, the recently Approved Resolution of the New gTLD Program Committee¹ about GAC advice on “.amazon” and the analysis made by the independent third-party expert, bring new considerations about new gTLDs, trademarks and geographic names, which are detailed in section 4 of this document.

3. The protection of Geographic Names

The protection of geographic names should be object of special concern within the new gTLD program². ICANN as an institution is committed to acting on public interest³, and therefore new gTLDs that are related with words, strings and expressions that refer to different names of geographic references like regions of countries, regions of continents, sub-regions of countries, rivers, mountains, among others, should be protected in the name of public interest, due to their geographic, cultural and national relevance.

Although there are references that prevent the use of geographic names in new gTLDs included in the Applicant Guidebook, this list is limited and not sufficient to avoid the misuse of other geographic names and to protect the public interest in its entirety. It includes a limited amount of names and it does not protect in any way the diversity of places and geographic names that can be found all around the world.

Special attention should be given to the issue of geographic gTLDs as a concept (in generic terms), as they intersect with core areas of interests of any state.

Contrary to the principle of freedom of use of geographic names, allowing private companies to register geographic names as part of gTLDs strings creates a high risk for these names to be captured by companies that want to use them to reinforce their brand strategy or to profit from the meaning of these names, limiting the possibility of utilizing them in the public interest of the affected communities. Besides, the request for identity between the geographic name and the one utilized in the string, allows room for confusion in the public and consumers, as it is unavoidable that a geographic name will evoke the related geographical site and its population.

Geographic names should not be allowed to be registered as gTLDs, unless requested by the relevant communities where they belong or after a specific authorization given by the government or community to the applicant.

The national community and geographic meaning of the requested strings as new gTLDs must prevail above any other interest.

¹ See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>

² See GAC Principles Regarding New gTLDs, of 28 March 2007.

³ See ICANN ByLaws, Section 2, “Core Values”, and ICANN AoC with the Department of Commerce, of 30 Sep 2009.

4. Differences between trademarks and new gTLDs

There are differences between the concept and scope of a Trademark and a TLD.

Trademark rights are conferred by States to individuals for the sole purpose of protecting the bona fide use of a mark in a specific category of products or services. There is no system of brands in the world to grant general rights on the use of a sign or name. The applicant of a trademark registrant shall inform the agency of each country, which is the current use that does or intends to do with that mark. The State grants the exclusive right to such use and no more than that.

Requested trademark applications have been ordered for specific products and services which demonstrates its own recognition of the limitation of the company's rights. In the national nomenclature of goods and services, in accordance with the Treaty of Nice, there are 45 classes of goods and services.

The document prepared by Dr Jerome Pasa, as a third-party expert⁴ to provide additional advice on the specific issues of application of law at the case of ".amazon", includes several paragraphs that are of high interest to the subject of this document, which are detailed as follows:

Paragraph 15.1:

.....

"an intellectual property right, whatever its nature, affords its owner an exclusivity or monopoly of exploitation over the subject matter of the right within the limits stipulated by law – whether national or regional – applicable to this right. This exclusive right allows its holder to prevent third parties from carrying out on this subject matter the acts of exploitation which the law reserves to him.

An intellectual property right is therefore, like any property, a right to exclude third parties and, in this case, a right to exclude unauthorised third parties from the scope of protection which the law grants to the owner of the intellectual property right.

Binding as against third parties, an intellectual property right never affords its owner the right to exploit or to use the subject matter of its right."

.....

"an intellectual property right does not grant its owner a right to use the intangible subject matter in question. The right grants him ownership, ownership which is always binding on unauthorised third parties, but not, unless misinterpreting the notion of intellectual property, the possibility to exploit the subject matter of its ownership in any circumstances.

15-2. The same applies under trade mark law.

A trade mark right – the right associated with the registration of a trade mark – grants the owner a monopoly binding on third parties within the limits defined by law.

⁴ See <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>

However, the holder cannot invoke this right as a right to use the sign, even for the products and services specified in the registration, or even as the right to use the sign in particular forms, such as a new gTLD.

.....

The document states that exclusive right held by a company in its trade mark "does not therefore necessarily give it the right per se either to use it in any other form it may choose, such as a new TLD".

The document also express that a trade mark held by an applicant do not in legal terms give it a right to the new TLD of the trade mark.

5. Avoiding misuse of geographic names in future gTLD rounds

The lists of prohibited strings detailed in the Applicant Guidebook should be considered as a general reference for the applicant and not as a strict and only criteria to determine whether a name is geographic or not.

Governments should keep the right to oppose the delegation of a top level domain (even if it is not included on that list) on the basis of its sensitivity to national interests. Furthermore, that right should be enhanced for future rounds.

The flexibility and openness of criteria that applicants should have in relation with geographic names, especially in contacting previously to the application the relevant communities, does not undermine the multistakeholder structure and processes of ICANN and will not erode the confidence of global businesses.

On the contrary, a previous early contact with relevant communities and the applicant will generate confidence in the whole process and could also generate new ways of agreements among parties, before the conflict is established.

As stated in section 4 of this document and, an enhanced procedure to protect geographic names should not upset global trademark norms.

ICANN and Governments should encourage the applicants to get touch with related local governments to try to reach agreements. Dialogue and communication based on the laws and regulations is a better way to solve any difficulties. Furthermore, if the agreement between the relevant governments and the applicants can not be reached, the public interest should be priority.

6. Next steps

a. At the National / Regional Level

All countries should be encouraged to enhancing the ISO 3166-2 list by submitting official requests from national administrations, in a way that regions and sub-regions are included in this important reference list.

Special efforts must be done by ICANN to the broader international community, which is not comprised by GAC today.

GAC representatives and ICANN regional managers can actively engage in outreach efforts focusing in those countries not active in GAC meeting, GAC lists and ICANN activities, in order for them to be aware of future impact of this process.

The ISO 3166-2 list includes different types of country subdivisions names: districts, cantons, provinces, states, regions, cities, territories, among several others. The national reference in the ISCO 3166-2 list can be enhanced with these different divisions and subdivisions in order to satisfy the country needs.

b. Best practices for future rounds of new gTLDs

To be developed (by GAC + cross constituency group?) for future rounds of new gTLDs:

- For the applicant:
 - o Previous research and investigation about different meanings of the applied for string, considering also the notion of protection of a name even if it is being translated to another language
 - o In the case of doubts, encourage the applicant to establish contact previous to the application with the relevant authorities of the country – city – region – subregion.
- For ICANN:
 - o Enhance outreach efforts to all countries and regions of the world previous to the next new gTLD round.
 - o Governments should have an appropriate way to raise concerns about the use of geographic names associated with their territories
- For Governments / Applicants / ICANN:
 - o Establish a clear process for governments to raise their concerns when their territories names used in the next new gTLD round.
 - o Establish clear steps / way forward for both the applicants and government in reaching consensus with the applied gTLD
 - o What's next if there are no consensus reached between both parties.
- Other ideas?

c. Suggested changes in the Applicant Guide Book

Taking into consideration that the Durban Communiqué states that “The GAC recommends that ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs”, a new text is suggested regarding the geographic names, in the case that the same text of the present AGB will be used as ground document:

To include in the paragraph 2.2.1.4 of the AGB the following sentence:

“ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities”.

Also the following paragraph appears in the section “**2.2.1.4.2 Geographic Names Requiring Government Support**” of the AGB. It should be a general statement or principle regarding geographic names, in order to clarify and reinforce the importance of the previous communication between the Applicants and the Governments, even in case of any doubt.

“Nevertheless, in the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.”

A specific reference to the Geographic Names Repository described in section 6.b of this document must be also included.

The suggested changes in the Applicant Guide Book, paragraph 2.2.1.4 of the AGB should read as follows:

“2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names, **taking into consideration that, according with the 2007 GAC Principles regarding New gTLDs, ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.** The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

“Nevertheless, in the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.”

EXHIBIT C-062

Response to Documentary Information Disclosure Policy Request

To: Mr. Flip Petillion, Crowell & Moring LLP

Date: 20 June 2014

Re: Request No. 20140523-1

Thank you for your Request for Information dated 23 May 2014 (the “Request”), which was submitted through the Internet Corporation for Assigned Names and Numbers’ (ICANN) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

Items Requested

In summary, the Request seeks “all documents directly and indirectly relating to (1) the balance of the competing interests of each factor” considered by the New gTLD Program Committee (“NGPC”) in approving Resolution 2014.05.14.NG03, which determined that Amazon EU S.à.r.l.’s (“Amazon”) applications for .AMAZON and the related internationalized domain names in Japanese and Chinese (collectively, the “Amazon Applications”) should not proceed, “and (2) the Governmental Advisory Committee’s (“GAC”) advice in relation to the Amazon Applications.” The Request identifies certain specific categories of documents, including:

1. All communications between individual members of ICANN’s Board and GAC representatives or other government officials acting as GAG representatives directly or indirectly relating to any of the Amazon Applications;
2. All communications between ICANN’s Board and the GAC directly or indirectly relating to any of the Amazon Applications;
3. All communications between individual members of ICANN’s Board and ICANN’s Staff directly or indirectly relating to any of the Amazon Applications;
4. All communications between individual members of ICANN’s Staff directly or indirectly relating to any of the Amazon Applications;
5. All communications between individual members of ICANN’s Board directly or indirectly relating to any of the Amazon Applications;
6. All communications between individual members of ICANN Staff and the Independent Expert M. Jérôme Passa directly or indirectly relating to any of the Amazon Applications;
7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;

8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;
9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;
10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;
11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;
12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;
13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;
14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

Response

The Request seeks the disclosure of various categories of documents related to NGPC Resolution 2014.05.14.NG03 ("Resolution"), by which the NGPC accepted advice from the GAC and determined that the Amazon Applications should not proceed.

A principal element of ICANN's approach to transparency and information disclosure is the commitment to make publicly available on its website a comprehensive set of materials concerning ICANN's operational activities as a matter of course. As a result, many of the items that are sought from ICANN within the Request are already publicly posted. For transparency and ease of reference, ICANN includes the following relevant links:

On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications. (*Available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>.)

On 12 March 2013, ICANN's Independent Objector ("IO") filed a Community Objection to the Amazon Applications on behalf of the "Amazon Community," i.e., the community of "South-American region with the same English name around the Amazon River." The 27 January 2014 Expert Determination overruling that objection is posted at <http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>.

On 11 April 2013, in its Beijing Communiqué, the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed beyond Initial Evaluation on the applications. (*Available at* <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>.) Amazon's response to that GAC advice is posted at <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>.

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications. (*Available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>.) Amazon's response to that GAC advice is posted at <http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>.

On 7 April 2014, the NGPC provided Amazon and the GAC with an independent, third-party report it had commissioned from French Law Professor Jérôme Passa regarding specific issues of law raised by the Amazon Applications. That report is posted at <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>. Amazon's response to the report is posted at <https://www.icann.org/en/system/files/correspondence/hayden-to-crocker-et-al-14apr14-en.pdf>.

The Resolution and accompanying rationale, are posted at [https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en - /2.b](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-%2F2.b). The Preliminary Report of the NGPC's 14 May 2014 meeting is available at <https://www.icann.org/resources/board-material/prelim-report-new-gtld-2014-05-14-en>. The minutes of the 14 May 2013 NGPC meeting were approved on 21 June 2013, and will be posted, together with accompanying Briefing Materials, at <https://www.icann.org/resources/pages/meetings-2014-01-06-en>.

On 20 May 2014, Amazon filed a Reconsideration Request, seeking reconsideration of the Resolution. That request, as well accompanying exhibits, are posted online at <https://www.icann.org/resources/pages/14-27-2014-06-03-en>.

Finally, correspondence sent and received by ICANN's Board with respect to the Amazon Applications has been posted as follows:

- 5 March 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board, President and CEO, and General Counsel, *available at* <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf>
- 4 July 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf>

- 13 September 2013 letter from Stefanos Tsimikalis to ICANN's Board and President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/tsimikalis-to-crocker-chalaby-13sep13-en.pdf>
- 4 October 2013 letter from Ernesto H. F. Araújo, Chargé d'Affairs for Brazil, to ICANN's President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/araujo-to-chehade-04oct13-en.pdf>
- 3 December 2013 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf>
- 24 December 2013 letter from Fernando Rojas Samané, Vice Minister of Foreign Affairs of Peru, to ICANN's Board *available at* <https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-24dec13-en.pdf>
- 10 January 2014 letter from Stacey King, Sr. Corporate Counsel, Amazon.com to ICANN's Board and President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf>
- 3 March 2014 letter from Fernando Rojas Samané, Vice Minister of Foreign Affairs of Peru, to ICANN's Board and President and CEO, *available at* <https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-et-al-03mar14-en.pdf>
- 25 March 2014 letter from Robby Ramlakhan, Secretary General of the Amazon Cooperation Treaty Organization to ICANN's Board, *available at* <https://www.icann.org/en/system/files/correspondence/ramlakhan-to-crocker-25mar14-en.pdf>
- 7 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Amazon EU S.à.r.l., *available at* <https://www.icann.org/en/system/files/correspondence/chalaby-to-gradden-07apr14-en.pdf>
- 7 April 2014 from ICANN's Board to the GAC, *available at* <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>
- 10 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Robby Ramlakhan, Secretary General of the Amazon Cooperation Treaty Organization, *available at* <https://www.icann.org/en/system/files/correspondence/chalaby-to-ramlakhan-10apr14-en.pdf>
- 11 April 2014 letter Fernando Rojas Samané, Vice Minister of Foreign Affairs of Peru, to ICANN's Board, *available at* <https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-11apr14-en.pdf>
- 14 April 2014 letter from Cherine Chalaby, Chair of the NGPC, to Fernando Rojas Samané, Vice Minister of Foreign Affairs of Peru, *available at* <https://www.icann.org/en/system/files/correspondence/chalaby-to-samanez-14apr14-en.pdf>
- 14 April 2014 letter from the Ministries of External Relations and Science, Technology, and Innovation of Brazil to ICANN's Board, *available at*

<https://www.icann.org/en/system/files/correspondence/filho-almeida-to-crocker-14apr14-en.pdf>

- 14 April 2014 letter from Scott Hayden, Vice President, Intellectual Property, Amazon, to ICANN's Board, *available at* <https://www.icann.org/en/system/files/correspondence/hayden-to-crocker-et-al-14apr14-en.pdf>

ICANN further responds to your individual requests as follows:

Requests regarding ICANN's Communications Concerning the Amazon Applications – Items 1, 2, 3, 4, 5

Amazon applied for the Amazon Applications. On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications. On 11 April 2013, in its Beijing Communiqué, the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed beyond Initial Evaluation on the applications. On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications. On 14 May 2014, the NGPC passed the Resolution, accepting the advice in the GAC's Durban Communiqué and determining that the Amazon Applications should not proceed.

Items 1, 2, 3, 4, and 5 seek communications between ICANN and the GAC concerning the Amazon Applications, as well as internal ICANN communications concerning the Amazon Applications. These Items do not identify the time period for which responsive documents are sought and are therefore overbroad. Because Amazon submitted its applications on 23 March 2012, ICANN understands the relevant time period as including documents created from 23 March 2012 to the present. These Items are also overbroad and vague insofar as they seek all documents “directly and indirectly” relating to any of the Amazon Applications. So construed, the Items would require ICANN to produce thousands of documents, and would be “excessive or overly burdensome.” (DIDP Policy, *available at* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) As is discussed above, the focus of Amazon's Request as noted in the “Relevant Background” section of the Request is obtaining information relating to the GAC's Advice on the Amazon Applications and to the Resolution. ICANN therefore interprets Items 1, 2, 3, 4, and 5 as seeking communications concerning the GAC's Advice in relation to the Amazon Applications. If Amazon chooses to revise its request to more specifically and narrowly describe the documents it seeks, ICANN will consider any such narrowed request.

Subject to the above, ICANN responds that many of the items that are sought from ICANN within the Request are already publicly posted on ICANN's website. ICANN further responds that given the scope and timing of the Request, ICANN has not completed its review of documents that may be responsive to the Items. Thus far, ICANN's review of documents that may be responsive to the Items 1, 2, 3, 4, and 5 show that any responsive document that has not already been publicly disclosed on ICANN's website is not appropriate for disclosure pursuant to the following DIDP Defined Conditions of Nondisclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; or (iii) complying with which is not feasible.

ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Nondisclosure as soon as practicable.

Requests regarding ICANN's Communications with the Independent Expert M. Jérôme Passa Concerning the Amazon Applications – Item 6

On 5 February 2014, in response to the consensus GAC Advice on the Amazon Applications, the NGPC announced that it was commissioning an “independent, third-party expert to provide additional analysis on the specific issues of application of law at issue, which may focus on legal norms or treaty conventions relied on by Amazon or governments.” (See Annex 1 to NGPC Resolution 2014.02.05.NG01, *available at* <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-05feb14-en.pdf>.)

ICANN, however, did not directly retain Professor Passa. Professor Passa was retained by ICANN's outside counsel, and ICANN did not have any communications with him regarding the scope of his work or the substance of his conclusions. As a result, ICANN's search for documentary information in response to this Request revealed that no responsive documents exist within ICANN.

Requests regarding ICANN's Communications with the Independent Objector M. Alain Pellet Concerning the Amazon Applications – Items 7 and 8

Under the New gTLD Program, formal objections were permitted to be filed against applications. Specifically, an objection could have been based on four enumerated grounds: string confusion,

legal rights, limited public interest, and community. Module 3 of the New gTLD Applicant Guidebook (“Guidebook”) and the New gTLD Dispute Resolution Procedure (“Procedure”) set forth the procedures and process for filing objections. (*See* Guidebook, § 3, <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>.) Objections were, and continued to be, administered by independent Dispute Resolution Service Providers (“DRSPs”) in accordance with the Procedure and the applicable DRSP’s Rules. (*See* Procedure, Art. 1, <http://newgtlds.icann.org/en/applicants/agb/>.) Community objections are administered by the International Center of Expertise of the International Chamber of Commerce (“ICC”). (*See* Guidebook, § 3.2.3.)

The IO was authorized to act in the best interest of global Internet users and to lodge limited public interest and community objections in cases where no other objection has been filed. The IO lodged a community objection against the Amazon Applications on 12 March 2013. An Expert Determination on that objection, finding against the IO, was issued on 27 January 2014.

Item 7 asks for documents constituting communications between ICANN and the IO relating to the Amazon Applications. This item overlaps with Item 8, which seeks documents in ICANN’s possession or control concerning communications between ICANN and the IO concerning ICANN policies around conflicts of interest and/or the IO’s “ongoing representation of governments.”

These Requests do not identify the time period for which responsive documents are sought and are therefore overbroad. Because Amazon submitted its applications on 23 March 2012, ICANN understands the relevant time period as including documents created from 23 March 2012 to present. Item 7 is also overbroad and vague insofar as it seeks all documents “directly and indirectly” relating to any of the Amazon Applications. Because the focus of Amazon’s Request is the IO objection to the Amazon Applications, ICANN interprets Item 7 as seeking communications between the IO and ICANN regarding the Amazon Applications. Item 8 is overbroad and vague insofar as it seeks all documents “indirectly” relating to ICANN policies around conflicts of interest and/or M. Pellet’s ongoing representation of governments. ICANN interprets Item 8 as seeking communications between the IO and ICANN directly relating to those issues. If Amazon chooses to revise its request to more specifically and narrowly describe the documents it seeks, ICANN will consider any such narrowed request.

Further, all communications during an objection proceeding regarding the objection must comply with Article 6 of the Procedure, which provides that the DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings. (*See* Procedure, Art. 6(b).) ICANN has the authority, pursuant to Article 10(b) of the Procedure, to monitor the progress of all proceedings and to take steps, where appropriate, to coordinate with DRSPs regarding individual applications for which objections are pending before more than one DRSP. (*See id.* at Art. 10(b).) However, ICANN is not otherwise involved

in the objection proceedings and ICANN generally does not communicate directly with the parties regarding the objection during the course of the proceedings.¹

As such, unless the parties to the proceedings and/or the DRSP provide ICANN with copies of documents or correspondence submitted during the objection proceedings, ICANN would not be generally be in possession of such documents. In those circumstances where ICANN is copied on documents submitted during the objection proceedings, such documents would also equally be available to the parties to the objection proceedings.

Subject to the above, ICANN responds that given the scope and timing of the Request, ICANN has not completed its review of documents that may be responsive to these Items. Thus far, ICANN's review of documents that may be responsive to the Items 7 and 8 show that any responsive document that has not already been publicly disclosed on ICANN's website is not appropriate for disclosure pursuant to the following DIDP Defined Conditions of Nondisclosure.

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information subject to the attorney– client, attorney work product privilege, or any other applicable privilege, or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Information requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; or (iii) complying with which is not feasible.

ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Nondisclosure as soon as practicable.

Requests regarding Internal Communications of the GAC Concerning the Amazon Applications - Items 9, 10, 11, 12, 13, and 14

ICANN's DIDP is intended to ensure that information contained in documents concerning ICANN's operational activities, and within ICANN's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. A threshold consideration in responding to a DIDP request, then, is whether the documents requested are in ICANN's possession, custody, or control.

¹ In some circumstances, applicants communicate with ICANN and seek ICANN's involvement in the proceedings. In those circumstances, ICANN informs the applicants that ICANN does not become involved in objection proceedings and directs the applicants to contact the DRSP directly.

Items 9, 10, 11, 12, 13, and 14 all seek the disclosure of “GAC communications” concerning the Amazon Applications. ICANN’s GAC is an advisory committee established pursuant to Article XI, Section 2.1 of ICANN’s Bylaws “to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.” Membership in the GAC is open to all national governments and distinct economies recognized in international fora. ICANN does not hold membership in the GAC and does not participate or otherwise get involved in the GAC’s operations or decision-making processes. As such, unless the GAC provided ICANN with copies of documents or correspondence concerning its communications relating to the Amazon Applications, ICANN would not be in possession of such documents. The GAC advice regarding the Amazon Applications, as well as the Early Warning regarding those applications that was submitted by the governments of Brazil and Peru, are both published. All of the materials are already publicly posted and are therefore equally available to Amazon. The links to those materials are included above, in the list of publicly available documents responsive to the Requests.

Furthermore, as noted, the DIDP is intended to ensure that information contained in documents concerning ICANN’s operational activities is made public absent a compelling reason for confidentiality. The internal GAC documents requested in these Items do not constitute “documents concerning ICANN’s operational activities” and are therefore not appropriately subject to the DIDP. (See DIDP Policy, *available at* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Subject to the above, ICANN responds that given the scope and timing of the Request, ICANN has not completed its search for documents that may be responsive to these Items. Thus far, ICANN’s search for responsive documents shows that there are no responsive documents in ICANN’s possession, custody, or control. ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP’s Defined Conditions for Nondisclosure as soon as practicable.

About DIDP

ICANN’s DIDP is limited to requests for information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, which is contained within the ICANN Accountability & Transparency: Framework and Principles please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

EXHIBIT C-063



North America Europe Asia

Contact Information Redacted

Contact Information Redacted
 Contact Information Redacted

PAUL D. McGRADY
 Partner
 Contact information Redacted

July 7, 2014

VIA EMAIL

ICANN Board Governance Committee
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094-2536
 reconsideration@icann.org

Re: Reconsideration Request for Failure to Disclose Documents to Amazon EU S.à.r.l.

Dear Board Governance Committee,

Please find attached a Reconsideration Request submitted on behalf of Amazon EU S.à.r.l. (“Applicant”) and its applications (ID Nos. 1-1315-58086, 1-1318-83995, and 1-1318-5591) (the “Applications”).

This Reconsideration Request is submitted to the ICANN Board Governance Committee (“BGC”), within the 15-day deadline allowed to submit such a request.

As a preliminary remark, Applicant seeks review of a denial to provide documents pursuant to ICANN’s Documentary Information Disclosure Policy (“DIDP”). ICANN Staff’s response to Applicant’s DIDP request purports to state that all relevant documents are either already publicly available or nonexistent, while simultaneously denying access to an unknown number of documents based on broad and non-descript assertions of privilege. ICANN Staff’s decision to produce **zero** documents in response to Applicant’s request – in spite of ICANN’s public commitment to transparency of process – creates questions as to the reasons behind ICANN’s decision to prevent release of information relating to ICANN’s rejection of Applicant’s meritorious applications for .AMAZON and other related gTLDs.

Applicant therefore makes this Reconsideration Request in compliance with the requirements defined by ICANN and under the DIDP appeal procedures. Should the BGC determine that this Reconsideration Request is not the appropriate procedure, we ask the BGC to specify the appropriate jurisdiction for this appeal.

Sincerely,

Paul D. McGrady
 Winston & Strawn LLP

Enclosures

RECONSIDERATION REQUEST

1. Requester Information

Name: Amazon EU S.à.r.l.

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional):

C/o:

Name: Paul D. McGrady, Winston & Strawn LLP

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

Amazon EU S.à.r.l. ("Applicant") seeks reconsideration of the actions and inactions of ICANN Staff in responding to Applicant's request for documents made under the Documentary Information Disclosure Policy (the "DIDP Request") relating to the New gTLD Program Committee's ("NGPC") decision not to approve the Applications for .AMAZON and related gTLDs, Resolution 2014.05.14.NG03 ("Applications"). See DIDP Request attached at Appendix 1. ICANN Staff summarily and without adequate justification denied Applicant's DIDP Request relating to the NGPC decision (the "DIDP Response"). See DIDP Response attached at Appendix 2. ICANN Staff's refusal to

properly consider Applicant's reasonable request for information contradicts ICANN's stated commitment to transparency and accountability. See, e.g., Affirmation of Commitments, Articles 3 and 7; ICANN Bylaws, Articles 1 and 3. The specific actions or inactions of ICANN Staff are set forth below in response to Item 8, but in sum, ICANN Staff issued a facially inadequate response to Applicant's DIDP Request by refusing to provide **any documents** regarding the Applications. In doing so, ICANN Staff asserted contradictory justifications and abused the DIDP Defined Conditions Non-Disclosure Policy. ICANN Staff's actions are inconsistent with DIDP Procedures, ICANN Articles of Incorporation, Bylaws, and Affirmation of Commitments. As a result, Applicant has suffered a tangible and serious harm.

4. Date of action/inaction:

On June 22, 2014, ICANN published its Response to Applicant's DIDP Request 20140523-1.

5. On what date did you become aware of the action or that action would not be taken?

Applicant learned of ICANN Staff's Response to its DIDP Request on June 22, 2014.

6. Describe how you believe you are materially affected by the action or inaction:

ICANN Staff's refusal to provide non-public documentation despite limited and reasonable requests for information is in violation of its own stated commitment to transparency. This demonstrable disregard for an open decision-making process materially affects Applicant's ability to understand the reason for the denial of its new gTLD applications and to take full advantage of specific accountability mechanisms set

forth by ICANN under its governing documents. As demonstrated in Applicant's Request for Reconsideration of the gTLD decision (attached as Appendix 3 (without exhibits)), Applicant believes the GAC did not follow the appropriate procedure for objecting to the Applications and the NGPC may have relied on false and inaccurate information in reaching its conclusions about the Applications. Without additional documentation from ICANN, however, Applicant has no way of determining how the NGPC balanced competing interests or how GAC advice factored into the NGPC's decision. For Applicant, a company with globally well-known non-geographic trade names and trademarks, similar to a number of other successful gTLD applicants, it is imperative to understand ICANN's justifications for denying the Applications to operate gTLDs in connection with those names and trademarks. Applicant's concerns are amplified by the fact that the individuals reviewing its Applications are some of the same individuals refusing to provide documents related to that review and decision. On its face, the DIDP Response appears so disingenuous and defective that it undermines the spirit and purpose of the DIDP Procedures.

Applicant is entitled to a fair and transparent response regarding the Applications. Applicant should be allowed to evaluate the fairness of the NGPC decision and determine if the decision-making process complied with all ICANN policies and procedures. ICANN Staff's failure to disclose documentation relating to the Applications prevents Applicant from reviewing the actions of ICANN, an organization that states its commitment to openness and transparency.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

ICANN's failure to respond to the DIDP Requests without adequate justification

calls into question ICANN's objectivity and violates the commitment to openness and transparency articulated in ICANN's Bylaws and Affirmation of Commitments. If ICANN may summarily refuse to provide additional information about its decisions to parties questioning its rationale while simultaneously providing contradictory justifications for the refusal, what is to stop it from keeping all major decisions and considerations behind closed doors? ICANN's refusal to provide information in response to a reasonable and tailored DIDP Request creates dangerous precedent whereby ICANN Staff may use the DIDP Procedures as a shield to keep communications from the applicants and the general public. This causes significant material harm to both current and future applicants, who will be unsure of ICANN's objectivity or commitment to abide by its own rules and regulations.

8. Detail of Staff Action

I. ICANN Staff's DIDP Response is facially inadequate.

a. ICANN Staff's objections based on scope and timeframe are unfounded.

Applicant submitted reasonably narrow and tailored requests and explicitly sought information not already publicly available. DIDP Request at 2. Applicant is not privy to the precise nature of the documents generated in conjunction with the NGPC's decision to deny the Applications for .AMAZON and related gTLDs. Nor is Applicant privy to the precise timeframes during which such communications occurred. Without the benefit of such information, Applicant crafted its DIDP Request in as narrow a fashion as possible.

ICANN Staff's repeated objection that Applicant did not assign a precise timeframe to certain requests is particularly nonsensical given that the *substance* of

each of Applicant's requests was self-limiting with respect to timeframe. As acknowledged in the DIDP Response, all of Applicant's requests related to the Applications submitted on March 23, 2012. DIDP Response at 5. Accordingly, each of these requests clearly sought information from that date forward. Given the very narrow and precise nature of the information sought, a timeframe post-dating March 23, 2012, is neither excessive nor overly burdensome.

b. ICANN Staff's DIDP Response is contradictory and grossly inadequate.

The DIDP Procedures require a response to a DIDP request within 30 days unless more time is needed, in which case, the procedures contemplate an extension period. Accordingly, if ICANN Staff required more time to submit a complete response, the DIDP Procedures explicitly allow for an extension. Instead, the ICANN Staff repeatedly admits that its review of potentially responsive documents is incomplete. See DIDP Response at 5 ("ICANN has not completed its review of documents that may be responsive [to Items 1-5]."); see *also* DIDP Response at 8 (same regarding Items 7-8); DIDP Response at 9 (same regarding Items 9-14). At the same time, however, ICANN Staff claims that no responsive documents exist or would be disclosed at any rate. See, e.g., DIDP Response at 7 ("ICANN has not completed its review of documents that may be responsive to [Items 7-8]" but "any responsive document . . . is not appropriate for disclosure."). Similarly, regarding Items 1-5, ICANN Staff states that such items would require "ICANN to produce thousands of documents," yet simultaneously maintains that "any responsive document . . . is not appropriate for disclosure." DIDP Response at 5. It is not clear why, if thousands of documents are responsive to these items, none are appropriate for disclosure, particularly where

ICANN Staff admits it has not reviewed all of the potentially responsive documents. ICANN Staff's contradictory and incomplete response leaves Applicant in a state of uncertainty whereby it is unclear if ICANN Staff, indeed, intends to produce additional documents at some undisclosed later date or will claim indefinitely that there are no documents to produce.

c. ICANN Staff's DIDP Response abuses the DIDP Defined Conditions of Nondisclosure Policy.

In addition to defects outlined above, ICANN Staff's DIDP Response makes sweeping conclusions as to the content of any responsive documents. To cover all of its bases for withholding all documents under the DIDP, ICANN Staff has broadly asserted privilege over any potentially responsive documents. Despite Applicant's explanation in its initial request that the information sought did not meet any of the defined conditions for nondisclosure (DIDP Request at 2-3), ICANN Staff withheld documents on such grounds. Rather than addressing Applicant's statement to explain why it was inaccurate or articulating why nondisclosure is warranted, ICANN Staff's DIDP Response merely recites the conditions for nondisclosure from the DIDP Procedures verbatim. See, e.g., DIDP Response at 6 (stating that "any responsive document [to Items 1-5] . . . is not appropriate for disclosure pursuant to the . . . DIDP Defined Conditions of Nondisclosure"); DIDP Response at 8 (same statement regarding Items 7-8). Given the fact that ICANN Staff refused to turn over a single document based on 14 different categories of requests, a mere regurgitation of the DIDP Procedures is hardly a sufficient response to the DIDP Request.

Just one of several examples of ICANN Staff's misuse of the Nondisclosure Policy is its response to Item 13, which sought "All GAC communications directly or

indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed.” See DIDP Request at 2. This Item narrowly sought information over a very discrete timeframe that was well within the scope of ICANN’s DIDP policy. ICANN Staff failed to respond to this Item individually, choosing instead to lump it in with broad objections to five other Items that sought information about GAC communications. ICANN Staff’s justification for its refusal to produce any documents responsive to these Items was its assertion that such requests did “not constitute ‘documents concerning ICANN’s operational activities.’” DIDP Response at 9. For support, ICANN Staff simply referred to the DIDP Policy as a whole, without any specific reference to any individual basis for non-disclosure. Such a response from ICANN Staff with respect to a well-defined and discrete request for information is facially inadequate and underscores the perfunctory and superficial nature of ICANN’s responses to Applicant’s DIDP Request.

II. ICANN Staff’s DIDP Response is inconsistent with the DIDP Procedures, ICANN Articles of Incorporation, Bylaws and Affirmation of Commitments.

The DIDP “is intended to ensure that information contained in documents concerning ICANN’s operation activities, and within ICANN’s possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.” See DIDP Procedures. However, ICANN Staff’s DIDP Response restrains Applicant’s access to such documents without a compelling reason for confidentiality.

a. ICANN Staff refused to produce documents responsive to the DIDP Request within its *custody and/or control*.

ICANN Staff’s response to Item 6 implies that documents in possession of

ICANN's legal representative are outside of ICANN's custody and/or control. See DIDP Response at 6. Applicant objects to this response to the extent that ICANN Staff failed to communicate with its outside counsel to obtain all documents responsive to Item 6. As an initial matter, ICANN Staff's position that documents sent to its outside counsel are not within ICANN's possession, custody, or control is dubious at best. Additionally, such a posture sets a dangerous precedent whereby ICANN Staff could shield documents and information from disclosure simply by shipping such materials to its outside counsel. Such a precedent would inherently degrade ICANN's stated policy in favor of transparency of process.

Similarly, regarding Items 7 and 8, which seek non-public communications between ICANN and the Independent Objector, ICANN Staff provides myriad excuses attempting to explain why ICANN may or may not be in possession of such documents. ICANN Staff does not, however, deny the existence of responsive documents. As such, Applicant requests that ICANN Staff produce documents responsive to such requests. Moreover, to the extent ICANN Staff attempts to dodge production responsibilities based on an argument that parties to the objection proceedings may have received certain documents, Applicant requests production of any such documents.

b. If there are no additional documents responsive to any or all of Applicant's DIDP Requests, ICANN Staff should explicitly indicate as such in writing.

It is unclear from ICANN Staff's response to Items 9-14 whether or not it is ICANN Staff's position that it is not in possession of any relevant documents responsive to such requests. ICANN Staff's DIDP Response explains why responsive documents may not be in ICANN's custody or control; however, ICANN Staff does not specify whether that is the case. To the extent ICANN is in possession of documents

responsive to Items 9-14, Applicant requests disclosure of such documents or a statement of nonexistence to sufficiently respond to the DIDP Request.

ICANN Staff's objections stating that documents relating to the GAC proceedings are not within ICANN's possession, custody or control or are not relating to ICANN proceedings (see, e.g. DIDP Response at 8-9) are without merit. Without addressing whether or not the GAC is an independent entity, its structure is created directly from the ICANN Bylaws and ICANN employees facilitate and work with the GAC on a regular basis. Indeed, at least the following employees seem primarily or substantially focused on work with the GAC:

- Olof Nordling, Sr. Director, GAC Relations
- Julia Charvolen, GAC Services Coordinator
- Jeannie Ellers, GSE Support Manager

Clearly, documents relating to GAC actions and deliberations in the possession of ICANN Staff are within the possession, custody and control of ICANN and are properly sought under Applicant's DIDP Requests.

Additionally, with respect to all of Applicant's DIDP Requests, ICANN Staff should not be permitted to rely vaguely on public documents and on an allegedly ongoing investigation to sidestep its obligations to alert Applicant to the universe of documents that exist. If ICANN Staff contends that the universe of documents responsive to an individual DIDP Request consists of documents that are entirely public, ICANN Staff should identify each of those public documents and then indicate explicitly in writing that there are no additional documents responsive to that Request.

c. ICANN Staff presented no compelling reason for confidentiality.

Under the DIDP, information that falls within the nondisclosure exemptions “*may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure.*” This policy is of great significance here, given the reality that the same ICANN Staff which advise the ICANN Board are also responsible for fielding and responding to DIDP requests.

ICANN Staff’s generic and contradictory responses to the DIDP Request raise serious concerns over ICANN’s commitment to transparency. In its DIDP Request, Applicant articulated its need for publication of documents and communications in light of the fact that there is a “compelling reason for confidentiality” (DIDP Request at 4); however, ICANN failed to address this point. In its DIDP Request, Applicant articulated a need for disclosure as outweighing any harm because, “unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies.” DIDP Request at 3. ICANN ignored this concern wholeheartedly. As a result, the precise harm articulated in Applicant’s DIDP Request has come to fruition.

As stated previously, the concern at issue is broader than the abuse of the DIDP Procedures. Applicant finds itself in the unfortunate position of ensuring that its Applications have been considered in accordance with ICANN policies. Article 7 of the Affirmation of Commitments embodies ICANN’s commitment “*to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN relied.*” Applicant’s DIDP Request seeks to uncover

the documents and communications that formed the basis on which ICANN relied in making its determination on the Applications. Further, ICANN's Articles and Bylaws repeatedly purport aspirations for transparency, accountability, fairness, and consistency in ICANN operations. ICANN Staff's failure to disclose information pursuant to the DIDP Request is in direct contravention of these policies.

As explained above, ICANN Staff's DIDP Response indicates either an attempt to quell transparent information sharing, as required under ICANN's Bylaws and Articles of Incorporation, or reflects a cavalier attitude towards the DIDP. Either scenario is directly adverse to ICANN's commitment to transparency and exhibits serious disregard to the rights of parties attempting to participate in good faith.

9. What are you asking ICANN to do now?

Applicant requests reconsideration of ICANN Staff's refusal to produce documents responsive to its requests for information concerning the Applications and NGPC decision to deny such Applications. Specifically, Applicant requests that ICANN Staff finish its review of the potentially responsive documents. Where documents are indirectly under ICANN's custody and control, Applicant requests that ICANN Staff endeavor to collect such documents.

Further, where ICANN Staff purports to claim privilege over any responsive document, Applicant requests the production of a privilege log, identifying the documents responsive to the DIDP Request and stating the specific grounds for the privilege asserted (i.e. attorney-client privilege, deliberative process privilege, etc.). To clarify, Applicant is not requesting a summary of such documents; Applicant merely seeks a list of documents that would otherwise be produced pursuant to the DIDP Request and the basis for which such documents are being withheld. Also, where the

privileged information can be redacted, Applicant requests production of responsive documents (as specified under the DIDP). The production of a privilege log would ensure that ICANN Staff has completed a thorough review of its documents, as it is required to do under the DIDP, and is sincerely withholding documents based on actual privilege rather than making blanket assertions to avoid producing any responsive documents. Applicant believes this request is reasonable in light of ICANN's obligation to promote transparency, particularly here, where the same group of individuals who advise the ICANN board – including on issues relating to the gTLD application process – have been tasked with the review of the documents which formed the basis of ICANN's decision with respect to the Applications.

Along the same lines, where ICANN Staff seeks refuge under the DIDP Defined Conditions for Nondisclosure policy, Applicant requests that ICANN Staff provide an explanation identifying specific reasons why withholding documents outweighs the public interest in disclosure. ICANN Staff should keep in mind that there is no public interest in attempting to hide documents which reveal the factors that played a part in ICANN's actual decision-making process – including the participation of government representatives in their roles as members of the ICANN community – and its relative transparency or opacity.

In the event that – after genuine consideration of the DIDP Request – ICANN Staff continues to refuse production of any documents, Applicant requests that ICANN Staff be required to follow the DIDP Procedures and provide a compelling reason for nondisclosure beyond citing to the language of the DIDP. This issue cannot be viewed in a vacuum; the broader perspective reveals a serious threat to the integrity of ICANN

procedures should ICANN Staff be permitted to abuse the system and deny access to documents.

Finally, under Article IV, Section 2 of the Bylaws, the Board possesses the ability to review documents and statements from third parties while considering a reconsideration request. Accordingly, Applicant requests that ICANN reach out to any necessary parties, even if ICANN considers them to be a third party, including but not limited to the GAC and the Independent Objector (to the extent ICANN deems the GAC and the Independent Objector to be independent of the ICANN structure), to determine whether any documents responsive to the DIDP Request exist. This would provide a safeguard to ensure the accuracy of ICANN Staff's DIDP Response.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

I. ICANN Staff's Failure to Properly Consider and Respond to Applicant's DIDP Request Harmed Applicant.

As detailed above, ICANN Staff failed to properly consider Applicant's reasonably limited and tailored request for documents relating to the Applications. In doing so, ICANN Staff violated its own Bylaws and Affirmation of Commitments, which emphasize a commitment to open and transparent decision-making. It is clear from the DIDP Response that ICANN Staff has made, at best, a disingenuous effort to discover documentation relating to Applicant's DIDP Request. Even if responsive documents are present, ICANN Staff refuses to provide them. ICANN Staff's refusal to provide Applicant with even a single page of documentation relating to the Applications is without justification or cause. Applicant is unable to evaluate the fairness of ICANN's

decision-making process and is unable to ensure that ICANN complied with its own policies and procedures.

II. The Requested Relief Reverses Most of the Harm.

The requested relief will reverse the harm caused by ICANN Staff's blanket refusal to provide documents in response to Applicant's DIDP Request. If ICANN Staff finishes its review of documents, including documents under ICANN's indirect control, Applicant and the public can be assured ICANN adheres to the DIDP Procedures instead of issuing premature and summary denials. A privilege log and staff explanations for withholding specific documents will allow Applicant and the public to be confident ICANN Staff is not exercising a broad assertion of privilege in order to avoid thorough review. Additionally, these detailed responses will ensure ICANN Staff is not using its DIDP Procedures as a way of obscuring its decision-making process. In the event ICANN Staff determines after thorough review, that no documents should be produced, a detailed and compelling reason for each non-disclosure will be necessary to allow Applicant to evaluate ICANN's commitment to fair, open, and transparent decision-making. Lastly, employing the Board's power to review documents and statements from third parties will alleviate the harm caused by nondisclosure of responsive documents omitted from ICANN's files.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

Do you have any documents you want to provide to ICANN?

1. Applicant DIDP Request 20140523-1
2. ICANN DIDP Response to Request 20140523-1
3. Applicant Request for Reconsideration of NGPC Resolution 2014.05.14.NG03 (without exhibits)

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.



Signature

July 7, 2014

Date

EXHIBIT C-064



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

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As amended 30 July 2014

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

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

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and
 - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.

Section 2. CORE VALUES

In performing its mission, the following core values should guide the decisions and actions of ICANN:

1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.
2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.
3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.
4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.
6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.
10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.
11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.

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

ARTICLE II: POWERS

Section 1. GENERAL POWERS

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

Section 2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability

of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "Website"), which may include, among other things, (i) a calendar of scheduled meetings of the Board, Supporting Organizations, and Advisory Committees; (ii) a docket of all pending policy development matters, including their schedule and current status; (iii) specific meeting notices and agendas as described below; (iv) information on ICANN's budget, annual audit, financial contributors and the amount of their contributions, and related matters; (v) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (vi) announcements about ICANN activities of interest to significant segments of the ICANN community; (vii) comments received from the community on policies being developed and other matters; (viii) information about ICANN's physical meetings and public forums; and (ix) other information of interest to the ICANN community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

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

Section 4. MEETING NOTICES AND AGENDAS

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

Section 5. MINUTES AND PRELIMINARY REPORTS

1. All minutes of meetings of the Board and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary for posting on the Website.
2. No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the

Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the preliminary report made publicly available. The Secretary shall send notice to the Board of Directors and the Chairs of the Supporting Organizations (as set forth in Articles VIII - X of these Bylaws) and Advisory Committees (as set forth in Article XI of these Bylaws) informing them that the resolutions have been posted.

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

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

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

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

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

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

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

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

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

Section 7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

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

Section 2. RECONSIDERATION

1. ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board.
2. Any person or entity may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that he, she, or it have been adversely affected by:
 1. one or more staff actions or inactions that contradict established ICANN policy(ies); or
 2. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
 3. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.
3. The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:
 1. evaluate requests for review or reconsideration;
 2. summarily dismiss insufficient requests;
 3. evaluate requests for urgent consideration;
 4. conduct whatever factual investigation is deemed appropriate;
 5. request additional written submissions from the affected party, or from other parties;

6. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and
 7. make a recommendation to the Board of Directors on the merits of the request, as necessary.
4. ICANN shall absorb the normal administrative costs of the reconsideration process. It reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration, who shall then have the option of withdrawing the request or agreeing to bear such costs.
5. All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after:
1. for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 15 days from the initial posting of the rationale; or
 2. for requests challenging staff actions, the date on which the party submitting the request became aware of, or reasonably should have become aware of, the challenged staff action; or
 3. for requests challenging either Board or staff inaction, the date on which the affected person reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.
6. To properly initiate a Reconsideration process, all requestors must review and follow the Reconsideration Request form posted on the ICANN website. at <http://www.icann.org/en/groups/board/governance/reconsideration>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.
7. Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.
8. The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
9. The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; (ii) it is frivolous, querulous or vexatious; or (iii) the requestor had notice and opportunity to, but did not, participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
10. For all Reconsideration Requests that are not summarily dismissed, the Board

Governance Committee shall promptly proceed to review and consideration.

11. The Board Governance Committee may ask the ICANN staff for its views on the matter, which comments shall be made publicly available on the Website.
12. The Board Governance Committee may request additional information or clarifications from the requestor, and may elect to conduct a meeting with the requestor by telephone, email or, if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard; the Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
13. The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
14. The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN staff, and by any third party.
15. For all Reconsideration Requests brought regarding staff action or inaction, the Board Governance Committee shall be delegated the authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make recommendation to the Board for consideration and action. The Board Governance Committee's determination on staff action or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
16. The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation. The final recommendation shall be posted on ICANN's website.
17. The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on ICANN's website. The Board's decision on the recommendation is final.
18. If the requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated at ICANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
19. The Board Governance Committee shall respond to the request for urgent

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

20. The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 1. the number and general nature of Reconsideration Requests received, including an identification if the requests were acted upon, summarily dismissed, or remain pending;
 2. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any request pending for more than ninety (90) days;
 3. an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
 4. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in [Section 2 of this Article](#), ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action. In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("IRP Panel"), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation

and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

1. did the Board act without conflict of interest in taking its decision?;
 2. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and
 3. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. ICANN's response shall not exceed that same length. Parties may submit documentary evidence supporting their positions without limitation. In the event that parties submit expert evidence, such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN's mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel. In the event that an omnibus standing panel: (i) is not in place when an IRP Panel must be convened for a given proceeding, the IRP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the IRP Provider; or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the IRP Provider shall identify one or more panelists, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
7. All IRP proceedings shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRP Provider"). The membership of the standing panel shall be coordinated by the IRP Provider subject to approval by ICANN.
8. Subject to the approval of the Board, the IRP Provider shall establish operating rules and procedures, which shall implement and be consistent with this [Section 3](#).
9. Either party may request that the IRP be considered by a one- or three-member panel; the Chair of the standing panel shall make the final determination of the size of each IRP panel, taking into account the wishes of the parties and the complexity of the issues presented.
10. The IRP Provider shall determine a procedure for assigning members from the standing panel to individual IRP panels.
11. The IRP Panel shall have the authority to:
1. summarily dismiss requests brought without standing, lacking in substance, or that are frivolous or vexatious;
 2. request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties;
 3. declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws; and
 4. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP;

5. consolidate requests for independent review if the facts and circumstances are sufficiently similar; and
6. determine the timing for each proceeding.
12. In order to keep the costs and burdens of independent review as low as possible, the IRP Panel should conduct its proceedings by email and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP Panel may hold meetings by telephone. In the unlikely event that a telephonic or in-person hearing is convened, the hearing shall be limited to argument only; all evidence, including witness statements, must be submitted in writing in advance.
13. All panel members shall adhere to conflicts-of-interest policy stated in the IRP Provider's operating rules and procedures, as approved by the Board.
14. Prior to initiating a request for independent review, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. The cooperative engagement process is published on ICANN.org and is incorporated into this Section 3 of the Bylaws.
15. Upon the filing of a request for an independent review, the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review. A conciliator will be appointed from the members of the omnibus standing panel by the Chair of that panel. The conciliator shall not be eligible to serve as one of the panelists presiding over that particular IRP. The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review.
16. Cooperative engagement and conciliation are both voluntary. However, if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes, if applicable, and ICANN is the prevailing party in the request for independent review, the IRP Panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees.
17. All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
18. The IRP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review. The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the IRP proceedings shall bear its own expenses.
19. The IRP operating procedures, and all petitions, claims, and declarations, shall be posted on ICANN's website when they become available.
20. The IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.
21. Where feasible, the Board shall consider the IRP Panel declaration at the Board's next meeting. The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value.

Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

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

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

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

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

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

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

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

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

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

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article IV](#) or the Independent Review Policy set forth in [Section 3 of Article IV](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent

body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall:

1. facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies;
2. exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to ICANN's interactions with the community so as to be inappropriate subject matters for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations;
3. have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by ICANN);
4. heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;
5. maintain neutrality and independence, and have no bias or personal stake in an outcome; and
6. comply with all ICANN conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

1. No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
2. ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.
3. Contact with the Ombudsman shall not constitute notice to ICANN of any particular action or cause of action.

4. The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

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

Section 5. ANNUAL REPORT

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

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

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

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

1. The Directors shall consist of:

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

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

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

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

e. One voting member selected by the At-Large Community according to the

provisions of Article XI of these Bylaws. This seat on the Board of Directors is referred to in these Bylaws as Seat 15.

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

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

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

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

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

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

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

ICANN Directors shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for

sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making;

2. Persons with an understanding of ICANN's mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;

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

4. Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

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

Section 4. ADDITIONAL QUALIFICATIONS

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

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

3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection to positions on the Board as provided by [Article VII, Section 8](#).

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the selection of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to

ensure that at all times each Geographic Region shall have at least one Director, and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "Geographic Region": Europe; Asia/Australia/Pacific; Latin America/Caribbean islands; Africa; and North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

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

Section 7. DUTIES OF DIRECTORS

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

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Director Seats 1 through 15 shall begin as follows:
 - a. The regular terms of Seats 1 through 3 shall begin at the conclusion of ICANN's annual meeting in 2003 and each ICANN annual meeting every third year after 2003;
 - b. The regular terms of Seats 4 through 6 shall begin at the conclusion of ICANN's annual meeting in 2004 and each ICANN annual meeting every third year after 2004;
 - c. The regular terms of Seats 7 and 8 shall begin at the conclusion of ICANN's annual meeting in 2005 and each ICANN annual meeting every third year after 2005;
 - d. The terms of Seats 9 and 12 shall continue until the conclusion of ICANN's ICANN's annual meeting in 2015. The next terms of Seats 9 and 12 shall begin at the conclusion of ICANN's annual meeting in 2015 and each ICANN annual meeting every third year after 2015;
 - e. The terms of Seats 10 and 13 shall continue until the conclusion of ICANN's annual meeting in 2013. The next terms of Seats 10 and 13 shall begin at the conclusion of ICANN's annual meeting in 2013 and each ICANN annual

meeting every third year after 2013; and

f. The terms of Seats 11, 14 and 15 shall continue until the conclusion of ICANN's annual meeting in 2014. The next terms of Seats 11, 14 and 15 shall begin at the conclusion of ICANN's annual meeting in 2014 and each ICANN annual meeting every third year after 2014.

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

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

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

5. Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (Note: In the period prior to the beginning of the first regular term of Seat 15 in 2010, Seat 15 was deemed vacant for the purposes of calculation of terms of service.)

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

Section 9. NON-VOTING LIAISONS

1. The non-voting liaisons shall include:

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

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

c. One appointed by the Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);

d. One appointed by the Internet Engineering Task Force.

2. The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of ICANN written notice of its appointment.

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

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

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

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

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

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

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

Section 12. VACANCIES

1. A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director; if the authorized number of Directors is increased; or if a Director has been declared of unsound mind by a final order of court or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBCL. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a Supporting Organization, in which case that vacancy shall be filled by that Supporting Organization, or (b) that Director was the President, in which case the vacancy shall be filled in accordance with the provisions of [Article XIII of these Bylaws](#). The selecting body shall give written notice to the Secretary of ICANN of their appointments to fill vacancies. A

Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

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

Section 13. ANNUAL MEETINGS

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

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

Section 15. SPECIAL MEETINGS

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

Section 16. NOTICE OF MEETINGS

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

Section 17. QUORUM

At all annual, regular, and special meetings of the Board, a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless

otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time to another place, time, or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those Directors not at the meeting at the time of the adjournment.

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

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment; provided that (a) all Directors participating in such a meeting can speak to and hear one another, (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board, and (c) ICANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of, or votes by, the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and not persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

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

Section 20. ELECTRONIC MAIL

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

Section 21. RIGHTS OF INSPECTION

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

Section 22. COMPENSATION

1. Except for the President of ICANN, who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.

2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of ICANN for services to ICANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in its entirety Reasonable Compensation for such service under the standards set forth in

§53.4958-4(b) of the Treasury Regulations.

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

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

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

6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.

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

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

(b) A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, and the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding the whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not

reasoned if it does nothing more than recite the facts and express a conclusion.

(c) "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

8. Each of the non-voting liaisons to the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison. If the Board determines to offer a compensation arrangement to one or more non-voting liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 23. PRESUMPTION OF ASSENT

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

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

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

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair, appointed by the ICANN Board;
2. A non-voting Chair-Elect, appointed by the ICANN Board as a non-voting advisor;
3. A non-voting liaison appointed by the ICANN Root Server System Advisory Committee established by [Article XI of these Bylaws](#);
4. A non-voting liaison appointed by the ICANN Security and Stability Advisory Committee established by [Article XI of these Bylaws](#);
5. A non-voting liaison appointed by the [Governmental Advisory Committee](#);
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the At-Large Advisory Committee established by [Article XI of these Bylaws](#);
7. Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization, established by [Article X of these Bylaws](#), as follows:
 - a. One delegate from the Registries Stakeholder Group;

- b. One delegate from the Registrars Stakeholder Group;
- c. Two delegates from the Business Constituency, one representing small business users and one representing large business users;
- d. One delegate from the Internet Service Providers Constituency;
- e. One delegate from the Intellectual Property Constituency; and
- f. One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

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

- a. The Council of the Country Code Names Supporting Organization established by [Article IX of these Bylaws](#);
- b. The Council of the Address Supporting Organization established by [Article VIII of these Bylaws](#); and
- c. The Internet Engineering Task Force.

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

Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#):

- 1. Each voting delegate shall serve a one-year term. A delegate may serve at most two successive one-year terms, after which at least two years must elapse before the individual is eligible to serve another term.
- 2. The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.
- 3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next ICANN annual meeting.
- 4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
- 5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be

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

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

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence, with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making;
2. Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;
4. Persons who are neutral and objective, without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities;
5. Persons with an understanding of ICANN's mission and the potential impact of ICANN's activities on the broader Internet community who are willing to serve as volunteers, without compensation other than the reimbursement of certain expenses; and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

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

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be

published on the Website.

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

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

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in [Section 2 of this Article](#).

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

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

Section 2. ADDRESS COUNCIL

1. The ASO shall have an Address Council, consisting of the members of the NRO Number Council.
2. The Address Council shall select Directors to those seats on the Board designated to be filled by the ASO.

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

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

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

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

Section 2. ORGANIZATION

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see [Section 4\(2\) of this Article](#)) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 3. ccNSO COUNCIL

1. The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of [ICANN's Geographic Regions](#) in the manner described in [Section 4\(7\) through \(9\) of this Article](#); (b) three ccNSO Council members selected by the ICANN Nominating Committee; (c) liaisons as described in [paragraph 2 of this Section](#); and (iv) observers as described in [paragraph 3 of this Section](#).

2. There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (a) the Governmental Advisory Committee; (b) the At-Large Advisory Committee; and (c) each of the Regional Organizations described in [Section 5 of this Article](#). These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

4. Subject to the provisions of the [Transition Article of these Bylaws](#): (a) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (b) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (c) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been

selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

5. A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

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

8. The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in [Section 4\(6\) of this Article](#)) and to manage the development of policy recommendations in accordance with Section 6 of this Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

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

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

11. The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

12. Except as provided by [paragraphs 9 and 10 of this Section](#), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in [paragraph 14 of this Section](#). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in

conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

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

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

Section 4. MEMBERSHIP

1. The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in [paragraph 2 of this Section](#) shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization", or under any later variant, for that country-code top-level domain.

2. Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees

established by the ccNSO Council under [Section 7\(3\) of this Article](#). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

3. Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

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

5. Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.

6. There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

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

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

9. If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled

to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

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

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

Section 5. REGIONAL ORGANIZATIONS

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

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The

ccPDP shall be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

1. Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.
2. Upon request of the ccNSO Council, ICANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by ccNSO participants for travel to any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision, at ccNSO expense, for administrative and operational support in addition or as an alternative to support provided by ICANN.
3. The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in [paragraphs 1 and 2 of this Section](#), as approved by the ccNSO members.
4. Written notices given to the ICANN Secretary under this Article shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The ICANN Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO shall consist of:

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

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

Section 3. GNSO COUNCIL

1. Subject to the provisions of [Transition Article XX, Section 5 of these Bylaws](#) and as described in [Section 5 of Article X](#), the GNSO Council shall consist of:

- a. three representatives selected from the Registries Stakeholder Group;
- b. three representatives selected from the Registrars Stakeholder Group;
- c. six representatives selected from the Commercial Stakeholder Group;
- d. six representatives selected from the Non-Commercial Stakeholder Group;
and
- e. three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in [Section 3\(8\) of this Article](#)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council at the same time.

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

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

2. Subject to the provisions of the [Transition Article XX, and Section 5 of these Bylaws](#), the regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO

Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

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

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

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

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

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

6. The GNSO shall make selections to fill Seats 13 and 14 on the ICANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in [Section 3\(8\) of this Article](#), shall make a selection to fill one of two ICANN Board seats, as outlined below; any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

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

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the ICANN Secretary, consistent with Article VI, Sections [8\(4\)](#) and [12\(1\)](#).

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

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

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

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

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

- a. Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
- b. Initiate a Policy Development Process ("PDP") Within Scope (as described in [Annex A](#)): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- c. Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority.
- d. Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
- f. Changes to an Approved PDP Team Charter: For any PDP Team Charter

under contract to ICANN;

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

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

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

3. Each Stakeholder Group identified in [paragraph 1 of this Section](#) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

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

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

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

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

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

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

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

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO shall be as stated in [Annex A](#) to these Bylaws. These procedures may be supplemented or revised in the manner stated in [Section 3\(4\) of this](#)

[Article.](#)

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

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

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

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

b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.

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

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

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

f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the ICANN Board of Directors, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

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

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

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

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

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

2. Security and Stability Advisory Committee

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

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

2. To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the

ICANN community accordingly. The Committee shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC, RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

4. To report periodically to the Board on its activities.

5. To make policy recommendations to the ICANN community and Board.

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

c. The SSAC shall annually appoint a non-voting liaison to the ICANN Board according to [Section 9 of Article VI](#).

3. Root Server System Advisory Committee

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

1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

2. Communicate on matters relating to the administration of the

Root Zone with those who have direct responsibility for that administration. These matters include the processes and procedures for the production of the Root Zone File.

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

4. Respond to requests for information or opinions from the ICANN Board of Directors.

5. Report periodically to the Board on its activities.

6. Make policy recommendations to the ICANN community and Board.

b. The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

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

2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.

c. The RSSAC shall annually appoint a non-voting liaison to the ICANN Board according to Section 9 of Article VI.

4. At-Large Advisory Committee

a. The At-Large Advisory Committee (ALAC) is the primary organizational home within ICANN for individual Internet users. The role of the ALAC shall

be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.

b. The ALAC shall consist of (i) two members selected by each of the Regional At-Large Organizations ("RALOs") established according to paragraph [4\(g\) of this Section](#), and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to [Section 5 of Article VI](#).

c. Subject to the provisions of the [Transition Article of these Bylaws](#), the regular terms of members of the ALAC shall be as follows:

1. The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.

2. The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.

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

4. The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.

d. The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee.

e. The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region, as defined according to [Section 5 of Article VI](#)) to the Nominating Committee.

f. Subject to the provisions of the [Transition Article of these Bylaws](#), the At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

g. There shall be one RALO for each Geographic Region established according to [Section 5 of Article VI](#). Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for

its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures.

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

i. Membership in the At-Large Community

1. The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.
2. The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article VI](#)) of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.
3. Each RALO's Memorandum of Understanding shall also include provisions designed to allow, to the greatest extent possible, every individual Internet user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's At-Large Structures.
4. To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and character of its Geographic Region.
5. Once the criteria and standards have been established as provided in this Clause i, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.
6. Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the ICANN Board.
7. Decisions as to whether to accredit, not to accredit, or disaccredit an At-Large Structure shall be subject to review according to procedures established by the Board.
8. On an ongoing basis, the ALAC may also give advice as to whether a prospective At-Large Structure meets the applicable criteria and standards.

j. The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

1. Making a selection by the At-Large Community to fill Seat 15 on the Board. Notification of the At-Large Community's selection shall be given by the ALAC Chair in writing to the ICANN Secretary, consistent with Article VI, Sections 8(4) and 12(1).
2. Keeping the community of individual Internet users informed about the significant news from ICANN;
3. Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;
4. Promoting outreach activities in the community of individual Internet users;
5. Developing and maintaining on-going information and education programs, regarding ICANN and its work;
6. Establishing an outreach strategy about ICANN issues in each RALO's Region;
7. Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;
8. Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;
9. Offering Internet-based mechanisms that enable discussions among members of At-Large structures; and
10. Establishing mechanisms and processes that enable two-way communication between members of At-Large Structures and those involved in ICANN decision-making, so interested individuals can share their views on pending ICANN issues.

Section 3. PROCEDURES

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

Section 4. TERM OF OFFICE

The chair and each member of a committee shall serve until his or her successor is appointed, or until such committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee.

Section 5. VACANCIES

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

Section 6. COMPENSATION

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

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

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

2. Types of Expert Advisory Panels.

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

b. In addition, in accordance with [Section 1\(3\) of this Article](#), the Board may refer issues of public policy pertinent to matters within ICANN's mission to a multinational governmental or treaty organization.

3. Process for Seeking Advice-Public Policy Matters.

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

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

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

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

5. Receipt of Expert Advice and its Effect. External advice pursuant to this Section shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.

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

Section 2. TECHNICAL LIAISON GROUP

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

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

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

a. In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

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

4. TLG Procedures. The TLG shall not have officers or hold meetings, nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual charters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG

organizations; establish or attempt to establish unified positions; or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

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

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

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board, which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board; provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote; and, provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:
 - a. The filling of vacancies on the Board or on any committee;
 - b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
 - c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
 - d. The appointment of committees of the Board or the members thereof;
 - e. The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CNPBCL;
 - f. The approval of the annual budget required by [Article XVI](#); or

g. The compensation of any officer described in [Article XIII](#).

2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of [Article VI](#) applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 3. TEMPORARY COMMITTEES

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

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

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

Section 2. ELECTION OF OFFICERS

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

Section 3. REMOVAL OF OFFICERS

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

Section 4. PRESIDENT

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

Section 5. SECRETARY

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

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of ICANN's annual budget. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 7. ADDITIONAL OFFICERS

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

Section 8. COMPENSATION AND EXPENSES

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

Section 9. CONFLICTS OF INTEREST

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

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

ICANN shall, to maximum extent permitted by the CNPBCL, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group)

acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

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

Section 2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 3. CHECKS

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

Section 4. LOANS

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

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement and a description of any payments made by ICANN to Directors (including reimbursements of

expenses). ICANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 4. ANNUAL BUDGET

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

Section 5. FEES AND CHARGES

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

ARTICLE XVII: MEMBERS

ICANN shall not have members, as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL"), notwithstanding the use of the term "Member" in these Bylaws, in any ICANN document, or in any action of the ICANN Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

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

Section 2. SEAL

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

ARTICLE XIX: AMENDMENTS

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

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

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

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in [paragraph 5 of this Section 2](#), the Board of Directors of the Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002, except that those At-Large members of the Board under the Old Bylaws who elect to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of [Article VI, Section 12 of the New Bylaws](#), vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by [Article VI, Section 9 of the New Bylaws](#). The Board Committees existing on the date of adoption of this Transition Article shall continue in existence, subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.
2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.
3. The "New Board" is that Board described in [Article VI, Section 2\(1\) of the New Bylaws](#).
4. Promptly after the adoption of this Transition Article, a Nominating Committee shall be formed including, to the extent feasible, the delegates and liaisons described in [Article VII, Section 2 of the New Bylaws](#), with terms to end at the conclusion of the ICANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board, with terms to conclude upon the commencement of the first regular terms specified for those Seats in [Article VI, Section 8\(1\)\(a\)-\(c\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of that selection.
5. The Effective Date and Time of the New Board shall be a time, as designated by the Transition Board, during the first regular meeting of ICANN in 2003 that begins not less than seven calendar days after the ICANN Secretary has received written notice of the selection of Directors to fill at least ten of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board, it shall assume from the Transition Board all the rights, duties, and obligations of the ICANN Board of Directors. Subject to Section 4 of this Article, the Directors ([Article VI, Section 2\(1\)\(a\)-\(d\)](#)) and non-voting liaisons ([Article VI, Section 9](#)) as to which the ICANN Secretary has received notice of selection shall, along with the President ([Article VI, Section 2\(1\)\(e\)](#)), be seated upon the Effective Date and Time of the New Board, and thereafter any additional Directors and non-voting liaisons shall be seated upon the ICANN Secretary's receipt of notice of their selection.
6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.

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

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

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization shall continue in operation according to the provisions of the [Memorandum of Understanding originally entered on 18 October 1999](#) between ICANN and a group of regional Internet registries (RIRs), and [amended in October 2000](#), until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article, the Address Supporting Organization shall make selections, and give the ICANN Secretary written notice of those selections, of:

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

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

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

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

2. After the adoption of [Article IX of these Bylaws](#), the Nominating Committee shall select the three members of the ccNSO Council described in [Article IX, Section 3\(1\)\(b\)](#). In selecting three individuals to serve on the ccNSO Council, the Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first ICANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second ICANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third ICANN annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.
3. Upon the ccNSO Council being constituted, the At-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council, as provided by [Article IX, Section 3\(2\)\(a\) and \(b\)](#).
4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in [Article IX, Section 5](#). Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.
5. Until the ccNSO Council is constituted, Seats 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall, through the ccNSO Council, make selections of Directors to fill Seats 11 and 12 on the New Board, with terms to conclude upon the commencement of the next regular term specified for each of those Seats in [Article VI, Section 8\(1\)\(d\) and \(f\) of the New Bylaws](#), and shall give the ICANN Secretary written notice of its selections.
6. Until the ccNSO Council is constituted, the delegate to the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board, depending on which is in existence at the time any particular appointment is required, after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate to the Nominating Committee appointed by the Transition Board or New Board according to this Section 4(9) then serving shall remain in office, except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of ICANN's annual meeting, or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in [Article VII, Section 2\(8\)\(c\)](#) shall be made by the ccNSO Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization ("GNSO"), upon the adoption of this Transition Article, shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent, organizationally, the former Constituencies of the GNSO, subject to ICANN Board approval of each individual Stakeholder Group Charter:
 - a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group;
 - b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group;

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

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

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

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

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

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

4. Beginning with the commencement of the ICANN Meeting in October 2009, or another date the Board may designate by resolution (the "Effective Date of the Transition"), the GNSO Council seats shall be assigned as follows:

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

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

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

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

e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member to the

Contracted Party House, one voting member to the Non-Contracted Party House, and one non-voting member assigned to the GNSO Council at large.

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

5. The GNSO Council, as part of its Restructure Implementation Plan, will document: (a) how vacancies, if any, will be handled during the transition period; (b) for each Stakeholder Group, how each assigned Council seat to take effect at the 2009 ICANN annual meeting will be filled, whether through a continuation of an existing term or a new election or appointment; (c) how it plans to address staggered terms such that the new GNSO Council preserves as much continuity as reasonably possible; and (d) the effect of Bylaws term limits on each Council member.

6. As soon as practical after the commencement of the ICANN meeting in October 2009, or another date the Board may designate by resolution, the GNSO Council shall, in accordance with [Article X, Section 3\(7\)](#) and its GNSO Operating Procedures, elect officers and give the ICANN Secretary written notice of its selections.

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The [Protocol Supporting Organization referred to in the Old Bylaws](#) is discontinued.

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

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

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

3. Upon the adoption of the New Bylaws, the [Security and Stability Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until further action of the committee. Promptly upon the adoption of this Transition Article, the Security and Stability Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(4\) of the New Bylaws](#).

4. Upon the adoption of the New Bylaws, the [Root Server System Advisory Committee](#) shall continue in operation according to its existing operating principles and practices, until

further action of the committee. Promptly upon the adoption of this Transition Article, the Root Server Advisory Committee shall notify the ICANN Secretary of the person selected as its delegate to the Nominating Committee, as set forth in [Article VII, Section 2\(3\) of the New Bylaws](#).

5. At-Large Advisory Committee

a. There shall exist an Interim At-Large Advisory Committee until such time as ICANN recognizes, through the entry of a Memorandum of Understanding, all of the Regional At-Large Organizations (RALOs) identified in [Article XI, Section 2\(4\) of the New Bylaws](#). The Interim At-Large Advisory Committee shall be composed of (i) ten individuals (two from each ICANN region) selected by the ICANN Board following nominations by the At-Large Organizing Committee and (ii) five additional individuals (one from each ICANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in [Article VII, Section 5 of the New Bylaws](#). The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the ICANN annual meeting in 2005.

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

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

d. Promptly upon its creation, the Interim At-Large Advisory Committee shall notify the ICANN Secretary of the persons selected as its delegates to the Nominating Committee, as set forth in [Article VII, Section 2\(6\) of the New Bylaws](#).

Section 8. OFFICERS

ICANN officers (as defined in [Article XIII of the New Bylaws](#)) shall be elected by the then-existing Board of ICANN at the annual meeting in 2002 to serve until the annual meeting in 2003.

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the ICANN President shall continue unchanged in membership, scope, and operation until

changes are made by the President.

Section 10. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements, including employment and consulting agreements, entered by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

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

Section 1. Required Elements of a Policy Development Process

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

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

Section 2. Policy Development Process Manual

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

Section 3. Requesting an Issue Report

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

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

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

Section 4. Creation of an Issue Report

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

The following elements should be considered in the Issue Report:

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

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the ICANN website for a public comment period that complies with the designated practice for public comment periods within ICANN.

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

Section 5. Initiation of the PDP

The Council may initiate the PDP as follows:

Board Request. If the Board requested an Issue Report, the Council, within the timeframe set forth in the

PDP Manual, shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X, Section 3, paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

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

The Council approval process is set forth in [Article X, Section 3, paragraph 9\(d\) through \(g\), as supplemented by the PDP Manual](#).

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

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the ICANN Board.

Section 9. **Board Approval Processes**

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

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.

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

Section 10. Implementation of Approved Policies

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

Section 11. Maintenance of Records

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

Section 12. Additional Definitions

"Comment Site", "Comment Forum", "Comments For a" and "Website" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

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

"Staff Manager" means an ICANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13. Applicability

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

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

1. Request for an Issue Report

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

- a. *Council.* The ccNSO Council (in this Annex B, the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The ICANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

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

2. Creation of the Issue Report and Initiation Threshold

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

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

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy

process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

- 1) The issue is within the scope of ICANN's mission statement;
- 2) Analysis of the relevant factors according to [Article IX, Section 6\(2\)](#) and [Annex C](#) affirmatively demonstrates that the issue is within the scope of the ccNSO;

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

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

In all events, consideration of revisions to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

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

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

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

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

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

b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope.

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

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

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

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

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article IX, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.
- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. Public Notification of Initiation of the PDP and Comment Period

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

7. Task Forces

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

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

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

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and
3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

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

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

d. *Collection of Information.*

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

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

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

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

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

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

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

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

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

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue;

2. If a Supermajority Vote was not reached, a clear statement of all positions espoused by task force members submitted within the time line for submission of constituency reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position;

3. An analysis of how the issue would affect each Region, including any financial impact on the Region;

4. An analysis of the period of time that would likely be necessary to implement the policy; and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "Final Report". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

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

call. The Issue Manager shall be present at the meeting.

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

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

11. Recommendation of the Council

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

12. Council Report to the Members

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

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

13. Members Vote

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

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

Recommendation.

14. Board Report

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

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

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

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

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

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

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

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

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

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

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

The scope of the ccNSO's authority and responsibilities must recognize the complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the ICANN Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

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

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

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

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

The Core Functions

1. Data Entry Function (DEF):

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

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

2. The Name-Server Function (NSF)

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

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

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

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries

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

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

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

The information below offers an aid to:

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

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

Name Server Function (as to ccTLDs)

Level 1: Root Name Servers

Policy role: IETF, RSSAC (ICANN)

Executive role: Root Server System Operators

Accountability role: RSSAC (ICANN), (US DoC-ICANN MoU)

Level 2: ccTLD Registry Name Servers in respect to interoperability

Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized

Executive role: ccTLD Manager

Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers
Policy role: ccTLD Manager, IETF (RFC)
Executive role: Registrant
Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry
Policy role: ccNSO Policy Development Process (ICANN)
Executive role: ICANN (IANA)
Accountability role: ICANN community, ccTLD Managers, US DoC, (national authorities in some cases)

Level 2: ccTLD Registry
Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure
Executive role: ccTLD Manager
Accountability role: Local Internet Community, including national authorities in some cases

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

EXHIBIT C-065

RECOMMENDATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 14-27

22 AUGUST 2014

The Requester, Amazon EU S.à.r.l., seeks reconsideration of an NGPC¹ Resolution directing that the Requester's applications for .AMAZON and related internationalized domain names in Japanese and Chinese, should not proceed.

I. Brief Summary.

The Requester applied for .AMAZON and related internationalized domain names ("IDNs") in Japanese and Chinese (collectively, the "Amazon Applications").

In its Durban Communiqué, the GAC² informed the Board that it had reached consensus GAC advice on .AMAZON and the related IDNs ("GAC Durban Advice"). After significant and careful consideration, on 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 ("Resolution") accepting the GAC Durban Advice and directed that the Amazon Applications should not proceed.

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider other material information in accepting the advice.

¹ New gTLD Program Committee.

² Governmental Advisory Committee.

The BGC³ concludes that there is no evidence that the NGPC's actions in adopting the Resolution support reconsideration. As discussed in further detail below, the Requester has not demonstrated that the NGPC failed to consider any material information in passing the Resolution or that the NGPC relied on false or inaccurate material information in passing the Resolution. As such, the Requester has not stated a proper basis for reconsideration. Further, the NGPC properly considered the GAC Durban Advice in accordance with ICANN's Bylaws and the procedures set forth in the gTLD Applicant Guidebook.

II. Facts.

A. Background Facts.

Amazon EU S.à.r.l. ("Requester") applied for the Amazon Applications.

On 17 June 2012 the GAC Chair sent a letter to ICANN's Board, advising that:

Given the delays in the gTLD application process, the timing of the upcoming ICANN meetings, and the amount of work involved, **the GAC advises the Board** that it will not be in a position to offer any new advice on the gTLD applications in 2012. For this reason, the GAC is considering the implications of providing any GAC advice on gTLD applications. These considerations are not expected to be finalized before the Asia-Pacific meeting in April 2013.

(17 June 2013 Letter, *available at*

<https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf>) (emphasis in original).

On 20 November 2012, the GAC representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications. (*Available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en>.)

On 14 February 2013, the GAC declared that it would be posting a list of applications that the GAC would consider as a whole during the GAC meeting to be held in Beijing in April

³ Board Governance Committee.

2013. (See <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>.) On 25 February 2013, the GAC further stated that it was “still compiling and processing inputs received from GAC members” and would post further information as soon as possible. (See *id.*)

On 5 March 2013, the Requester sent the Board a letter regarding its Public Interest Commitments with respect to the Amazon Applications. (See <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf>.)

On 12 March 2013, ICANN’s Independent Objector (“IO”) filed a Community Objection to the Applications on behalf of the “Amazon Community,” i.e., the community of “South-American region with the same English name around the Amazon River” (“Community Objection”). (See Determination on Community Objection ¶¶ 40, 59, available at <http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>.)

On 13 March 2013, the objection period for new gTLDs closed. (See <http://newgtlds.icann.org/en/program-status/odr>.)

On 11 April 2013, in its Beijing Communiqué, the GAC identified the Amazon Applications as warranting further GAC consideration and advised the Board not to proceed with those applications beyond Initial Evaluation (“GAC Beijing Advice”). (Beijing Communiqué, available at <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>.)

On 10 May 2013, the Requester responded to the GAC Beijing Advice. The Requester argued that the GAC had not reached consensus advice on the Applications, and that the New gTLD Applicant Guidebook (“Guidebook”) did not provide for ICANN to delay specific applications for further GAC consideration. (Response to GAC Beijing Advice at Pgs. 3-5, available at <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>.) The Requester also argued that it had relied on the Guidebook’s

provisions regarding geographic strings, which included a provision for Community Objections to geographic strings, and that the GAC Beijing Advice represented a “new attempt to isolate strings that raise geographic issues” and acted “as an effective veto on Community-driven policies.” (*Id.* at 2-3.)

In July 2013, prior to the GAC meeting in Durban, South Africa, the United States Government issued a statement on geographic names, in which it stated its intent to “remain neutral” with respect to the Amazon Applications, “thereby allowing [the] GAC to present consensus objections on these strings to the Board, if no other government objects.” (*See* http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf.)

On 4 July 2013, the Requester sent a letter to the Board regarding its ongoing efforts to negotiate with the governments of Brazil and Peru regarding the Amazon Applications. The Requester also submitted proposed Public Interest Commitments. (*See* <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf>.)

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on the Amazon Applications. (Durban Communiqué, *available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>.)

On 23 August 2013, the Requester responded to the GAC Durban Advice. It argued that the presumption created by that advice pursuant to Module 3.1 of the Guidebook was rebuttable, and had in fact been rebutted, because the advice: “(1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN’s Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years.” (Response to GAC Durban Advice at 2, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315->

58086-en.pdf.) As such, the Requester argued, the GAC Durban Advice should be rejected. Accompanying its response, the Requester attached a lengthy excerpt from a legal treatise on the protection of geographic names in international law, as well as information about Amazon's worldwide trademarks, communications between the GAC and ICANN regarding the protection of geographic names, and information about another gTLD application. (*Id.* at Appendices A-F.)

On 3 December 2013, the Requester sent another letter to the Board, providing further detail and clarification regarding the Requester's ongoing attempts to negotiate with the governments of Brazil and Peru regarding the Amazon Applications. (*See* <https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf>.)

On 10 January 2014, the Requester wrote to the Board, contending that the Amazon Applications do not fall within any of the five Guidebook categories of "geographic names" requiring government of public authority support. (*See* <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf>.)

On 27 January 2014, an Expert Determination was rendered by the Panel appointed by the ICC⁴ to hear the IO's Community Objection to the Amazon Applications. The Panel found in favor of the Requester. Specifically, the Panel determined that the IO had "not shown that there is a substantial opposition to [the Applications] within [the Amazon Community] or that [the Applications] would lead to substantial detriment." (Expert Determination ¶ 107.)

On 7 April 2014, the NGPC provided the Requester and the GAC with an independent, third-party report it had commissioned from French Law Professor Jérôme Passa regarding specific issues of law raised by the Amazon Applications ("Expert Analysis"). (*See* <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>.) In its

⁴ International Chamber of Commerce.

cover letter, the NGPC stated that it “welcomes any additional information that [the parties] believe is relevant to the NGPC in making its final decision on the GAC’s advice on [the Amazon Applications].” (*Id.*)

On 11 April 2014, the Peruvian Government sent a letter to the ICANN Board, urging it to reject the Amazon Applications. (*See* <https://www.icann.org/en/system/files/correspondence/samanez-to-crocker-11apr14-en.pdf>.) On 14 April 2014, the Brazilian Government sent a letter to the ICANN Board, reiterating its objections to the Amazon Applications. (*See* <https://www.icann.org/en/system/files/correspondence/filho-almeida-to-crocker-14apr14-en.pdf>.)

That same day, the Requester sent a letter to the Board responding to the Expert Analysis. The Requester stated that it agreed with the “core conclusions” of the Expert Analysis, but reiterated its objections to the GAC Durban Advice. (*See* <https://www.icann.org/en/system/files/correspondence/hayden-to-crocker-et-al-14apr14-en.pdf>.)

On 14 May 2014, the NGPC passed the Resolution, accepting the GAC Durban Advice and determining that the Amazon Applications should not proceed. The NGPC noted that “[its] decision is without prejudice to the continuing efforts by [the Requester] and members of the GAC to pursue dialogue on the relevant issues.” (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#/2.b>)

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC’s acceptance of the GAC Durban Advice. The Requester argues that the GAC Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider material information in accepting the advice.

On 26 July 2014, the BGC requested clarification from the Requester regarding the Requester's allegation that the NGPC considered false or inaccurate material information in passing the Resolution. On 2 August 2014, Amazon responded to the BGC's request clarifying the allegedly false or inaccurate material information that Amazon claims the NGPC relied upon in passing the Resolution. ("2 August Letter"). (*See* <https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf>.)

B. The Requester's Claims.

The Requester contends that reconsideration is warranted because the NGPC:

1. Accepted the GAC Durban Advice although it was filed after the close of the objection filing period (Request, § 8, Pgs. 6-7);
2. Individually considered the Amazon Applications, without articulating what "exceptional circumstances" justified such individualized consideration (*Id.*, § 8, Pgs. 7-8.);
3. Failed to adhere to appropriate GAC Governing Principles by applying a "strong presumption" to the GAC Durban Advice (*Id.*, § 8, Pgs. 8-9);
4. Improperly relied on the Early Warning as rationale for the GAC Durban Advice (*Id.*, § 8, Pgs. 10-11);
5. Improperly: (i) considered false and inaccurate material information contained in correspondence from representatives of the governments of Brazil and Peru; and (ii) failed to consider material correspondence and comments from the Requester and other parties, (*Id.*, § 8, Pgs. 11-14); and
6. Failed to consider material information with respect to:
 - i. The United States Government's July 2013 statement, (*Id.*, § 8, Pgs. 14-16);
 - ii. The Expert Determination rejecting the IO's Community Objection to the

Amazon Applications, (*Id.*, § 8, Pgs. 16-18);

- iii. The scope of the Expert Analysis (*Id.*, § 8, Pgs. 18-19);
- iv. The NGPC's obligations under ICANN's Bylaws and Articles of Incorporation, (*Id.*, § 8, Pgs. 19-21); and
- v. The fiscal implications of the Resolution (*Id.*, § 8, Pgs. 21-22).

C. Relief Requested.

The Requester asks the Board to reverse the Resolution, to direct the NGPC to reject the GAC Durban Advice, and to direct ICANN Staff to proceed with the Applications. (Request, § 9, Pg. 22.)

III. Issues.

In view of the claims set forth in Request 14-27, the issues for reconsideration are whether the NGPC failed to consider material information or relied on false or inaccurate material information in:

1. Accepting the GAC Durban Advice although it was filed after the close of the objection filing period, (Request, § 8, Pgs. 6-7);
2. Individually considering the Amazon Applications, although the NGPC should only do so "under exceptional circumstances," (*Id.*, § 8, Pgs. 7-8.);
3. Failing to adhere to appropriate GAC Governing Principles by applying a "strong presumption" to the GAC Durban Advice, (*Id.*, § 8, Pgs. 8-9);
4. Improperly relying on the Early Warning as rationale for the GAC Durban Advice, (*Id.*, § 8, Pgs. 10-11);
5. Improperly: (i) considering false or inaccurate material information in correspondence submitted from representatives of the governments of Brazil and Peru; and (ii) failing to consider material correspondence and comments from the Requester

- and other parties, (*Id.*, § 8, Pgs. 11-14);
6. Failing to consider material information provided by the United States Government in its July 2013 statement, (*Id.*, § 8, Pgs. 14-16);
 7. Failing to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications, (*Id.*, § 8, Pgs. 16-18);
 8. Failing to consider the Expert Analysis and the Requester's request for additional studies, (*Id.*, § 8, Pgs. 18-19);
 9. Failing to consider its obligations under ICANN's Bylaws and Articles of Incorporation in accepting the GAC Durban Advice, (*Id.*, § 8, Pgs. 19-21); and
 10. Failing to consider the fiscal implications of its acceptance of the GAC Durban Advice, (*Id.*, § 8, Pgs. 21-22).

IV. The Relevant Standards for Evaluating Reconsideration Requests and Community Objections.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.⁵ (Bylaws, Art. IV, § 2.) Requester is challenging a Board action. Dismissal of a request for reconsideration is appropriate if the BGC recommends, and the Board or the NGPC agrees, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws for challenges of a Board or

⁵ Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

staff action or inaction. (Bylaws, Art. IV, § 2.9.)

V. Analysis and Rationale.

A. The Requester Has Not Stated a Proper Basis for Reconsideration with Respect to the Timeliness of the GAC Durban Advice.

The Requester argues that the NGPC should not have accepted the GAC Durban Advice because that advice was submitted on 18 July 2013, after the 13 March 2013 close of the objection filing period. In order to state a basis for reconsideration of a Board action, the Requester must demonstrate that the Board (or in this case the NGPC) considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC Durban Advice, and that the Requester was materially affected by the NGPC's action or inaction. (Bylaws, Art. IV, § 2.2.) The Requester, however, neither argues nor provides any evidence demonstrating that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC Durban Advice.

Further, contrary to what Requester argues, the NGPC must consider GAC advice on new gTLDs submitted after the close of the objection period. Notwithstanding the Guidebook, ICANN's Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.) The provisions of the Guidebook regarding the treatment of GAC Advice do not supplant the requirements of the Bylaws on this subject matter.

B. The Requester Has Not Stated A Proper Basis for Reconsideration With Respect To The NGPC's Individual Consideration Of The Amazon Applications.

The Requester argues that the NGPC improperly individually considered the Amazon Applications failing to explain why the circumstances surrounding its Applications are

sufficiently “exceptional” to warrant individual consideration. (Request, § 8, Pg. 8.) Again, the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in passing the Resolution and therefore has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

In any event, Requester’s argument contradicts Section 5.1 of the Guidebook, which explicitly provides for the Board to individually consider any new gTLD application, including as the result of GAC Advice:

The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet Community. Under exceptional circumstances, the Board may individually consider a gTLD application. *For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs* or of the use of an ICANN accountability mechanism.

(Guidebook, § 5.1) (emphasis added). As the Guidebook’s language makes clear, GAC Advice is precisely the sort of “exceptional circumstance” that would justify the Board’s individual consideration of a gTLD application. Further, as discussed above, ICANN’s Bylaws affirmatively require the Board to consider any issues that the GAC may put to the Board by way of comment or advice, including issues pertaining to individual gTLD applications. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.)

C. The Requester’s Claim that the NGPC Afforded a Strong Presumption to the GAC Durban Advice Does Not Support Reconsideration.

Requester appears to argue that the GAC Durban Advice should not have created a strong presumption for the ICANN Board that the Amazon Applications should not proceed. (Request, § 8, Pgs. 8-9.) In support, the Requester contends that because the GAC Durban Advice was provided following the close of the objection period, it was not provided pursuant to the Guidebook, and thus was not subject to the presumption standards set forth therein regarding GAC Advice. (Request, § 8, Pgs. 8-9.) Once again, because the Requester does not argue that

the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the GAC Durban Advice, it has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

D. The NGPC Properly Considered The Rationale Given In Brazil’s and Peru’s Early Warning.

The Requester argues that the NGPC improperly considered the rationale given in the Early Warning because, the Requester claims, that rationale “reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC.” (Request, § 8, Pg.10.) The Requester’s claims do not support reconsideration.

In its rationale for the Resolution, the NGPC stated that although it “*d[id] not have the benefit of the rationale relied upon by the GAC in issuing [the GAC Durban Advice]*, the NGPC considered the reason/rationale provided in the GAC Early Warning submitted on behalf of the governments of Brazil and Peru” (Resolution Rationale) (emphasis added). The NGPC did not state that it considered the rationale of the Early Warning to represent the rationale for the GAC Durban Advice—to the contrary, it explicitly stated that it “d[id] not have the benefit” of that rationale.

Because the NGPC recognized that the Early Warning rationale did not constitute the rationale for the GAC Durban Advice, there is no evidence that the NGPC relied on false or inaccurate material information in considering that advice. The Requester points to no policy or process that would prevent the Board from considering the rationale behind an Early Warning in considering GAC Advice. Further, insofar as the Requester argues that the NGPC failed to consider material information in failing to “conduct further inquiry of the GAC as to the basis and reason for the consensus advice,” (Request, § 8, Pg. 10), nothing in ICANN’s Bylaws, the

Guidebook, or the GAC's Operating Principles requires the GAC to provide a rationale for its consensus advice.

Finally, the BGC notes that the NGPC did not rely solely on the Early Warning in determining whether to accept the GAC Durban Advice. Rather, as is reflected in the resolution, the NGPC considered, among other materials, numerous documents, legal advice and letters submitted by the Requester and by other community stakeholders.

E. The NGPC Did Not Rely on False or Inaccurate Material Information or Fail to Consider Material Information in its Consideration of Public Comments and Correspondence to the Board.

The Requester argues that the NGPC: (i) relied on false or inaccurate material information in considering correspondence sent to the Board by the governments of Brazil and Peru; and (ii) failed to consider material information in failing to consider other correspondence, including correspondence sent by the Requester. (Request, § 8, Pgs. 11-14.)

As to the Board's consideration of correspondence sent by the governments of Brazil and Peru, the Requester appears to argue that the "NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC members." (*Id.*, § 8, Pg. 11, *see also id.*, § 8, Pgs. 13-14.) The Requester's claim is unsupported. In its rationale for the Resolution, the NGPC stated only that it "considered as part of the NGPC's action" an 11 April 2014 letter from Fernando Rojas Samané, the Vice Minister of Foreign Affairs for Peru, and a 14 April 2014 letter from Benedicto Fonseca Filho, a Director in the Ministry of External Relations of Brazil. Nowhere in the rationale does the NGPC state, or even imply, that it understood the correspondence from the governments of Brazil and Peru to represent GAC consensus advice. Furthermore, the Requester cites to no Guidebook or Bylaws provision that prohibits the NGPC from taking into consideration correspondence duly submitted to ICANN.

The Requester also argues that, although the 11 April 2014 letter from the Peruvian Government contained false information regarding whether Amazon has an ISO 3166-2 code,⁶ the NGPC “failed to identify any false and inaccurate information contained in the letter.” (*Id.*, § 8, Pgs. 13-14.) However, the NGPC’s alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC’s determination. The NGPC’s rationale does not state that it relied on the Peruvian Government’s representation regarding the ISO 3166-2 code in deciding to accept the GAC Durban Advice, and the Requester does not explain how the NGPC did so rely, or how the information is at all relevant.⁷ The Requester does not cite to a Guidebook or Bylaws provision that would require the NGPC to identify any and all false or inaccurate information contained in the correspondence it considers and explain that the NGPC did not rely on that specific information in reaching its determination, particularly when that information is not relevant or material to the decision being made.

Finally, in its 2 August Letter responding to the BGC’s request for clarification, the Requester argues that the 14 April 2014 letter from the Brazilian government inaccurately states that “all steps prescribed in the gTLD Applicant Guidebook in order to object to [the Amazon Applications] . . . have been timely taken by Brazil and Peru” (2 August Letter, Pg. 2.) The Requester claims that this statement is inaccurate because the GAC Durban Advice was not timely. Again, the NGPC’s alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC’s determination, and the

⁶ The ISO 3166-2 code is published by the International Organization for Standardization and assigns five-digit alphanumeric strings to countries’ administrative divisions and dependent territories. (*See* http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3.)

⁷ In its 2 August Letter responding to the BGC’s request for clarification, the Requester adds that this same representation was made by Peru’s GAC representative to the GAC prior to its vote on the GAC Durban Advice. (2 August Letter at 1-2.) However, the GAC is an independent advisory committee, and not part of ICANN’s Board. As such, the materials considered by the GAC in rendering its advice are not a proper basis for reconsideration.

Requester does not explain how the NGPC relied on the Brazilian Government's allegedly inaccurate representation in deciding to accept the GAC Durban Advice. Further, as is discussed above, the Requester's argument regarding the alleged untimeliness of the GAC Durban Advice is not a proper basis for reconsideration.⁸

In addition to arguing that the NGPC considered false or inaccurate information in the correspondence from the governments of Brazil and Peru, the Requester also argues that the NGPC failed to consider material public comments and correspondence. For instance, the Requester argues that, while the NGPC considered the responses of the governments of Brazil and Peru to the Expert Analysis, it did not consider the Requester's response. (Request, § 8, Pg. 12.) However, in its rationale the NGPC explicitly noted that it considered communications it received in response to the Expert Analysis, including the 14 April 2014 response from Scott Hayden, the Requester's Vice President, Intellectual Property, as well as letters from the Peruvian government and the Brazilian government. The Requester identifies no other specific public comment or piece of correspondence that it claims the NGPC failed to consider, and the NGPC's rationale for the Resolution clearly states that its "review of significant materials included, but [was] not limited to," the listed materials. In any event, the Requester does not identify any provision in the Bylaws or Guidebook that would require the NGPC to consider (much less comment upon) every comment and piece of correspondence received.⁹

⁸ In its 2 August Letter, the Requester also argues that following the issuance of the GAC Durban Advice but prior to the NGPC vote on the Resolution, it requested, and was denied, the opportunity to meet with the NGPC to present its position. The Requester does not challenge this staff and/or Board action and points to no Bylaw or ICANN policy or procedure that would require such a meeting.

⁹ The Requester also appears to argue that the NGPC should have solicited opinions from other governments. (Request, § 8, Pg. 12.) However, it cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

As such, the Requester has not demonstrated that the NGPC relied on false or inaccurate material information or failed to consider material relevant information with respect to public comments and correspondence regarding the GAC Durban Advice.

F. The NGPC Did Not Fail to Consider Material Information from the United States Government.

The Requester argues that the NGPC failed to consider material information in failing to consider the July 2013 statement from the United States Government on geographic indicators. (Request, § 8, Pgs. 14-15.) In its statement, the United States Government expressed its intent to “remain neutral” on the Applications, so as to “allow[] the GAC to present consensus objections on those strings to the Board, if no other government objects.” Nonetheless, the Requester argues that “[t]he statement from the U.S. Government calls into direct question the belief that the GAC Durban Advice is clearly representative of the consensus adoption of the entire GAC of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence.” (*Id.*, § 8, Pg. 15.)

Further, the United States Government’s statement does not negate the fact that the GAC Durban Advice represents consensus GAC Advice. Pursuant to GAC Operating Principle 47, “consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection.” (GAC Operating Principle 47, *available at* <https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>.) As the statement makes clear, the United States did not object to the GAC Durban Advice. The mere fact that the United States remained neutral with respect to the GAC Durban Advice was not material to the NGPC’s consideration of that advice.

As such, the Requester has not demonstrated that the NGPC failed to consider material information with respect to the United States Government’s statement.

G. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Determination.

The Requester argues that the NGPC improperly failed to consider the Expert Determination rejecting the Independent Objector’s Community Objection to the Amazon Applications. (Request, § 8, Pgs. 16-17.) The Requester appears to contend that the Expert Determination was material because: (1) the objections of the Brazilian and Peruvian governments would have been properly raised in the context of a Community Objection—which those governments did not bring; and (2) a Community Objection by those governments would have failed, as is evidenced by the Expert Determination. (*Id.* at 17.)

GAC members are not limited to raising objections that could have been raised in, or that meet the standards required to prevail upon, one of the four enumerated grounds for formal objections. (Guidebook Module 3, § 3.2.) Rather, GAC Advice on new gTLD applications is generally “intended to address applications that are identified by national governments to be problematic, e.g., that potentially violate national law or raise sensitivities.” (*Id.*, § 3.1.) GAC members’ discretion with respect to their reasons for objecting to gTLD applications is reflected in the fact that the GAC is not required to issue a rationale for its advice. In any event, the briefing materials of the NGPC’s 29 April 2014 and 14 May 2014 meetings reflect that the Expert Determination was considered by the NGPC during its deliberations on the Amazon Applications. As such, the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Determination.

H. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Analysis.

The Requester argues that ICANN instructed Professor Passa “to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term ‘Amazon’ or whether ICANN was ‘obliged’ to grant .AMAZON

based on pre-existing trademark registrations,” when “[t]he real question is whether, by accepting GAC advice, which is not rooted in any existing law, ICANN would be violating either national [or] international law.” (Request, § 8, Pgs. 18-19) (emphasis in original).

Module 3.1 of the Guidebook sets forth the parameters in which GAC Advice will be given under the New gTLD Program. Module 3.1 provides, in pertinent part:

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board *may consult with independent experts*, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures.

(Guidebook, § 3.1) (emphasis added).

Under this provision, the Board has the discretion to seek an independent expert opinion on issues raised by GAC Advice. The Board may also define the scope of its consultation with independent experts. As such, the Requester’s objection to the scope of Professor Passa’s assignment is not a basis for reconsideration.

The Requester has not cited to any provision of the Bylaws or Guidebook that would require ICANN to commission additional legal studies at the request of a New gTLD Applicant. Reconsideration for failure to consider material information is not proper where “the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of the action or refusal to act.” (Bylaws, Art. IV, § 2.B.) The Requester was given multiple opportunities to present materials for the NGPC’s consideration, including the opportunity—which it accepted—to respond to the Expert Report. In fact, the Requester attached to its response to the GAC Durban Advice a lengthy excerpt from a legal treatise on the protection of geographic names. (Response to GAC Durban Advice Appx. A.) If

the Requester believed that additional legal analysis was required, it was free to commission that analysis and submit it to the NGPC.

I. The NGPC Did Not Fail to Consider Material Information with Respect to Its Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The Requester alleges that the NGPC failed to take into account material information regarding its obligations under Articles I.2, II.3, and III.1 of ICANN’s Bylaws; Article 4 of its Articles of Incorporation; and Sections 4, 5, 7, and 9.3 of its Affirmations of Commitment. (Request, § 8, Pgs. 19-21.) The Requester’s disagreement with the Resolution does not, however, demonstrate that the NGPC failed to consider those obligations. And, as the rationale for the Resolution makes clear, the NGPC acted pursuant to its obligation under Article XI, Section 2.1 of the Bylaws, to duly address advice put to it by the GAC. As such, the Requester has not stated a proper basis for reconsideration with respect to the NGPC’s consideration of its obligations under ICANN’s Bylaws, Articles of Incorporation, and Affirmations of Commitment.¹⁰

J. The NGPC Did Not Fail to Consider Material Information with Respect to the Fiscal Implications of the Resolution.

The Requester argues that the Board failed to consider material information in failing to consider the potential fiscal implications of the Resolution, specifically the fact that “[s]hould it be determined that the [Resolution] in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal impacts on ICANN. . . .” (Request, § 8, Pgs. 21-22.)

¹⁰ The Requester also argues that the NGPC “should have sought comment from the [Generic Names Supporting Organization (“GNSO”)] as to whether [the GAC Durban Advice was] in violation of GNSO Policy.” (Request, § 8, Pg. 21.) However, the Requester cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

The Requester has not demonstrated that the NGPC did not consider the potential for litigation arising out of the Resolution, including the potential fiscal impact of such litigation. In any event, the Requester does not identify any requirement that the NGPC consider such an impact—indeed, the Requester has not demonstrated how the speculative possibility of litigation is material to the NGPC’s determination here. As such, the Requester has not identified a proper ground for reconsideration.

VI. Recommendation.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore recommends that Reconsideration Request 14-27 be denied without further consideration. In terms of timing of the BGC’s Recommendation, the BGC notes that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. (Bylaws, Art. IV, § 2.16.) The BGC required additional time to make its recommendation due to its request for clarification from the Requester, and due to the volume of Reconsideration Requests received within recent months. As such, the first practical opportunity for the BGC to take a decision on this Request was on 22 August 2014; it was impractical for the BGC to do so sooner.

EXHIBIT C-066

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& ACCOUNTABILITY \(HTTPS://WWW.ICANN.ORG/STEWARDSHIP-ACCOUNTABILITY\)](https://www.icann.org/stewardship-accountability)

Resources

[About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(Internet Corporation for Assigned Names and Numbers\) \(https://www.icann.org/resources/pages/welcome-2012-02-25-en\)](https://www.icann.org/resources/pages/welcome-2012-02-25-en)

[Board \(https://www.icann.org/resources/pages/board-of-directors-\)](https://www.icann.org/resources/pages/board-of-directors-)

Minutes | Board Governance Committee (BGC) Meeting

22 Aug 2014

BGC Attendees: Cherine Chalaby, Olga Madruga-Forti, Chris Disspain, Mike Silber, and Bruce Tonkin – Chair


BGC Member Apologies: Ray Plzak and Ram Mohan

Other Board Member Attendees: Steve Crocker


Executive and Staff Attendees: Megan Bishop (Board Support Coordinator), John Jeffrey (General Counsel and Secretary), Wendy Profit (Board Support Specialist), and Amy Stathos (Deputy General Counsel)

The following is a summary of discussions, actions taken, and actions identified:

2014-03-19-en)

 [Accountability](https://www.icann.org/resources/accountability)
(<https://www.icann.org/resources/accountability>)

 [Governance](https://www.icann.org/resources/pages/governance-2012-02-25-en)
(<https://www.icann.org/resources/pages/governance-2012-02-25-en>)

 [Groups](https://www.icann.org/resources/pages/groups-2012-02-06-en)
(<https://www.icann.org/resources/pages/groups-2012-02-06-en>)


[Business](https://www.icann.org/resources/pages/business)
(<https://www.icann.org/resources/pages/business>)

 [Contractual Compliance](https://www.icann.org/resources/pages/compliance-2012-02-25-en)
(<https://www.icann.org/resources/pages/compliance-2012-02-25-en>)

 [Registrars](https://www.icann.org/resources/pages/registrars-0d-2012-02-25-en)
(<https://www.icann.org/resources/pages/registrars-0d-2012-02-25-en>)

 [Registries](https://www.icann.org/resources/pages/registries-46-2012-02-25-en)
(<https://www.icann.org/resources/pages/registries-46-2012-02-25-en>)

[Operational Metrics](https://www.icann.org/resources/pages/metrics-gdd-2015-01-30-en)
(<https://www.icann.org/resources/pages/metrics-gdd-2015-01-30-en>)

 [Identifier Systems Security, Stability \(Security, Stability and Resiliency\) \(Security,](#)


1. Minutes – The BGC approved the minutes from the meeting on 24 July 2014.


2. Reconsideration Request 14-27 – Bruce Tonkin abstained from participation in this matter noting conflicts, indicating that his employer uses Amazon as a supplier and, while not material to this particular decision, he would abstain to prevent any perception of bias. Staff briefed the BGC regarding Amazon EU S.a.r.l.'s ("Requester's") request seeking reconsideration of the NGPC's 14 May 2014 resolution (Resolution 2014.05.14.NG03) accepting the GAC (Governmental Advisory Committee) (Governmental Advisory Committee) advice and directing that the applications for .AMAZON and related IDNs (Internationalized Domain Names) (Internationalized Domain Names) in Japanese and Chinese filed by Amazon (collectively, the "Amazon Applications") should not proceed. The Requester asserted, among other things, that the NGPC had relied on false or inaccurate information in making its determination. In its 24 July 2014 meeting, the BGC decided to seek additional information or clarification from the Requester regarding the alleged false or inaccurate information. Requester submitted its response to the request for additional information on 2 August 2014. After discussion and consideration of the Reconsideration Request and all materials submitted, the BGC concluded that the Requester has not demonstrated that the NGPC failed to consider any material information or relied on false or inaccurate material information in passing the Resolution. The BGC approved a motion recommending that the NGPC deny Reconsideration Request 14-27.

■ Action: Staff to prepare materials for consideration by the NGPC.

3. Reconsideration Request 14-29 – Bruce Tonkin abstained from participation in this matter noting conflicts, indicating that his employer uses Amazon as a supplier and, while not material to this particular decision, he would abstain to prevent any perception of bias. Staff briefed the BGC regarding DotKids Foundation Limited's ("Requester's") request seeking reconsideration of ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers)'s decision to partially defer the Requester's change request seeking to modify portions of its community application for .KIDS in preparation for its Community Priority Evaluation ("CPE"). The Requester and Amazon EU S.a.r.l ("Amazon") both applied for .KIDS and are in the same contention set. In preparing for the CPE, the Requester submitted a change request to ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) seeking: (i) to supplement its application with additional letters of support; and (ii) to revise written portions of its application. ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) permitted the additional letters of support, but deferred making any decision regarding the revisions to the application until after the CPE was concluded. On 11 June 2014, the Requester filed Reconsideration Request 14-29, claiming that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned Names and Numbers) violated policies and procedures in partially deferring the Requester's change request. After discussion and consideration of the Request, the BGC concluded that the Requester has not demonstrated that ICANN (Internet Corporation for Assigned Names and Numbers) (Internet Corporation for Assigned


Stability and Resiliency) and Resiliency (IS-SSR) (<https://www.icann.org/resources/pages/is-ssr-2014-11-24-en>)


 [ccTLDs](https://www.icann.org/resources/pages/cctlds-21-2012-02-25-en) (<https://www.icann.org/resources/pages/cctlds-21-2012-02-25-en>)

 [Internationalized Domain Names](https://www.icann.org/resources/pages/idn-2012-02-25-en) (<https://www.icann.org/resources/pages/idn-2012-02-25-en>)

 [Universal Acceptance Initiative](https://www.icann.org/resources/pages/universal-acceptance-2012-02-25-en) (<https://www.icann.org/resources/pages/universal-acceptance-2012-02-25-en>)

 [Policy](https://www.icann.org/resources/pages/policy-01-2012-02-25-en) (<https://www.icann.org/resources/pages/policy-01-2012-02-25-en>)

 [Public Comment](https://www.icann.org/public-comments) (<https://www.icann.org/public-comments>)

 [Technical Functions](https://www.icann.org/resources/pages/technical-functions-2015-10-15-en) (<https://www.icann.org/resources/pages/technical-functions-2015-10-15-en>)

 [Contact](https://www.icann.org/resources/pages/contact-2012-02-06-en) (<https://www.icann.org/resources/pages/contact-2012-02-06-en>)

 [Help](https://www.icann.org/resources/pages/help-2012-02-03-en) (<https://www.icann.org/resources/pages/help-2012-02-03-en>)

Names and Numbers)'s partial deferral of the change request violates any [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers) policy or procedure and, therefore, determined that Request 14-29 be denied. The Bylaws authorize the BGC to make a final determination on Reconsideration Requests brought regarding staff action or inaction and the BGC concluded that its determination on Request 14-29 is final; no consideration by the NGPC is warranted.

4. [Reconsideration Requests 14-34](#) – Staff briefed the BGC regarding Despegar Online SRL, DotHotel, Inc., dot Hotel Limited, Fegistry, LLC, Spring McCook, LLC, and Top Level Domain Holdings Limited's (collectively, the "Requesters") request seeking reconsideration of the Community Priority Evaluation Panel's ("Panel's") Report ("Report"), and [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers)'s acceptance of that Report, finding that HOTEL Top-Level-Domain S.a.r.l.'s application for .HOTEL prevailed in Community Priority Evaluation ("CPE"). The Requesters asserted that the Panel improperly interpreted and applied the CPE criteria set forth in the New gTLD (generic Top Level Domain) (generic Top Level Domain) Applicant Guidebook, and breached "other [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers) [p]rinciples" set forth in the [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers) Bylaws. After discussion and consideration of the Request, the BGC concluded that the Requester has not demonstrated that the Panel acted in contravention of established policy or procedure and, therefore, determined that Request 14-34 be denied. The Bylaws authorize the BGC to make a final determination on Reconsideration Requests brought regarding staff action or inaction and the BGC concluded that its determination on Request 14-34 is final; no consideration by the NGPC is warranted.

5. [Reconsideration Request 14-35](#) – Bruce Tonkin abstained from participation in this matter noting conflicts, indicating that his employer uses Amazon as a supplier and, while not material to this particular decision, he would abstain to prevent any perception of bias. Staff briefed the BGC regarding Amazon EU S.a.r.l.'s ("Requester's") request seeking reconsideration of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers) staff's response to the Requester's request for documents pursuant to [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers)'s Document Information Disclosure Policy ("DIDP") relating to the Requester's applications for .AMAZON and related [IDNs \(Internationalized Domain Names\)](#) (Internationalized Domain Names) in Japanese and Chinese (collectively, the "Amazon Applications"). The Requester asserted that the DIDP Response was "facially inadequate" and inconsistent with DIDP procedures and [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation, Bylaws, and Affirmation of Commitments. After discussion and consideration of the Request, the BGC concluded that the Requester has not demonstrated that [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) (Internet Corporation for Assigned Names and

Numbers) acted in contravention of established policy or procedure in responding to the DIDP Request and, therefore, determined that Request 14-35 be denied. The Bylaws authorize the BGC to make a final determination on Reconsideration Requests brought regarding staff action or inaction and the BGC concluded that its determination on Request 14-35 is final; no consideration by the NGPC is warranted.

6. Expressions of Interest for Nominating Committee 2015 Leadership – Bruce Tonkin provided a brief overview of the status of current Expressions of Interest ("EOIs") for Nominating Committee ("NomCom") Leadership. The BGC will be recommending to the Board a Chair and a Chair-Elect position for the NomCom. In its 24 July 2014 meeting, the BGC decided to seek additional information from each of the interested applicants in order to make determinations regarding candidate interviews, and to allow for the conclusion of a 360-degree review of the 2014 NomCom Leadership before proceeding. The BGC sent additional questions to the applicants and asked that written responses be submitted by the end of the month. The committee chair also noted that the 360-degree review of the 2014 NomCom Leadership has been completed. The BGC also discussed timing considerations regarding the submission of recommendations for the Chair and Chair-Elect positions.
7. Board Evaluation – The BGC discussed conducting a 360-degree Board evaluation, the need for a comprehensive survey questionnaire, the need to determine the quantity and selection process of potential participants in the questionnaire, and potential timing for development of the questionnaire and issuance of the questionnaire.

Published on 4 September 2014



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[Independent Review Process](https://www.icann.org/resources/pages/irp-2012-02-25-en)
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Help

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[Domain Name Dispute Resolution](https://www.icann.org/en/help/dndr)
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[Registrar Problems](https://www.icann.org/en/news/announcements/announcement-06mar07-en.htm)
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[WHOIS](http://whois.icann.org/)
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EXHIBIT C-067

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 14-35**

22 AUGUST 2014

The Requester, Amazon EU S.à.r.l, seeks reconsideration of ICANN staff’s response to the Requester’s request for documents pursuant to ICANN’s Document Information Disclosure Policy (“DIDP”), including documents relating to ICANN’s consideration of Requester’s applications for .AMAZON and related internationalized domain names (“IDNs”) in Japanese and Chinese.

I. Brief Summary.

The Requester applied for .AMAZON and related IDNs in Japanese and Chinese (collectively, “Amazon Applications”).

In its Durban Communiqué, the GAC¹ informed the Board that it had reached consensus advice on .AMAZON and the related IDNs (“GAC Durban Advice”). On 14 May 2014, the NGPC² resolved to accept the GAC Durban Advice (see Resolution 2014.05.NG03), which meant that the Amazon Applications should not proceed (“Resolution”).

The Requester then sought the following documents pursuant to ICANN’s DIDP: “all documents directly and indirectly relating to: (1) the balance of the competing interests of each factor considered by the [NGPC] in approving [the Resolution] . . . and (2) the [GAC] advice in relation to the Amazon Applications” (“DIDP Request”). (DIDP Request, Pg. 1.) Specifically, the Requester sought the production of documents regarding: (i) ICANN’s communications concerning the Amazon Applications (Items 1, 2, 3, 4, 5); (ii) ICANN’s communications with

¹ Governmental Advisory Committee.

² New gTLD Program Committee.

the Independent Expert M. Jérôme Passa concerning the Amazon Applications (Item 6); (iii) ICANN's communications with the Independent Objector M. Alain Pellet concerning the Amazon Applications (Items 7 and 8); and (iv) internal communications of the GAC concerning the Amazon Applications (Items 9, 10, 11, 12, 13, and 14).

On 30 May 2014, the Requester filed Reconsideration Request 14-27, seeking reconsideration of the Resolution. (<https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf>.)

In response to the Requester's DIDP Request, ICANN identified and provided links to all publicly available responsive documents. With respect to some of the requests, ICANN stated that it "has not completed its review of documents that may be responsive to these Items" and that it would "produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP's Defined Conditions for Disclosure as soon as practicable." (*See, e.g.*, Response, Pg. 6; *see also* Response, Pg. 9.) With respect to Item 6, which sought communications between ICANN staff and Professor Passa, ICANN responded that because ICANN staff had no communications with Professor Passa, no responsive documents exist. (Response, Pg. 6.)

On 7 July 2014, the Requester filed the instant Reconsideration Request ("Request 14-35"), seeking reconsideration of ICANN's response to its DIDP Request. In particular, the Requester claims that the DIDP Response is "facially inadequate" and inconsistent with DIDP procedures and ICANN's Articles of Incorporation, Bylaws, and Affirmation of Commitments. The Requester's claims are unsupported, as the Requester has failed to demonstrate that ICANN acted in contravention of established policy or procedure in responding the DIDP Request. The BGC therefore concludes that Request 14-35 be denied.

II. Facts.

A. Background Facts.

The Requester applied for .AMAZON and related internationalized domain names (“IDNs”) in Japanese and Chinese (collectively, “Amazon Applications”).

On 12 March 2013, ICANN’s Independent Objector (“IO”) filed a Community Objection to the Amazon Applications on behalf of the “Amazon Community,” i.e., the community of “South-American region with the same English name around the Amazon River.” (*See* Determination on Community Objection ¶¶ 40, 59, *available at* <http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>.)

On 11 April 2013, in its Beijing Communiqué, the GAC identified .AMAZON and the related IDNs as strings that warranted further GAC consideration and advised the Board not to proceed beyond Initial Evaluation on those strings (“GAC Beijing Advice”). (Beijing Communiqué, *available at* <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>.)

On 18 July 2013, in its Durban Communiqué, the GAC informed the Board that it had reached consensus on GAC Objection Advice on .AMAZON and the related IDNs (“GAC Durban Advice”). (Durban Communiqué, *available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>.)

On 27 January 2014, the ICC³ Panel appointed to hear the IO’s Community Objection to the Amazon Applications rendered its Expert Determination. The Panel found in favor of the Requester. Specifically, the Panel determined that the IO had “not shown that there is a

³ International Chamber of Commerce.

substantial opposition to [the Applications] within [the Amazon Community] or that the [the Applications] would lead to substantial detriment.” (Expert Determination ¶ 107.)

On 7 April 2014, the NGPC provided the Requester and the GAC with an independent, third-party report it had commissioned from French Law Professor Jérôme Passa regarding specific issues of law raised by the Amazon Applications (“Expert Analysis”). (See <https://www.icann.org/en/system/files/correspondence/crocker-to-dryden-07apr14-en.pdf>.)

On 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 (“Resolution”), accepting the GAC Durban Advice and determining that the Amazon Applications should not proceed. The NGPC noted that “[its] decision is without prejudice to the continuing efforts by [the Requester] and members of the GAC to pursue dialogue on the relevant issues.” (<https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#/2.b>)

On 23 May 2014, the Requester filed its DIDP Request, seeking “all documents directly and indirectly relating to (1) the balance of the competing interests of each factor considered by the [NGPC] in approving [the Resolution] . . . and (2) the [GAC] advice in relation to the Amazon Applications.” (DIDP Request, Pg. 1.) Specifically, the Requester sought:

1. All communications between individual members of ICANN’s Board and GAC representatives or other government officials acting as GAC representatives directly or indirectly relating to any of the Amazon Applications;
2. All communications between ICANN’s Board and the GAC directly or indirectly relating to any of the Amazon Applications;
3. All communications between individual members of ICANN’s Board and ICANN’s Staff directly or indirectly relating to any of the Amazon Applications;
4. All communications between individual members of ICANN’s Staff directly or indirectly relating to any of the Amazon Applications;
5. All communications between individual members of ICANN’s Board directly or indirectly relating to any of the Amazon Applications;

6. All communications between individual members of ICANN Staff and the Independent Expert M. Jérôme Passa directly or indirectly relating to any of the Amazon Applications;
7. All communications between individual members of ICANN Staff and/or the ICANN Board and the Independent Objector M. Alain Pellet directly or indirectly relating to any of the Amazon Applications;
8. All communications between individual members of ICANN Staff and the Independent Objector M. Alain Pellet directly or indirectly relating to ICANN policies around conflicts of interest and/or M. Pellet's ongoing representation of governments;
9. All GAC deliberations from behind closed doors directly or indirectly relating to any of the Amazon Applications;
10. All GAC communications, including but not limited to a GAC vote on whether or not the GAC could obtain consensus against any of the Amazon Applications during the April 2013 ICANN meeting in Beijing;
11. All GAC communications, including but not limited to the GAC's inability to obtain consensus against any of the Amazon Applications during the April 2013 ICANN Meeting in Beijing;
12. All GAC communications, including but not limited to communications directly or indirectly relating to the decision to hold another vote on the Amazon Applications during the April 2013 ICANN Meeting in Durban;
13. All GAC communications directly or indirectly relating to the decision to make the GAC deliberations during the April 2013 ICANN Meeting in Beijing closed;
14. All GAC communications directly or indirectly relating to the Amazon Applications between the April 2013 ICANN Meeting in Beijing and the July 2013 ICANN Meeting in Durban.

(Id., Pgs. 1-2.)

On 30 May 2014, the Requester filed Reconsideration Request 14-27, seeking reconsideration of the Resolution. (<https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf>.)

On 22 June 2014, ICANN responded to the Requester's DIDP Request. ICANN identified and provided links to all publicly available documents responsive to the DIDP Request. With respect to Items 1-5 and 7-14, all of which could potentially involve responsive documents

within ICANN’s custody or control, ICANN stated that it “has not completed its review of documents that may be responsive to these Items” and that it would “produce all responsive documents, if any, that are not already publicly available or otherwise subject to any of the DIDP’s Defined Conditions for Disclosure as soon as practicable.” (*See, e.g.*, Response, Pg. 6; *see also* Response, Pg. 9.) With respect to Item 6, which sought communications between ICANN staff and Professor Passa, ICANN responded that because ICANN staff had no communications with Professor Passa, no responsive documents exist. (Response, Pg. 6.)

On 7 July 2014, the Requester filed Request 14-35, seeking reconsideration of ICANN’s response to its DIDP Request.

B. The Requester’s Claims.

The Requester contends that reconsideration is warranted because ICANN staff violated established policy and procedure in responding to the Requester’s DIDP Request by:

1. Making “unfounded” objections based on scope and the time period for which documents were requested, (Request 14-35, § 8, Pgs. 4-5);
2. Giving “contradictory” responses, (*Id.*, § 8, Pgs. 5-6);
3. “[A]bus[ing]” the DIDP Defined Conditions of Nondisclosure Policy by “broadly assert[ing] privilege over any potentially responsive documents,” (*Id.*, § 8, Pgs. 6-7);
4. Refusing to produce responsive documents within ICANN’s custody and control, (*Id.*, § 8, Pgs. 7-8);
5. Improperly responding to Items 9-14 of the DIDP Request, including by failing to explicitly indicate whether there are documents responsive to those Items, (*Id.*, § 8, Pgs. 8-9); and

6. “[P]resent[ing] no compelling reason for confidentiality,” (*Id.*, § 8, Pgs. 10-11).

C. Relief Requested.

The Requester asks the Board to require ICANN staff to: (i) finish their review of potentially responsive documents; (ii) endeavor to collect documents “indirectly” under ICANN’s custody and control; (iii) produce a privilege log “identifying the documents responsive to the DIDP Request and stating the specific grounds for privilege asserted;” (iv) produce redacted versions of privileged documents where possible; and (v) “provide an explanation identifying specific reasons why withholding documents outweighs the public interest in disclosure.” (Request 14-35, § 8, Pgs. 11-12). The Requester also asks that in considering the DIDP Request, the Board reach out to “any necessary parties,” including the GAC and the Independent Objector, “to determine whether any documents responsive to the DIDP Request exist.” (*Id.* § 8, Pg. 13.)

III. Issues.

In view of the claims set forth in Request 14-35, the issues for reconsideration are whether ICANN staff violated established policy or procedure in responding to the Requester’s DIDP Request by:

1. Making “unfounded” objections based on scope and time period for which documents were requested, (Request 14-35, § 8, Pgs. 4-5);
2. Giving “contradictory” responses, (*Id.*, § 8, Pgs. 5-6);
3. “[A]bus[ing]” the DIDP Defined Conditions of Nondisclosure Policy by “broadly assert[ing] privilege over any potentially responsive documents,” (*Id.*, § 8, Pgs. 6-7);
4. Refusing to produce responsive documents within ICANN’s custody and control,

(*Id.*, § 8, Pgs. 7-8);

5. Improperly responding to Items 9-14 of the DIDP Request, including by failing to explicitly indicate whether there are documents responsive to those Items, (*Id.*, § 8, Pgs. 8-9); and
6. “[P]resent[ing] no compelling reason for confidentiality,” (*Id.*, § 8, Pgs. 10-11).

IV. The Relevant Standards for Evaluating Reconsideration Requests and the Documentary Information Disclosure Policy.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.⁴ (Bylaws, Art. IV, § 2.) Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board or the NGPC agrees to the extent that the BGC deems that further consideration by the Board or NGPC is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.

A principal element of ICANN’s approach to transparency and information disclosure is the commitment to make publicly available on its website a comprehensive set of materials concerning ICANN’s operational activities as a matter of course. In addition to making many documents public as a matter of course, the DIDP allows community members to request documentary information “concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control,” that is not already publicly available. (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

⁴ Article IV, § 2.2 of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.

ICANN reserves the right to withhold documents if they fall within any of ICANN's Defined Conditions for Nondisclosure ("Nondisclosure Conditions"), which include, among others: (i) "[i]nformation provided by or to a government or international organization . . . in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party; (ii) "[i]nternal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process . . .;" (iii) "[i]nformation exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates . . .;" or (iv) "[i]nformation subject to the attorney-client, attorney work product privilege, or any other applicable privilege." (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) In addition, ICANN may refuse "[i]nformation requests: (i) which are not reasonable; (ii) which are excessive or overly burdensome; (iii) complying with which is not feasible; or (iv) [which] are made with an abusive or vexatious purpose or by a vexatious or querulous individual." (*See id.*)

ICANN staff has the discretion to disclose documents that fall within one of the Nondisclosure Conditions if it "determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure." (*Id.*) Finally, the DIDP does not require ICANN staff to "create or compile summaries of any documented information," including logs of documents withheld under one of the Nondisclosure Conditions. (*Id.*)

V. Analysis and Rationale.

A. ICANN Staff’s Imposition of a Relevant Time Period on the DIDP Request Does Not Support Reconsideration.

The DIDP Request did not specify any time period for which responsive documents were sought. As such, in its Response, ICANN explained that the lack of any relevant time period identified by the Requester rendered the DIDP Request overbroad. ICANN stated that “[b]ecause [the Requester] submitted its [A]pplications on 23 March 2012, ICANN understands the relevant time period as including documents created from 23 March 2012 to the present.” (*See, e.g.*, DIDP Response at 5, 7.)

The Requester appears to agree with the manner in which ICANN staff interpreted the relevant time period for purposes of the Requester’s DIDP Request, conceding that “a timeframe post-dating March 23, 2012, is neither excessive nor overly burdensome.” (Request 14-35, § 8, Pgs. 4-5.) As such, to the extent the Request challenges ICANN staff’s imposition of a relevant time period on the DIDP Request, reconsideration is not supported.

Further, the Requester does not identify any policy or procedure that ICANN purportedly violated in this regard. Nor could it. Pursuant to the DIDP, ICANN is obligated to respond only to “reasonable” document requests. ICANN staff plainly has the discretion to state that requests that are devoid of any reasonable time and scope limitations are overbroad. (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) The Requester’s claim that ICANN’s “objections based on scope and timeframe are unfounded” is therefore unsupported and the Requester has not stated a basis for reconsideration with respect to ICANN staff’s imposition of a time limitation on the DIDP Request.

B. The Requester’s Claim that ICANN’s DIDP Response is Contradictory and Inadequate is Unsupported.

The Requester claims that ICANN’s Response to the DIDP Request is “contradictory” and “grossly inadequate” because ICANN “admits that its review of potentially responsive documents is incomplete” but also “claims that no responsive documents exist or would be disclosed at any rate.” (Request 14-35, § 8, Pgs. 5-6.) The Requester’s claim is unsupported.

The DIDP Response states that ICANN’s review of documents “thus far” showed that those responsive documents that had not been previously publicly disclosed on ICANN’s website fell within certain Nondisclosure Conditions and were therefore not appropriate for disclosure. (See Response, Items 1-5, Pg. 5; *Id.*, Items 7-8, Pg. 8.) The DIDP Response also makes clear that, with respect to certain Items in the DIDP Request, “ICANN has not completed its review of documents that may be responsive” and that “ICANN continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any [Nondisclosure Conditions].” (See DIDP Response, Items 1-5, Pg. 5; *Id.*, Items 7-8, Pg. 8; *Id.*, Items 9-14, Pg. 9.)⁵ Stating that those responsive documents that ICANN staff has already reviewed are subject to Nondisclosure Conditions is not inconsistent with stating that ICANN staff has not yet completed its search for responsive documents. As such, the Requester has not stated a proper basis for reconsideration with respect to its claim that the DIDP Response is “contradictory” and “inadequate.”

The BGC further notes that although ICANN continues its review of potentially responsive documents, many of the items appear to request documents facially subject to ICANN’s Nondisclosure Conditions. For example, Item 5, which requests “communications

⁵ As the Requester concedes, the DIDP does not require ICANN staff to complete its review of documents within 30 days. (Request 14-35, § 8, Pg. 5.) Instead, the DIDP requires only that ICANN staff “respond, to the extent feasible, to reasonable requests within 30 calendar days of receipt of the request. If that time frame will not be met, ICANN will inform the requester in writing as to when a response will be provided, setting forth the reasons necessary for the extension of time to respond.” (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) ICANN staff complied with that procedure by responding to the DIDP Request within 30 days and additionally explaining that its search was ongoing as to documents responsive to certain Items in the DIDP Request.

between individual members of ICANN’s Board” relating to the Amazon Applications, encompasses “internal information that, if disclosed, would be likely to compromise the integrity of ICANN’s deliberative and decision-making process . . . including internal documents, memoranda, and other similar communications to or from ICANN Directors.” (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) Similarly, Items 10-14, all of which request “GAC communications,” encompass “information exchanged, prepared for, or derived from the deliberative or decision-making process between ICANN . . . [and] other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN . . . [and] other entities” (*See id.*) Insofar as ICANN’s continued review uncovers responsive documents that are subject to Nondisclosure Conditions, those documents will not be produced.

C. ICANN Staff Appropriately Applied the DIDP Nondisclosure Conditions.

The Requester claims that “[d]espite [the Requester’s] explanation in its [DIDP Request] that the information sought did not meet any of the [Nondisclosure Conditions], ICANN staff withheld documents on such grounds.” (Request 14-35, § 8, Pg. 6.) The Requester’s claims do not support reconsideration.

The DIDP identifies a number of “conditions for the nondisclosure of information,” such as documents containing “[i]nformation subject to the attorney-client [privilege], attorney work product privilege, or any other applicable privilege” and/or containing “[i]nternal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications.” (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) It is ICANN’s responsibility

to determine whether requested documents fall within those Nondisclosure Conditions. The fact that the Requester provided its own view of how it believed ICANN should evaluate the DIDP Request does not bind ICANN to accept the Requester's position.

As noted above, many of the items in the DIDP Request appear to seek documents facially subject to Nondisclosure Conditions protecting information that, if disclosed "would or would be likely to compromise the integrity of . . . [the] deliberative and decision-making process." Thus far, ICANN's review of responsive documents has revealed documents that it has determined to be subject to those Nondisclosure Conditions and/or to the Nondisclosure Condition protecting information subject to the attorney-client privilege and/or other privileges. (*See, e.g.*, DIDP Response, Pg. 6.) The Requester's substantive disagreement with that determination is not a basis for reconsideration.

The Requester also claims that the DIDP Response was inadequate because it "merely recites the [Nondisclosure Conditions] verbatim." (Request 14-35, § 8, Pg. 6.) However, the Requester cites to no policy or procedure (because none exists) requiring ICANN staff to provide a further explanation for its application of the Nondisclosure Conditions than what is already set forth in those stated Conditions, which were narrowly crafted when the DIDP was adopted.

Because the Requester provides no evidence that ICANN staff failed to comply with the DIDP or its procedures, the Requester has not stated proper grounds for reconsideration.

D. The Requester's Claim that ICANN Refused to Produce Responsive And Non-Privileged Documents Within Its Custody or Control is Unfounded.

Item 6 of the DIDP Request seeks "[a]ll communications *between individual members of ICANN Staff* and the Independent Expert M. Jérôme Passa directly or indirectly relating to any of the Amazon Applications." (DIDP Request, Pg. 2) (emphasis added.) The DIDP Response states that because "Professor Passa was retained by ICANN's counsel, and ICANN staff did not

have any communications with him regarding the scope of his work or the substance of his conclusions . . . no responsive documents exist within ICANN.” (Response, Pg. 6.)

The Requester disputes this Response, arguing that it “implies that documents in possession of ICANN’s legal representative are outside of ICANN’s custody and/or control.” (Request 14-35, § 8, Pgs. 8-9.) Contrary to what the Requester argues, the Response does not state that responsive documents exist outside of ICANN’s custody or control. Rather, the Response states that because “ICANN did not have any communications with” Professor Passa, there are no documents responsive to a request for communications between Professor Passa and “individual members of ICANN Staff.” (DIDP Request, Pg. 2; Response, Pg. 3.) As such, the Requester has not stated a basis for reconsideration with respect to ICANN’s response to Item 6 of its DIDP Request.⁶

The Requester also disputes ICANN’s response to Items 7 and 8 of the DIDP Request, which seek documents relating to the Independent Objector’s objection to the Amazon Applications. In its Response, ICANN explained that other than “monitor[ing] the progress of all [objection] proceedings and [] tak[ing] steps, where appropriate, to coordinate with [dispute resolution service providers (“DSRPS”)] regarding individual applications for which objections are pending before more than one DRSP . . . ICANN is not [] involved in the objection proceedings and . . . generally does not communicate directly with the parties regarding the objection during the course of the proceedings.” (DIDP Response, Pgs. 7-8.) ICANN further responded that while “[t]hus far, [its] review of documents that may be responsive to Items 7 and 8 show that any responsive document that has not already been publicly disclosed on ICANN’s website is not appropriate for disclosure pursuant to the [Nondisclosure Conditions],” ICANN

⁶ In any event, documents of ICANN’s counsel are subject to the attorney-client privilege and other applicable privileges.

“continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to any [Nondisclosure Conditions].” (*Id.*, Pg. 8.)

Contrary to the Requester’s claim, ICANN’s response to Items 7 and 8 does not indicate any intent to either: (i) withhold responsive documents that are within ICANN’s custody and are not either publicly available or otherwise subject to Nondisclosure Conditions; or (ii) withhold documents based on “an argument that parties to the objection proceedings may have received certain documents.” (Request 14-35, § 8, Pg. 8.) As such, the Requester also has not stated a basis for reconsideration with respect to ICANN’s response to Items 7 and 8 of its DIDP Request.

E. ICANN’s Response to Items 9-14 of the DIDP Request is Consistent with ICANN Policy and Procedure.

The Requester disputes ICANN’s response to Items 9-14 of the DIDP Request, each of which seeks documents relating to “GAC deliberations” and/or “GAC communications” regarding the Beijing Advice, the Durban Advice, and the Amazon Applications. (Request 14-35, § 8, Pgs. 8-9.) Specifically, the Requester argues that “[i]t is unclear from [the] Response to Items 9-14 whether or not it is ICANN Staff’s position that it is not in possession of any relevant documents responsive to such requests.” (Request 14-35, § 8, Pg. 9.) The Requester’s claim is unsupported.

In its Response, ICANN explained that the GAC is an “advisory committee” which membership is “open to all national governments and distinct economies recognized in international fora,” and that because “ICANN does not hold membership in the GAC and does not participate or otherwise get involved in the GAC’s operations or decision-making processes . . . unless the GAC provided ICANN with copies of documents or correspondence concerning its communications . . . ICANN would not be in possession of such documents.”

(Response, Pg. 9.) Nonetheless, contrary to what the Requester argues, ICANN made clear that it has “not yet completed its search for [responsive] documents,” and that while “[t]hus far, ICANN’s search for responsive documents shows that there are no responsive documents within ICANN’s possession, custody, or control,” ICANN “continues to search for additional possibly responsive documents and will produce all responsive documents, if any, that are not already publicly available or otherwise subject to [Nondisclosure Conditions].” (Response, Pg. 9.)

The Requester also suggests that certain ICANN employees “seem primarily or substantially focused on work with the GAC,” and that documents within their possession are within the custody and control of ICANN. However, as noted, the Response specifically states that ICANN’s search for responsive documents has not yet concluded. If ICANN discovers responsive documents that are in the custody or control of ICANN, and which are not already publicly available or otherwise subject to Nondisclosure Conditions, ICANN will produce them.

Finally, the Requester objects to ICANN’s statement that “internal GAC documents . . . do not constitute ‘documents concerning ICANN’s operational activities’ and are therefore not appropriately subject to the DIDP.” (Request 14-35, § 8, Pg. 9; *see also* Response, Pg. 9; <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) The Requester claims that because the GAC’s “structure is created directly from the ICANN Bylaws” (Request 14-35, § 8, Pg. 9), the operational activities of the GAC necessarily constitute operational activities of ICANN subject to the DIDP. But as explained in the DIDP Response, the GAC is an advisory committee to ICANN and its role is to “consider and provide advice on the activities of ICANN as they relate to concerns of governments.” (Bylaws, Art. XI, § 2.1.) ICANN is not a member of the GAC and is not involved in the GAC’s operations or decision-making processes. As such, the

Requester's claim that any internal GAC documents somehow constitute the operational activities of ICANN is unfounded and does not support reconsideration.⁷

F. ICANN Staff Properly Withheld Responsive Documents that Fell within the DIDP's Nondisclosure Conditions.

Under the DIDP, documents that fall within the Nondisclosure Conditions “may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure.” (*See* <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) The Requester argues that in its DIDP Request it articulated a “need for disclosure [] outweighing any harm” by stating “there can be no harm from disclosing the information,” and that “unless the requested information is published, the ICANN community will have no way to evaluate whether ICANN has met its obligations to act fairly, for the benefit of the community, and in accord with its own policies.” (Request 14-35, § 8, Pg. 10; DIDP Request, Pg. 3.)

It is ICANN's responsibility to determine whether requested documents fall within Nondisclosure Conditions and whether, in a particular circumstance, the public interest in disclosing information outweighs the harm that may be caused by such disclosure. The fact that the Requester believes that there “can be no harm from disclosing the information” does not bind ICANN to accept the Requester's analysis.

ICANN determined that the potential harm outweighed the public interest in the

⁷ As to Items 9-14, as well as the other Items in the DIDP Request, the Requester argues that “[i]f ICANN Staff contends that the universe of documents responsive to an individual DIDP Request consists of documents that are entirely public, ICANN should identify each of those public documents and then indicate explicitly in writing that there are no additional documents responsive to that Request.” (Request 14-35, § 8, Pg. 9.) Although it is not required to do so by the DIDP, the DIDP Response identifies and provides links to responsive documents that are publicly available. (*See* DIDP Response, Pgs. 2-5.) Further, for those Items where ICANN staff's review of potentially responsive documents was complete, the Response explicitly stated that there were no additional, non-privileged documents responsive to those Items. (*See, e.g.*, DIDP Response, Pg. 6.) ICANN was clearly not able to make such a statement with respect to Items for which its review of potentially responsive documents remains ongoing.

disclosure of certain documents. For example, as noted above, many of the items in the DIDP Request seek documents whose disclosure “would or would be likely to compromise the integrity of . . . [the] deliberative and decision-making process” or would implicate ICANN’s attorney-client privilege. The Requester identifies no policy or procedure that ICANN staff violated in making its determination regarding whether the potential harm of disclosure outweighs the public interest of disclosure, and the Requester’s substantive disagreement with that determination is not a basis for reconsideration.

VI. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Request 14-35. As there is no indication that ICANN violated any policy or procedure with respect to its response to the Requester’s DIDP Request, and given that portions of Request 14-35 are simply premature as ICANN has stated that it is still reviewing documents, the instant Request 14-35 should not proceed.

In accordance with Article IV, Section 2.15 of the Bylaws, the BGC concludes that this determination is final and that no further consideration by the Board (or the New gTLD Program Committee) is warranted.

In terms of timing of the BGC’s Recommendation, it notes that Section 2.16 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical. (Bylaws, Art. IV, § 2.16.) To satisfy the thirty-day deadline, the BGC would have to have acted by 6 August 2014. Due to the volume of Reconsideration Requests received within recent months the first practical opportunity for the BGC to take a review this Request was on 22 August 2014.

EXHIBIT C-068

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Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)
- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)
- ▶ [Accountability & Transparency \(/resources/pages/accountability-2012-02-25-en\)](#)
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- ▶ [Registrars \(/resources/pages/registrars-0d-2012-02-25-en\)](#)
- ▶ [Registries \(/resources/pages/registries-46-2012-02-25-en\)](#)
- ▶ [Operational Metrics \(/resources/pages/metrics-gdd-performance-2015-01-30-en\)](#)
- ▶ [Identifier Systems Security, Stability \(Security, Stability and Resiliency\) and Resiliency \(IS-SSR\) \(/resources/pages/is-ssr-2014-11-24-en\)](#)

Approved Resolutions | Meeting of the New gTLD (generic Top Level Domain) Program Committee

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08 Sep 2014

1. Main Agenda:

- a. [Approval of Minutes](#)
- b. [Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC \(Governmental Advisory Committee\) Advice: Updates and Actions](#)
- c. [BGC Recommendation on Reconsideration Request 14-27. Amazon EU S.a.r.l.](#)
- d. [Perceived Inconsistent String Confusion Expert Determinations](#)
- e. [Any Other Business](#)

1. Main Agenda:

- a. [Approval of Minutes](#)
Resolved (2014.09.08.NG01), the Board New gTLD (generic Top Level Domain) Program Committee (NGPC) approves the minutes of its 21 June, 18 July and 30 July 2014 NGPC meetings.
- b. [Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC \(Governmental Advisory Committee\) Advice: Updates and Actions](#)
Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").
Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").
Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

ccTLDs (/resources/pages/cclds-21-2012-02-25-en)
▶ Internationalized Domain Names (/resources/pages/idn-2012-02-25-en)
▶ Universal Acceptance Initiative (/resources/pages/universal-acceptance-2012-02-25-en)
▶ Policy (/resources/pages/policy-01-2012-02-25-en)
▶ Public Comment (/public-comments)
▶ Contact (/resources/pages/contact-2012-02-06-en)
▶ Help (/resources/pages/help-2012-02-03-en)

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 50 meeting in London and issued a Communiqué on 25 June 2014 ("London Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC (Governmental Advisory Committee)'s advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013, 5 February 2014 and 14 May 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to certain remaining items of GAC (Governmental Advisory Committee) advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, the Singapore Communiqué, and new advice in the London Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2014.09.08.NG02), the NGPC adopts the scorecard titled "GAC (Governmental Advisory Committee) Advice (Beijing, Durban, Buenos Aires, Singapore, and London): Actions and Updates (8 September 2014)", attached as [Annex 1 \(/en/system/files/files/resolutions-new-gld-annex-1-08sep14-en.pdf\)](#) [PDF, 429 KB] to his Resolution, in response to open items of Beijing, Durban, Buenos Aires, Singapore and London GAC (Governmental Advisory Committee) advice.

Rationale for Resolution on 2014.09.08.NG02

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws [https://www.icann.org/resources/pages/bylaws-2012-02-25-en - XI \(/resources/pages/bylaws-2012-02-25-en#XI\)](https://www.icann.org/resources/pages/bylaws-2012-02-25-en-XI) 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 the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014), and its London Communiqué dated 25 June 2014. 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 policies. 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 NGPC has previously addressed items of the GAC (Governmental Advisory Committee)'s Beijing, Durban, Buenos Aires, and Singapore advice, but there are some items that the NGPC continues to work through. Additionally, the GAC (Governmental Advisory Committee) issued new advice in its London Communiqué that relates to the New gTLD (generic Top Level Domain) Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) advice, and new items of advice from London as described in the [scorecard \(/en/system/files/files/resolutions-new-gld-annex-1-08sep14-en.pdf\)](#) [PDF, 429 KB] (dated 8 September 2014).

As part of its consideration of the GAC (Governmental Advisory Committee) advice, ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC (Governmental Advisory Committee) advice was posted on 18 April 2013 <http://newtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>); the

Durban GAC (Governmental Advisory Committee) advice was posted on 1 August 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en>>; the Buenos Aires GAC (Governmental Advisory Committee) advice was posted on 11 December 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-11dec13-en>>; the Singapore advice was posted on 11 April 2014 <http://newgtlds.icann.org/en/announcements-and-media/announcement-11apr14-en>; and the London advice was posted on 14 July 2014 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-14jul14-en>>. The complete set of applicant responses are provided at: <<http://newgtlds.icann.org/en/applicants/gac-advice/>>.

In addition, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>. The NGPC has considered the applicant responses in addition to the community feedback on how ICANN (Internet Corporation for Assigned Names and Numbers) could implement the GAC (Governmental Advisory Committee)'s safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC (Governmental Advisory Committee) advice.

As part of its deliberations, the NGPC 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_2_version=1&modificationDate=1375787122000&api=v2 (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_2_version=1&modificationDate=1375787122000&api=v2) [PDF, 237 KB]
- GAC (Governmental Advisory Committee) Durban Communiqué: https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_2_version=1&modificationDate=1374215119858&api=v2 (https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_2_version=1&modificationDate=1374215119858&api=v2) [PDF, 103 KB]
- GAC (Governmental Advisory Committee) Buenos Aires Communiqué: https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_2_version=1&modificationDate=1385055905332&api=v2 (https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique_2_version=1&modificationDate=1385055905332&api=v2) [PDF, 97 KB]
- GAC (Governmental Advisory Committee) Singapore Communiqué (as amended): https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2 (https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore_5B1%5D.pdf?version=1&modificationDate=1397656205000&api=v2) [PDF, 147 KB]
- GAC (Governmental Advisory Committee) London Communiqué: <https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf?version=1&modificationDate=1406852169128&api=v2> (<https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf?version=1&modificationDate=1406852169128&api=v2>) [PDF, 140 KB]
- Applicant responses to GAC (Governmental Advisory Committee) 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]

In adopting its response to remaining items of Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) advice, and the new London advice, the NGPC considered the applicant comments submitted, the GAC (Governmental Advisory Committee)'s advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws. The adoption of the GAC (Governmental Advisory Committee) advice as provided in the attached scorecard will assist with resolving the GAC (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible.

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).

As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s organizational administrative function, ICANN (Internet Corporation for Assigned Names and Numbers) posted the London Communiqué and officially notified applicants of the advice on 14 July 2014. The Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 April 2014, 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

c. BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.a.r.l.

Whereas, Amazon EU S.a.r.l. ("Requester") filed Reconsideration Request 14-27 asking the New gTLD (generic Top Level Domain) Program Committee ("NGPC") to: (i) reverse Resolution 2014.05.14.NG03; (ii) reject the Governmental Advisory Committee (Advisory Committee)'s advice on .AMAZON and the related internationalized domain names (collectively, the "Amazon Applications"); and (iii) direct ICANN (Internet Corporation for Assigned Names and Numbers) staff to proceed with the Amazon Applications.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-27.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration and the NGPC agrees.

Resolved (2014.09.08.NG03), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-27, which can be found at <https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> (<https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf>) [PDF, 177 KB].

Resolution for Resolution 2014.09.08.NG03

i. Brief Summary

Amazon EU S.a.r.l. (the "Requester") applied for .AMAZON and related internationalized domain names ("IDNs (Internationalized Domain Names)") in Japanese and Chinese (the "Amazon Applications"). In its Durban Communiqué, the Governmental Advisory Committee (Advisory Committee) ("GAC (Governmental Advisory Committee)") informed the Board that it had reached consensus advice on .AMAZON and the related IDNs (Internationalized Domain Names) ("GAC (Governmental Advisory Committee) Durban Advice"). After significant and careful consideration, on 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 ("Resolution") accepting the GAC (Governmental Advisory Committee) Durban Advice and directed that the Amazon Applications should not proceed.

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the GAC (Governmental Advisory Committee) Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider other material information in accepting the advice.

The BGC concluded that the Requester has not stated proper grounds for reconsideration. Specifically, the BGC concluded that: (i) there is no evidence that the NGPC's actions in adopting the Resolution support reconsideration; (ii) the Requester has not demonstrated that the NGPC failed to consider any material information in passing the Resolution or that the NGPC relied on false or inaccurate material

information in passing the Resolution; and (iii) the NGPC properly considered the GAC (Governmental Advisory Committee) Durban Advice in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws and the procedures set forth in the gTLD (generic Top Level Domain) Applicant Guidebook. Therefore, the BGC recommended that Reconsideration Request 14-27 be denied (and the entirety of the BGC Recommendation is incorporated by reference as though fully set forth in this rationale). The NGPC agrees.

ii. Relevant Background Facts

The Requester applied for the Amazon Applications.

On 17 June 2012 the GAC (Governmental Advisory Committee) Chair sent a letter to ICANN (Internet Corporation for Assigned Names and Numbers)'s Board, which included the following:

Given the delays in the gTLD (generic Top Level Domain) application process, the timing of the upcoming ICANN (Internet Corporation for Assigned Names and Numbers) meetings, and the amount of work involved, **the GAC (Governmental Advisory Committee) advises the Board** that it will not be in a position to offer any new advice on the gTLD (generic Top Level Domain) applications in 2012. For this reason, the GAC (Governmental Advisory Committee) is considering the implications of providing any GAC (Governmental Advisory Committee) advice on gTLD (generic Top Level Domain) applications. These considerations are not expected to be finalized before the Asia-Pacific meeting in April 2013.¹

On 20 November 2012, the GAC (Governmental Advisory Committee) representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications.²

On 14 February 2013, the GAC (Governmental Advisory Committee) declared that it would be posting a list of applications that the GAC (Governmental Advisory Committee) would consider as a whole during the GAC (Governmental Advisory Committee) meeting to be held in Beijing in April 2013.³ On 25 February 2013, the GAC (Governmental Advisory Committee) further stated that it was "still compiling and processing inputs received from GAC (Governmental Advisory Committee) members" and would post further information as soon as possible.⁴

In March 2013, the Requester wrote to the Board regarding its Public Interest Commitments with respect to the Amazon Applications,⁵ and ICANN (Internet Corporation for Assigned Names and Numbers)'s Independent Objector ("IO") objected to the Amazon Applications on behalf of the "Amazon Community," *i.e.*, the "South-American region with the same English name around the Amazon River" ("Community Objection").⁶

On 11 April 2013, in its Beijing Communiqué the GAC (Governmental Advisory Committee) identified the Amazon Applications as warranting further GAC (Governmental Advisory Committee) consideration and advised the Board not to proceed with those applications beyond Initial Evaluation ("GAC (Governmental Advisory Committee) Beijing Advice").⁷ The Requester responded to the GAC (Governmental Advisory Committee) Beijing Advice arguing that the GAC (Governmental Advisory Committee) had not reached consensus advice on the Applications, and that the New gTLD (generic Top Level Domain) Applicant Guidebook ("Guidebook") did not provide for ICANN (Internet Corporation for Assigned Names and Numbers) to delay specific applications for further GAC (Governmental Advisory Committee) consideration.⁸ The Requester also argued that it had relied on the Guidebook's provisions regarding geographic strings, which included a provision for Community Objections to geographic strings, and that the GAC (Governmental Advisory Committee) Beijing Advice represented a "new attempt to isolate strings that raise geographic issues" and acted "as an effective veto on Community-driven policies."⁹

In early July 2013, the U.S. Government stated its intent to "remain neutral" with respect to the Amazon Applications, "thereby allowing [the] GAC (Governmental Advisory Committee) to present consensus objections on these strings to the Board, if no other government objects."¹⁰ Also in early July 2013, the Requester wrote to the Board about its ongoing efforts to negotiate with Brazil and Peru regarding the Amazon Applications. The Requester also submitted proposed Public Interest Commitments.¹¹

On 18 July 2013, in its Durban Communiqué, the GAC (Governmental Advisory Committee) informed the Board that it had reached consensus on GAC (Governmental Advisory Committee) Objection Advice on the Amazon Applications.¹²

On 23 August 2013, the Requester responded to the GAC (Governmental Advisory Committee) Durban Advice, arguing that it: "(1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN (Internet Corporation for Assigned Names and Numbers)'s Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years."¹³

On 3 December 2013, the Requester sent another letter to the Board, providing further detail and clarification regarding the Requester's ongoing attempts to negotiate with the governments of Brazil and Peru regarding the Amazon Applications.¹⁴ Just about a month later the Requester wrote to the Board contending that the Amazon Applications do not fall within any of the five Guidebook categories of "geographic names" requiring government or public authority support.¹⁵

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the GAC (Governmental Advisory Committee) Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider material information in accepting the advice.¹⁶

On 26 July 2014, the BGC asked the Requester for clarification regarding its allegation that the NGPC considered false or inaccurate material information in passing the Resolution. Amazon responded to the BGC's request clarifying the allegedly false or inaccurate material information that Amazon claims the NGPC relied upon in passing the Resolution. ("2 August Letter").¹⁷

III. Issues

The issues for reconsideration are whether the NGPC failed to consider material information or relied on false or inaccurate material information in:

1. Accepting the GAC (Governmental Advisory Committee) Durban Advice although it was filed after the close of the objection filing period¹⁸;
2. Individually considering the Amazon Applications, although the NGPC should only do so "under exceptional circumstances,"¹⁹;
3. Failing to adhere to appropriate GAC (Governmental Advisory Committee) Governing Principles by applying a "strong presumption" to the GAC (Governmental Advisory Committee) Durban Advice²⁰;
4. Improperly relying on the Early Warning as rationale for the GAC (Governmental Advisory Committee) Durban Advice²¹;
5. Improperly: (i) considering false or inaccurate material information in correspondence submitted from representatives of the governments of Brazil and Peru; and (ii) failing to consider material correspondence and comments from the Requester and other parties²²;
6. Failing to consider material information provided by the United States Government in its July 2013 statement²³;
7. Failing to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications²⁴;
8. Failing to consider the Expert Analysis and the Requester's request for additional studies²⁵;
9. Failing to consider its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws and Articles of Incorporation in accepting the GAC (Governmental Advisory Committee) Durban Advice²⁶; and
10. Failing to consider the fiscal implications of its acceptance of the GAC (Governmental Advisory Committee) Durban Advice.²⁷

IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the BGC to evaluate and, for challenged Board (or NGPC) action, make recommendations to the Board (or NGPC) with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-27 and finds the analysis sound.²⁸

v. Analysis and Rat on e

A. The Requester Has Not Stated a Proper Basis for Reconsideration with Respect to the Timeliness of the GAC (Governmental Advisory Committee) Durban Advice.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the timeliness of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the NGPC should not have accepted the GAC (Governmental Advisory Committee) Durban Advice because that advice was submitted on 18 July 2013, after the 13 March 2013 close of the objection filing period. The Requester, however, neither argues nor provides any evidence demonstrating that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC (Governmental Advisory Committee) Durban Advice. Accordingly, there is no basis for reconsideration.

Further, contrary to what the Requester argues, the NGPC must consider GAC (Governmental Advisory Committee) advice on new gTLDs submitted at any time. Notwithstanding the Guidebook, ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws affirmatively require the Board to consider any issues that the GAC (Governmental Advisory Committee) may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1 i and 2.1.j.) The provisions of the Guidebook regarding the treatment of GAC (Governmental Advisory Committee) Advice do not supplant the requirements of the Bylaws on this subject matter.

B. The Requester Has Not Stated A Proper Basis for Reconsideration With Respect To The NGPC's Consideration Of The Amazon Applications.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of the Amazon Applications. The Requester argues that the NGPC improperly "individually" considered the Amazon Applications failing to explain why the circumstances surrounding its Applications are sufficiently "exceptional" to warrant individual consideration.²⁹ Again, the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in passing the Resolution and therefore has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

In any event, Requester's argument contradicts Section 5.1 of the Guidebook, which explicitly provides for the Board to individually consider any new gTLD (generic Top Level Domain) application, including as the result of GAC (Governmental Advisory Committee) Advice:

The Board reserves the right to individually consider an application for a new gTLD (generic Top Level Domain) to determine whether approval would be in the best interest of the Internet Community. Under exceptional circumstances, the Board may individually consider a gTLD (generic Top Level Domain) application. **For example, the Board might individually consider an application as a result of GAC (Governmental Advisory Committee) Advice on New gTLDs or of the use of an ICANN (Internet Corporation for Assigned Names and Numbers) accountability mechanism.**

(Guidebook, § 5.1) (emphasis added). As the Guidebook makes clear, GAC (Governmental Advisory Committee) Advice is precisely the sort of "exceptional circumstance" that would justify the Board's individual consideration of a gTLD (generic Top Level Domain) application. Further, as discussed above, ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws affirmatively require the Board to consider any issues that the GAC (Governmental Advisory

Committee) may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.)

C. The Requester's Claim that the NGPC Afforded a Strong Presumption to the GAC (Governmental Advisory Committee) Durban Advice Does Not Support Reconsideration.

The BGC concluded, and the NGPC agrees, that the Requester has not stated proper grounds for reconsideration with respect to the alleged presumption applied to the GAC (Governmental Advisory Committee) Durban Advice on the Amazon Applications.

Requester claims that the GAC (Governmental Advisory Committee) Durban Advice should not have created a strong presumption for the ICANN (Internet Corporation for Assigned Names and Numbers) Board that the Amazon Applications should not proceed.³⁰ In support, the Requester contends that because the GAC (Governmental Advisory Committee) Durban Advice was provided after the close of the objection period, it was not provided pursuant to the Guidebook, and thus was not subject to the presumption standards set forth therein regarding GAC (Governmental Advisory Committee) Advice.³¹ Once again, because the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the GAC (Governmental Advisory Committee) Durban Advice, it has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

D. The NGPC Properly Considered the Rationale Given in Early Warnings

The BGC concluded, and the NGPC agrees, that the NGPC properly considered the rationale provided in the GAC (Governmental Advisory Committee) Early Warning submitted on behalf of the governments of Brazil and Peru. The Requester argues that the NGPC improperly considered the rationale given in the Early Warning because, the Requester claims, that rationale "reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC (Governmental Advisory Committee)."³² The Requester's claims do not support reconsideration.

In its rationale for the Resolution, the NGPC stated that although it "d[id] not have the benefit of the rationale relied upon by the GAC (Governmental Advisory Committee) in issuing [the GAC (Governmental Advisory Committee) Durban Advice], the NGPC considered the reason/rationale provided in the GAC (Governmental Advisory Committee) Early Warning submitted on behalf of the governments of Brazil and Peru . . ."³³ The NGPC did not state that it considered or relied on the rationale of the Early Warning to represent the rationale for the GAC (Governmental Advisory Committee) Durban Advice—to the contrary, it explicitly stated that it "d[id] not have the benefit" of that rationale. There simply is no evidence that the NGPC relied on false or inaccurate material information in accepting the GAC (Governmental Advisory Committee) Durban Advice. Further, insofar as the Requester argues that the NGPC failed to consider material information in failing to "conduct further inquiry of the GAC (Governmental Advisory Committee) as to the basis and reason for the consensus advice,"³⁴ nothing in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, the Guidebook, or the GAC (Governmental Advisory Committee)'s Operating Principles requires the GAC (Governmental Advisory Committee) to provide a rationale for its advice.

Finally, the BGC notes that the NGPC did not "rely" on the Early Warning in determining whether to accept the GAC (Governmental Advisory Committee) Durban Advice. Rather, as is reflected in the resolution, the NGPC considered, among other materials, numerous documents, legal advice and letters submitted by the Requester and by other community stakeholders.

E. The NGPC Did Not Rely on False or Inaccurate Material Information or Failure to Consider Material Information in its Consideration of Public Comments and Correspondence to the Board.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC relied on false or inaccurate material information or failed to consider material relevant information with respect to public comments and correspondence to the Board.

The Requester argues that the NGPC: (i) relied on false or inaccurate material information in considering correspondence sent to the Board by the governments of Brazil and Peru; and (ii) failed to consider material information in failing to consider other correspondence, including correspondence sent by the Requester.³⁵

As to consideration of correspondence sent by the governments of Brazil and Peru, the Requester appears to argue that the "NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC (Governmental Advisory Committee) members."³⁶ The claim is unsupported. In its rationale for the Resolution, the NGPC stated only that "considered as part of the NGPC's action" an 11 April 2014 letter from the Vice Minister of Foreign Affairs for Peru, and a 14 April 2014 letter from a Director in the Ministry of External Relations of Brazil. Nowhere does the NGPC state, or even imply, that it took the correspondence from Brazil and Peru as GAC (Governmental Advisory Committee) consensus advice. Furthermore, the Requester cites to no Guidebook or Bylaws provision that prohibits the NGPC from taking into consideration correspondence duly submitted to ICANN (Internet Corporation for Assigned Names and Numbers).

The Requester also argues that, although the 11 April 2014 letter from the Peruvian Government contained false information regarding whether Amazon has an ISO (International Organization for Standardization) 3166-2 code,³⁷ the NGPC "failed to identify any false and inaccurate information contained in the letter."³⁸ However, alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to a decision. The NGPC's rationale does not state that it relied on the Peruvian Government's representation regarding the ISO (International Organization for Standardization) 3166-2 code in deciding to accept the GAC (Governmental Advisory Committee) Durban Advice, and the Requester does not explain how the NGPC did so rely, or how the information is at all relevant.³⁹ Furthermore, the NGPC is not required to identify any and all false or inaccurate information contained in the correspondence it considers and explain that the NGPC did not rely on that specific information in reaching its determination, particularly when that information is not relevant or material to the decision being made.

Finally, in its 2 August Letter responding to the BGC's request for clarification, the Requester argues that the 14 April 2014 letter from the Brazilian government inaccurately states that "all steps prescribed in the gTLD (generic Top Level Domain) Applicant Guidebook in order to object to [the Amazon Applications] . . . have been timely taken by Brazil and Peru . . ."⁴⁰ The Requester claims that this statement is inaccurate because the GAC (Governmental Advisory Committee) Durban Advice was not timely. Again, the NGPC's alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC's determination. And, once again, the Requester does not explain how the NGPC relied upon the Brazilian Government's allegedly inaccurate representation in deciding to accept the GAC (Governmental Advisory Committee) Durban Advice. Further, as is discussed above, the Requester's argument regarding the alleged untimeliness of the GAC (Governmental Advisory Committee) Durban Advice is not a proper basis for reconsideration.⁴¹

The Requester also argues that the NGPC failed to consider material public comments and correspondence. For instance, the Requester argues that, while the NGPC considered the responses of the governments of Brazil and Peru to the Expert Analysis, it did not consider the Requester's response.⁴² However, in its rationale the NGPC explicitly noted that it considered communications it received in response to the Expert Analysis, including the 14 April 2014 response from Scott Hayden, the Requester's Vice President, Intellectual Property, as well as letters from the Peruvian government and the Brazilian government. The Requester identifies no other specific public comment or piece of correspondence that it claims the NGPC failed to consider, and the NGPC's rationale for the Resolution clearly states that its "review of significant materials included, but [was] not limited to," the listed materials.⁴³ In any event, the Requester does not

identify any provision in the Bylaws or Guidebook that would require the NGPC to consider (much less identify and discuss) every comment or piece of correspondence received.⁴⁴

F. The NGPC Did Not Fail to Consider Material Information from the United States Government.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the United States Government's statement.

The Requester argues that the NGPC failed to consider material information by failing to consider the July 2013 statement from the United States Government on geographic indicators.⁴⁵ In its statement, the United States Government expressed its intent to "remain neutral" on the Applications, so as to "allow[] the GAC (Governmental Advisory Committee) to present consensus objections on those strings to the Board, if no other government objects." Nonetheless, the Requester argues that "[t]he statement from the U.S. Government calls into direct question the belief that the GAC (Governmental Advisory Committee) Durban Advice is clearly representative of the consensus adoption of the entire GAC (Governmental Advisory Committee) of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence."⁴⁶

Further, the United States Government's statement does not negate the fact that the GAC (Governmental Advisory Committee) Durban Advice represents consensus GAC (Governmental Advisory Committee) Advice. Pursuant to GAC (Governmental Advisory Committee) Operating Principle 47, "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."⁴⁷ As the statement makes clear, the United States did not object to the GAC (Governmental Advisory Committee) Durban Advice. The mere fact that the United States remained neutral with respect to the GAC (Governmental Advisory Committee) Durban Advice was not material to the NGPC's consideration of that advice.

G. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Determination.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Determination.

The Requester argues that the NGPC improperly failed to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications.⁴⁸ The Requester appears to contend that the Expert Determination was material because: (1) the objections of the Brazilian and Peruvian governments would have been properly raised in the context of a Community Objection—which those governments did not bring; and (2) a Community Objection by those governments would have failed, as is evidenced by the Expert Determination.⁴⁹

GAC (Governmental Advisory Committee) members are not limited to raising objections that could have been raised in, or that meet the standards required to prevail upon, one of the four enumerated grounds for formal objections. (Guidebook Module 3, § 3.2.) Rather, GAC (Governmental Advisory Committee) Advice on new gTLD (generic Top Level Domain) applications is generally "intended to address applications that are identified by national governments to be problematic, e.g., that potentially violate national law or raise sensitivities." (Guidebook Module 3, § 3.1.) GAC (Governmental Advisory Committee) members' discretion with respect to their reasons for objecting to gTLD (generic Top Level Domain) applications is reflected in the fact that the GAC (Governmental Advisory Committee) is not required to issue a rationale for its advice. In any event, the briefing materials of the NGPC's 29 April 2014 and 14 May 2014 meetings reflect that the Expert Determination was considered by the NGPC during its deliberations on the Amazon Applications.⁵⁰

H. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Analysis.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Analysis.

The Requester argues that ICANN (Internet Corporation for Assigned Names and Numbers) instructed Professor Passa "to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN (Internet Corporation for Assigned Names and Numbers) was 'obliged' to grant .AMAZON based on pre-existing trademark registrations," when "[t]he real question is whether, by accepting GAC (Governmental Advisory Committee) advice, which is not rooted in any existing law, ICANN (Internet Corporation for Assigned Names and Numbers) would be violating either national [or] international law."⁵¹

The Guidebook sets forth the parameters in which GAC (Governmental Advisory Committee) Advice will be given under the New gTLD (generic Top Level Domain) Program:

ICANN (Internet Corporation for Assigned Names and Numbers) will consider the GAC (Governmental Advisory Committee) Advice on New gTLDs as soon as practicable. The Board **may consult with independent experts**, such as those designated to hear objections in the New gTLD (generic Top Level Domain) Dispute Resolution Procedure, in cases where the issues raised in the GAC (Governmental Advisory Committee) advice are pertinent to one of the subject matter areas of the objection procedures.

(Guidebook, § 3.1) (emphasis added). Under this provision, the Board has the discretion to seek an independent expert opinion on issues raised by GAC (Governmental Advisory Committee) Advice. The Board may also define the scope of its consultation with independent experts. As such, the Requester's objection to the scope of Professor Passa's assignment is not a basis for reconsideration.

The Requester has not cited to any provision of the Bylaws or Guidebook that would require ICANN (Internet Corporation for Assigned Names and Numbers) to commission additional legal studies at the request of a New gTLD (generic Top Level Domain) Applicant. Reconsideration for failure to consider material information is not proper where "the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act." (Bylaws, Art. IV, § 2 b.) The Requester was given multiple opportunities to present materials for the NGPC's consideration, including the opportunity—which it accepted—to respond to the Expert Analysis. In fact, the Requester attached to its response to the GAC (Governmental Advisory Committee) Durban Advice a lengthy except from a legal treatise on the protection of geographic names.⁵² If the Requester believed that additional legal analysis was required, it was free to commission that analysis and submit it to the NGPC.

I. The NGPC Did Not Fail to Consider Material Information with Respect to Its Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The Requester alleges that the NGPC failed to take into account material information regarding its obligations under Articles I.2, II.3, and III.1 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws; Article 4 of its Articles of Incorporation; and Sections 4, 5, 7, and 9.3 of its Affirmations of Commitment.⁵³ The Requester's disagreement with the Resolution does not, however, demonstrate that the NGPC failed to consider those obligations. And, as the rationale for the Resolution makes clear, the NGPC acted pursuant to its obligation under Article XI, Section 2.1 of the Bylaws, to duly address advice put to it by the GAC (Governmental Advisory Committee).⁵⁴

J. The NGPC Did Not Fail to Consider Material Information with Respect to the Fiscal Implications of the Resolution.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the fiscal implications of the Resolution. The Requester contends that "[s]hould it be determined that the [Resolution] in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal impacts on ICANN (Internet Corporation for Assigned Names and Numbers)"¹ The Requester has not demonstrated that the NGPC did not consider the potential for litigation arising out of the Resolution, including the potential fiscal impact of such litigation. In any event, the Requester has not demonstrated how the speculative possibility of litigation is material to the NGPC's determination here. As such, the Requester has not identified a proper ground for reconsideration.

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-27, including correspondence dated 4 September 2014 from Flip Petition on behalf of the Requester regarding the BGC Recommendation on Reconsideration Request 14-27.² Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-27 (<https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> ([/en/system/files/files/recommendation-amazon-22aug14-en.pdf](https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf)) [PDF, 177 KB]), which shall be deemed a part of this Rationale and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Sections 2.16 and 2.17 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical and the Board [or NGPC as appropriate] shall issue its decision on the BGC's recommendation within 60 days of receipt of the Reconsideration Request, or as soon thereafter as feasible. (See Bylaws, Article IV, Sections 2.16 and 2.17.) The BGC required additional time to make its recommendation due to its request for clarification from the Requester, and due to the volume of Reconsideration Requests received within recent months. As such, the first practical opportunity for the BGC to make a decision on this Request was on 22 August 2014; it was impractical for the BGC to do so sooner. Then, the first feasible chance for the NGPC to consider Request 14-27 was on 8 September 2014.

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

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

d. Perceived Inconsistent String Confusion Expert Determinations

No resolution taken.

e. Any Other Business

No resolution taken

Published on 10 September 2014

¹ 17 June 2013 Letter available at <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf> ([/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf](https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf)) [PDF, 74 KB] (emphasis in original).

² <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en> ([/resources/board-material/resolutions-new-gtld-2014-05-14-en](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en))

- ³ <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>
(<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>)
- ⁴ <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>
(<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>)
- ⁵ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf)) [PDF, 96 KB]
- ⁶ Determination on Community Objection, ¶¶ 40, 59, *available at* <http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>) [PDF, 553 KB].
- ⁷ Beijing Communiqué *available at* <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>
([/en/system/files/correspondence/gac-to-board-18apr13-en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf)) [PDF, 155 KB].
- ⁸ Response to GAC (Governmental Advisory Committee) Beijing Advice, at Pgs. 3-5, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 280 KB].
- ⁹ Response to GAC (Governmental Advisory Committee) Beijing Advice, at Pgs. 2-3, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 280 KB].
- ¹⁰ http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf
(http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf) [PDF, 12 KB]
- ¹¹ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf)) [PDF, 68 KB]
- ¹² Durban Communiqué *available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>
(<http://newgtlds.icann.org/en/applicants/gac-advice/durban47>).
- ¹³ Response to GAC (Governmental Advisory Committee) Durban Advice, at Pg. 2, *available at* <http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 7 MB]
- ¹⁴ <https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf>
([/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf)) [PDF, 132 KB]
- ¹⁵ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf)) [PDF, 72 KB]
- ¹⁶ <https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf> ([/en/system/files/files/request-amazon-30may14-en.pdf](https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf)) [PDF, 184 KB]
- ¹⁷ <https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf>
([/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf](https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf)) [PDF, 475 KB]
- ¹⁸ See Request 14-27, § 8, Pgs. 6-7.
- ¹⁹ See Request 14-27, § 8, Pgs. 7-8.
- ²⁰ See Request 14-27, § 8, Pgs. 8-9.
- ²¹ See Request 14-27, § 8, Pgs. 10-11.
- ²² See Request 14-27, § 8, Pgs. 11-14.
- ²³ See Request 14-27, § 8, Pgs. 14-16.
- ²⁴ See Request 14-27, § 8, Pgs. 16-18.
- ²⁵ See Request 14-27, § 8, Pgs. 18-19.
- ²⁶ See Request 14-27, § 8, Pgs. 19-21.

²⁷ See Request 14-27, § 8, Pgs. 21-22.

²⁸ Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

²⁹ See Request 14-27, § 8, Pg. 8.

³⁰ See Request 14-27, § 8, Pgs. 8-9.

³¹ See Request 14-27, § 8, Pgs. 8-9.

³² Request 14-27, § 8, Pg.10.

³³ Resolution 2014.05.14.NG03 Rationale *available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-2.b> (/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b).

³⁴ Request 14-27, § 8, Pg. 10.

³⁵ See Request 14-27, § 8, Pgs. 11-14.

³⁶ See Request 14-27, § 8, Pg. 11; *see also* Request 14-27, § 8, Pgs. 13-14.

³⁷ The ISO (International Organization for Standardization) 3166-2 code is published by the International Organization for Standardization and assigns five-digit alphanumeric strings to countries' administrative divisions and dependent territories. (See http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3.)

³⁸ See Request 14-27, § 8, Pgs. 13-14.

³⁹ In its 2 August Letter responding to the BGC's request for clarification, the Requester adds that this same representation was made by Peru's GAC (Governmental Advisory Committee) representative to the GAC (Governmental Advisory Committee) prior to its vote on the GAC (Governmental Advisory Committee) Durban Advice. (2 August Letter at 1-2.) However, the GAC (Governmental Advisory Committee) is an independent advisory committee, and not part of ICANN (Internet Corporation for Assigned Names and Numbers)'s Board. As such, the materials considered by the GAC (Governmental Advisory Committee) in rendering its advice are not a proper basis for reconsideration.

⁴⁰ 2 August Letter, Pg. 2, available at <https://www.icann.org/en/system/files/files/petition-to-ngpc-bgc-02aug14-en.pdf> (/en/system/files/files/petition-to-ngpc-bgc-02aug14-en.pdf) [PDF, 475 KB]

⁴¹ In its 2 August Letter, the Requester also argues that following the issuance of the GAC (Governmental Advisory Committee) Durban Advice but prior to the NGPC vote on the Resolution, it requested, and was denied, the opportunity to meet with the NGPC to present its position. The Requester does not challenge this staff and/or Board action and points to no Bylaw or ICANN (Internet Corporation for Assigned Names and Numbers) policy or procedure that would require such a meeting.

⁴² See Request 14-27, § 8, Pg. 12.

⁴³ Resolution 2014.05.14.NG03 Rationale *available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-2.b> (/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b).

⁴⁴ The Requester also appears to argue that the NGPC should have solicited opinions from other governments. (Request, § 8, Pg. 12.) However, it cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

⁴⁵ See Request 14-27, § 8, Pgs. 14-15.

⁴⁶ See Request 14-27, § 8, Pg. 15.

⁴⁷ GAC (Governmental Advisory Committee) Operating Principle 47 *available at* [https://gacweb.icann.org/display/gacweb/GAC+\(Governmental+Advisory+Committee\)+Operating+Principles](https://gacweb.icann.org/display/gacweb/GAC+(Governmental+Advisory+Committee)+Operating+Principles) (<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>).

⁴⁸ See Request 14-27, § 8, Pgs. 16-17.

⁴⁹ See Request 14-27, § 8, Pg. 17.

⁵⁰ Briefing materials of NGPC 29 April 2014 meeting available at <https://www.icann.org/en/system/files/bm/briefing-materials-1-29apr14-en.pdf> (/en/system/files/bm/briefing-materials-1-29apr14-en.pdf) [PDF, 485 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-29apr14-en.pdf> (/en/system/files/bm/briefing-materials-2-29apr14-en.pdf) [PDF, 950 KB]; Briefing materials of NGPC 14 May 2014 meeting available at <https://www.icann.org/en/system/files/bm/briefing-materials-1-14may14-en.pdf> (/en/system/files/bm/briefing-materials-1-14may14-en.pdf) [PDF, 688 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-14may14-en.pdf> (/en/system/files/bm/briefing-materials-2-14may14-en.pdf) [PDF, 1.62 MB].

⁵¹ Request 14-27, § 8, Pgs. 18-19 (emphasis in original).

⁵² See Response to GAC (Governmental Advisory Committee) Durban Advice, Appx. A, available at <https://www.icann.org/en/system/files/files/request-annex-amazon-2-30may14-en.pdf> (/en/system/files/files/request-annex-amazon-2-30may14-en.pdf) [PDF, 20 MB].

⁵³ See Request 14-27, § 8, Pgs. 19-21.

⁵⁴ The Requester also argues that the NGPC "should have sought comment from the [Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)")] as to whether [the GAC (Governmental Advisory Committee) Durban Advice was] in violation of GNSO (Generic Names Supporting Organization) Policy." (Request, § 8, Pg. 21.) However, the Requester cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

⁵⁵ Request 14-27, § 8, Pgs. 21-22.

⁵⁶ 4 September Letter, available at <https://www.icann.org/en/system/files/files/petition-to-ngpc-04sep14-en.pdf> (/en/system/files/files/petition-to-ngpc-04sep14-en.pdf) [PDF, 504 KB].

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Minutes | Meeting of the New gTLD (generic Top Level Domain) Program Committee

This page is available in:

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08 Sep 2014

Note: On 10 April 2012, the Board established the New gTLD (generic Top Level Domain) Program Committee, comprised of all voting members of the Board that are not conflicted with respect to the New gTLD (generic Top Level Domain) Program. The Committee was granted all of the powers of the Board (subject to the limitations set forth by law, the Articles of Incorporation, Bylaws or ICANN (Internet Corporation for Assigned Names and Numbers)'s Conflicts of Interest Policy) to exercise Board-level authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program. The full scope of the Committee's authority is set forth in its charter at <http://www.icann.org/en/groups/board/new-gTLD>.

A Regular Meeting of the New gTLD (generic Top Level Domain) Program Committee of the ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors was held on 8 September 2014 at 14:00 UTC in Istanbul, Turkey.

Committee Chairman Cherine Chalaby promptly called the meeting to order.

In addition to the Chair the following Directors participated in all or part of the meeting: Fadi Chehadé (President and CEO, ICANN (Internet Corporation for Assigned Names and Numbers)), Steve Crocker (Board Chairman), Chris Disspain, Bill Graham, Bruno Lanvin, Olga Madruga-Forti, Erika Mann, Gonzalo Navarro, George Sadowsky, Mike Silber, and Kuo-Wei Wu.

Ray Plzak sent apologies. Suzanne Woolf resigned from the Committee citing a conflict of interest with respect to the New gTLD (generic Top Level Domain) Program.

Jonne Soinen (IETF (Internet Engineering Task Force) Liaison) was in attendance as a non-voting liaison to the Committee. Heather Dryden was in attendance as an observer to the Committee.

Board Member Elect: Rinalia Abdul Rahim (observing).

Secretary: John Jeffrey (General Counsel and Secretary).

ICANN (Internet Corporation for Assigned Names and Numbers) Executives and Staff in attendance for all or part of the meeting: Akram Atallah (President, Global Domains Division); Megan Bishop

- ▶ [ccTLDs \(/resources/pages/cclds-21-2012-02-25-en\)](/resources/pages/cclds-21-2012-02-25-en)

- ▶ [Internationalized Domain Names \(/resources/pages/idn-2012-02-25-en\)](/resources/pages/idn-2012-02-25-en)

- ▶ [Universal Acceptance Initiative \(/resources/pages/universal-acceptance-2012-02-25-en\)](/resources/pages/universal-acceptance-2012-02-25-en)

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- ▶ [Contact \(/resources/pages/contact-2012-02-06-en\)](/resources/pages/contact-2012-02-06-en)

- ▶ [Help \(/resources/pages/help-2012-02-03-en\)](/resources/pages/help-2012-02-03-en)

(Board Support Coordinator); Michelle Bright (Board Support Manager); Samantha Eisner (Senior Counsel); Allen Grogan (Chief Contracting Counsel); Dan Halloran (Deputy General Counsel); Jamie Hedlund (Vice President, Strategic Programs); Vinciane Koenigsfeld (Board Support Content Manager); Erika Randall (Counsel); Amy Stathos (Deputy General Counsel); and Christine Willett (Vice President, [gTLD \(generic Top Level Domain\) Operations](#)).

These are the [Minutes of the Meeting of the New gTLD \(generic Top Level Domain\) Program Committee, which took place on 8 September 2014](#).

1. **Main Agenda:**

- a. [Approval of Minutes](#)
- b. [Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC \(Governmental Advisory Committee\) Advice: Updates and Actions Rationale for Resolution 2014.09.08.NG02](#)
- c. [BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.á.r.l. Rationale for Resolution 2014.09.08.NG03](#)
- d. [Perceived Inconsistent String Confusion Objection Expert Determinations](#)
- e. [Any Other Business](#)

1. Main Agenda:

a. Approval of Minutes

The Chair introduced for approval the Minutes of the 21 June, 18 July and 30 July 2014 meetings. George Sadowsky noted that he should not be listed as present during the 30 July 2014 meeting.

George Sadowsky moved and Mike Silber seconded the proposed resolution. The Committee took the following action:

Resolved (2014.09.08.NG01), the Board New [gTLD \(generic Top Level Domain\) Program Committee \(NGPC\)](#) approves the minutes of its 21 June, 18 July and 30 July 2014 NGPC meetings.

All members of the Committee present voted in favor of Resolution 2014.09.08.NG01. Ray Plzak was unavailable to vote on the Resolution. The Resolution carried.

b. [Remaining Items from Beijing, Durban, Buenos Aires, Singapore and London GAC \(Governmental Advisory Committee\) Advice: Updates and Actions](#)

The Committee continued its discussion of advice issued by the [Governmental Advisory Committee \(Advisory Committee\) \(GAC \(Governmental Advisory Committee\)\)](#) to the Board concerning the New [gTLD \(generic Top Level Domain\) Program](#). Chris Disspain provided an overview of a proposed new iteration of the scorecard to respond to open items of [GAC \(Governmental Advisory Committee\) advice](#). The Committee discussed each of the actions it proposed to take to address the advice, which included a discussion of the best manner to provide a clarification to the [GAC \(Governmental Advisory Committee\)](#) about the next steps to be taken with respect to the .SPA applications. Akram Atallah explained that the scorecard clarifies the interpretation taken about the [GAC \(Governmental Advisory Committee\) advice](#) and how to process the two remaining applications for .SPA. He noted that both remaining applications for .SPA would continue to move forward to the next phase of the New [gTLD \(generic Top Level Domain\) Program](#), which is for the applicants to resolve the contention set pursuant to the procedure in the Applicant Guidebook.

With respect to the GAC (Governmental Advisory Committee)'s advice in the London Communiqué concerning .AFRICA, Mike Silber expressed dissatisfaction with the amount of time taken by staff to implement the Committee's action adopting the GAC (Governmental Advisory Committee)'s advice to not proceed with DotConnectAfrica Trust's application (number 1-1165-42560) for .AFRICA.

Staff reported that revised responses to the GAC (Governmental Advisory Committee)'s questions originally posed in the Singapore Communiqué were sent to the GAC (Governmental Advisory Committee) on 2 September 2014. Additionally, the Committee was advised that the applicant for the .INDIANS gTLD (generic Top Level Domain), which application was the subject of GAC (Governmental Advisory Committee) advice, recently withdrew its application.

The Committee received an update on the ongoing work to develop a response to address the GAC (Governmental Advisory Committee)'s advice regarding protections for Intergovernmental Organizations (IGOs) in light of the Board's action approving certain GNSO (Generic Names Supporting Organization) consensus policy recommendations on protections for IGOs-INGOs. Chris updated the Committee on his recent participation in the GNSO (Generic Names Supporting Organization) Council's meeting held in early September. The Chair inquired about the approximate timeline for the next steps to consider the GAC (Governmental Advisory Committee) advice and the GNSO (Generic Names Supporting Organization) policy recommendations. Chris stated that the timeline was unclear because the process in the GNSO (Generic Names Supporting Organization) Operating Procedures allowing the GNSO (Generic Names Supporting Organization) to amend its policy recommendations prior to final approval by the Board had never been tested.

Jamie Hedlund provided an overview of new advice in the GAC (Governmental Advisory Committee)'s London Communiqué concerning Red Cross and Red Crescent terms and names as they relate to the policy development process. The Committee determined that it would discuss this item of advice during its meeting at ICANN (Internet Corporation for Assigned Names and Numbers) 51 in Los Angeles, and requested staff to prepare briefing materials on the matter.

George Sadowsky moved and Olga Madruga-Forti seconded the proposed resolution to adopt the new iteration of the scorecard. The Committee discussed the proposed resolution and then took the following action:

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 46 meeting in Beijing and issued a Communiqué on 11 April 2013 ("Beijing Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 47 meeting in Durban and issued a Communiqué on 18 July 2013 ("Durban Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 48 meeting in Buenos Aires and issued a Communiqué on 20 November 2013 ("Buenos Aires Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 49 meeting in Singapore and issued a Communiqué on 27 March 2014, which was amended on 16 April 2014 ("Singapore Communiqué").

Whereas, the GAC (Governmental Advisory Committee) met during the ICANN (Internet Corporation for Assigned Names and Numbers) 50 meeting in London and issued a Communiqué on 25 June 2014 ("London Communiqué").

Whereas, the NGPC adopted scorecards to respond to certain items of the GAC (Governmental Advisory Committee)'s advice, which were adopted on 4 June 2013, 10 September 2013, 28 September 2013, 5 February 2014 and 14 May 2014.

Whereas, the NGPC has developed another iteration of the scorecard to respond to

certain remaining items of GAC (Governmental Advisory Committee) advice in the Beijing Communiqué, the Durban Communiqué, the Buenos Aires Communiqué, the Singapore Communiqué, and new advice in the London Communiqué.

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN (Internet Corporation for Assigned Names and Numbers) Board's authority for any and all issues that may arise relating to the New gTLD (generic Top Level Domain) Program.

Resolved (2014.09.08.NG02), the NGPC adopts the scorecard titled "GAC (Governmental Advisory Committee) Advice (Beijing, Durban, Buenos Aires, Singapore, and London): Actions and Updates (8 September 2014)", attached as Annex 1 (/en/system/files/files/resolutions-new-gtld-annex-1-08sep14-en.pdf) [PDF, 429 KB] to this Resolution, in response to open items of Beijing, Durban, Buenos Aires, Singapore and London GAC (Governmental Advisory Committee) advice.

All members of the Committee present voted in favor of Resolution 2014.09.08.NG02. Ray Plzak was unavailable to vote on the Resolution. The Resolution carried.

Rationale for Resolution 2014.09.08.NG02

Article XI, Section 2.1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws [https://www.icann.org/resources/pages/bylaws-2012-02-25-en – XI \(/resources/pages/bylaws-2012-02-25-en#XI\)](https://www.icann.org/resources/pages/bylaws-2012-02-25-en-XI) 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 the New gTLD (generic Top Level Domain) Program through its Beijing Communiqué dated 11 April 2013, its Durban Communiqué dated 18 July 2013, its Buenos Aires Communiqué dated 20 November 2013, its Singapore Communiqué dated 27 March 2014 (as amended 16 April 2014), and its London Communiqué dated 25 June 2014. 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 policies. 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 NGPC has previously addressed items of the GAC (Governmental Advisory Committee)'s Beijing, Durban, Buenos Aires, and Singapore advice, but there are some items that the NGPC continues to work through. Additionally, the GAC (Governmental Advisory Committee) issued new advice in its London Communiqué that relates to the New gTLD (generic Top Level Domain) Program. The NGPC is being asked to consider accepting some of the remaining open items of the Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) advice, and new items of advice from London as described in the scorecard (/en/system/files/files/resolutions-new-gtld-annex-1-08sep14-en.pdf) [PDF, 429 KB] (dated 8 September 2014).

As part of its consideration of the GAC (Governmental Advisory Committee) advice, ICANN (Internet Corporation for Assigned Names and Numbers) posted the GAC (Governmental Advisory Committee) advice and officially notified applicants of the advice, triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1. The Beijing GAC (Governmental Advisory Committee) advice was posted on 18 April 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en> (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>)>; the Durban GAC (Governmental Advisory Committee) advice was posted on 1 August 2013 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en> ([http://newgtlds.icann.org/en/announcements-and-](http://newgtlds.icann.org/en/announcements-and-media/announcement-01aug13-en)

[media/announcement-01aug13-en](#)>; the Buenos Aires GAC (Governmental Advisory Committee) advice was posted on 11 December 2013
 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-11dec13-en>
 (<http://newgtlds.icann.org/en/announcements-and-media/announcement-11dec13-en>)>;
 the Singapore advice was posted on 11 April 2014
<http://newgtlds.icann.org/en/announcements-and-media/announcement-11apr14-en>
 (<http://newgtlds.icann.org/en/announcements-and-media/announcement-11apr14-en>);
 and the London advice was posted on 14 July 2014
 <<http://newgtlds.icann.org/en/announcements-and-media/announcement-14jul14-en>
 (<http://newgtlds.icann.org/en/announcements-and-media/announcement-14jul14-en>)>.
 The complete set of applicant responses are provided at:
 <<http://newgtlds.icann.org/en/applicants/gac-advice/>
 (<http://newgtlds.icann.org/en/applicants/gac-advice/>)>.

In addition, on 23 April 2013, ICANN (Internet Corporation for Assigned Names and Numbers) initiated a public comment forum to solicit input on how the NGPC should address Beijing GAC (Governmental Advisory Committee) advice regarding safeguards applicable to broad categories of new gTLD (generic Top Level Domain) strings
 <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>
 (<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>)>.
 The NGPC has considered the applicant responses in addition to the community feedback on how ICANN (Internet Corporation for Assigned Names and Numbers) could implement the GAC (Governmental Advisory Committee)'s safeguard advice in the Beijing Communiqué in formulating its response to the remaining items of GAC (Governmental Advisory Committee) advice.

As part of its deliberations, the NGPC 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
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1375787122000&api=v2 [PDF, 237 KB]
- GAC (Governmental Advisory Committee) Durban Communiqué:
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1374215119858&api=v2
https://gacweb.icann.org/download/attachments/27132037/Final_GAC_Communique_Durban_version=1&modificationDate=1374215119858&api=v2 [PDF, 103 KB]
- GAC (Governmental Advisory Committee) Buenos Aires Communiqué:
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique=1&modificationDate=1385055905332&api=v2
https://gacweb.icann.org/download/attachments/27132037/FINAL_Buenos_Aires_GAC_Communique=1&modificationDate=1385055905332&api=v2 [PDF, 96.5 KB]
- GAC (Governmental Advisory Committee) Singapore Communiqué (as amended):
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore=1&modificationDate=1397656205000&api=v2
https://gacweb.icann.org/download/attachments/27132037/GAC_Amended_Communique_Singapore=1&modificationDate=1397656205000&api=v2 [PDF, 147 KB]
- GAC (Governmental Advisory Committee) London Communiqué:
<https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf=1&modificationDate=1406852169128&api=v2>
<https://gacweb.icann.org/download/attachments/27132037/Communique%20London%20final.pdf=1&modificationDate=1406852169128&api=v2> [PDF, 138 KB]
- 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]

In adopting its response to remaining items of Beijing, Durban, Buenos Aires, and Singapore GAC (Governmental Advisory Committee) advice, and the new London advice, the NGPC considered the applicant comments submitted, the GAC (Governmental Advisory Committee)'s advice transmitted in the Communiqués, and the procedures established in the AGB and the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws. The adoption of the GAC (Governmental Advisory Committee) advice as provided in the attached scorecard will assist with resolving the GAC (Governmental Advisory Committee) advice in manner that permits the greatest number of new gTLD (generic Top Level Domain) applications to continue to move forward as soon as possible.

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).

As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s organizational administrative function, ICANN (Internet Corporation for Assigned Names and Numbers) posted the London Communiqué and officially notified applicants of the advice on 14 July 2014. The Singapore Communiqué, the Buenos Aires Communiqué, the Durban Communiqué, and the Beijing Communiqué were posted on 11 April 2014, 11 December 2013, 18 April 2013 and 1 August 2013, respectively. In each case, this triggered the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

c. BGC Recommendation on Reconsideration Request 14-27, Amazon EU S.á.r.l.

The Chair presented the Committee with an overview of background information concerning Reconsideration Request 14-27, noting that the requestor, Amazon EU S.á.r.l., called for the reversal of the Committee's decision on the GAC (Governmental Advisory Committee) advice concerning .AMAZON (and related IDNs (Internationalized Domain Names)). The requestor, also asked that the GAC (Governmental Advisory Committee) advice concerning .AMAZON (and related IDNs (Internationalized Domain Names)) be rejected, and that staff be directed to proceed with processing the applications. The Chair noted that the Board Governance Committee (BGC) recommended that the Reconsideration Request be denied because the requestor failed to state the proper grounds for reconsideration.

Amy Stathos reminded the Committee of the letter sent by the requestor following the BGC's determination, and noted that the two issues addressed in the letter were already dealt with in the BGC's recommendation being presented for the Committee's action.

The Committee discussed the claims raised in the Reconsideration Request, including the requestor's claim about the untimeliness of the GAC (Governmental Advisory Committee)'s advice on .AMAZON (and related IDNs (Internationalized Domain Names)) pursuant to the New gTLD (generic Top Level Domain) Applicant Guidebook. Amy provided a summary of the provisions in the Applicant Guidebook concerning the timing of GAC (Governmental Advisory Committee) advice.

Chris Disspain moved and Bill Graham seconded the proposed resolution. The Committee engaged in further discussion, and then took the following action:

Whereas, Amazon EU S.á.r.l ("Requester") filed Reconsideration Request 14-27 asking the New gTLD (generic Top Level Domain) Program Committee ("NGPC") to: (i) reverse Resolution 2014.05.14.NG03; (ii) reject the Governmental Advisory Committee (Advisory Committee)'s advice on .AMAZON and the related internationalized domain names (collectively, the "Amazon Applications"); and (iii) direct ICANN (Internet Corporation for

Assigned Names and Numbers) staff to proceed with the Amazon Applications.

Whereas, the BGC considered the issues raised in Reconsideration Request 14-27.

Whereas, the BGC recommended that the Request be denied because the Requester has not stated proper grounds for reconsideration and the NGPC agrees.

Resolved (2014.09.08.NG03), the NGPC adopts the BGC Recommendation on Reconsideration Request 14-27, which can be found at <https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> ([/en/system/files/files/recommendation-amazon-22aug14-en.pdf](https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf)) [PDF, 177 KB].

All members of the Committee present voted in favor of Resolution 2014.09.08.NG03. Ray Plzak was unavailable to vote on the Resolution. The Resolution carried.

Rationale for Resolution 2014.09.08.NG03

I. Brief Summary

Amazon EU S.à.r.l. (the "Requester") applied for .AMAZON and related internationalized domain names ("IDNs (Internationalized Domain Names)") in Japanese and Chinese (the "Amazon Applications"). In its Durban Communiqué, the Governmental Advisory Committee (Advisory Committee) ("GAC (Governmental Advisory Committee)"), informed the Board that it had reached consensus advice on .AMAZON and the related IDNs (Internationalized Domain Names) ("GAC (Governmental Advisory Committee) Durban Advice"). After significant and careful consideration, on 14 May 2014, the NGPC passed Resolution 2014.05.14.NG03 ("Resolution") accepting the GAC (Governmental Advisory Committee) Durban Advice and directed that the Amazon Applications should not proceed.

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the GAC (Governmental Advisory Committee) Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider other material information in accepting the advice.

The BGC concluded that the Requester has not stated proper grounds for reconsideration. Specifically, the BGC concluded that: (i) there is no evidence that the NGPC's actions in adopting the Resolution support reconsideration; (ii) the Requester has not demonstrated that the NGPC failed to consider any material information in passing the Resolution or that the NGPC relied on false or inaccurate material information in passing the Resolution; and (iii) the NGPC properly considered the GAC (Governmental Advisory Committee) Durban Advice in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws and the procedures set forth in the gTLD (generic Top Level Domain) Applicant Guidebook. Therefore, the BGC recommended that Reconsideration Request 14-27 be denied (and the entirety of the BGC Recommendation is incorporated by reference as though fully set forth in this rationale). The NGPC agrees.

II. Relevant Background Facts

The Requester applied for the Amazon Applications.

On 17 June 2012 the GAC (Governmental Advisory Committee) Chair sent a letter to ICANN (Internet Corporation for Assigned Names and Numbers)'s Board, which included the following:

Given the delays in the gTLD (generic Top Level Domain) application process, the timing of the upcoming ICANN (Internet Corporation for Assigned Names and Numbers) meetings, and the amount of work involved, **the GAC (Governmental Advisory**

Committee) advises the Board that it will not be in a position to offer any new advice on the gTLD (generic Top Level Domain) applications in 2012. For this reason, the GAC (Governmental Advisory Committee) is considering the implications of providing any GAC (Governmental Advisory Committee) advice on gTLD (generic Top Level Domain) applications. These considerations are not expected to be finalized before the Asia-Pacific meeting in April 2013.¹

On 20 November 2012, the GAC (Governmental Advisory Committee) representatives for the governments of Brazil and Peru submitted an Early Warning with respect to the Amazon Applications.²

On 14 February 2013, the GAC (Governmental Advisory Committee) declared that it would be posting a list of applications that the GAC (Governmental Advisory Committee) would consider as a whole during the GAC (Governmental Advisory Committee) meeting to be held in Beijing in April 2013.³ On 25 February 2013, the GAC (Governmental Advisory Committee) further stated that it was "still compiling and processing inputs received from GAC (Governmental Advisory Committee) members" and would post further information as soon as possible.⁴

In March 2013, the Requester wrote to the Board regarding its Public Interest Commitments with respect to the Amazon Applications,⁵ and ICANN (Internet Corporation for Assigned Names and Numbers)'s Independent Objector ("IO") objected to the Amazon Applications on behalf of the "Amazon Community," *i.e.*, the "South-American region with the same English name around the Amazon River" ("Community Objection").⁶

On 11 April 2013, in its Beijing Communiqué the GAC (Governmental Advisory Committee) identified the Amazon Applications as warranting further GAC (Governmental Advisory Committee) consideration and advised the Board not to proceed with those applications beyond Initial Evaluation ("GAC (Governmental Advisory Committee) Beijing Advice").⁷ The Requester responded to the GAC (Governmental Advisory Committee) Beijing Advice arguing that the GAC (Governmental Advisory Committee) had not reached consensus advice on the Applications, and that the New gTLD (generic Top Level Domain) Applicant Guidebook ("Guidebook") did not provide for ICANN (Internet Corporation for Assigned Names and Numbers) to delay specific applications for further GAC (Governmental Advisory Committee) consideration.⁸ The Requester also argued that it had relied on the Guidebook's provisions regarding geographic strings, which included a provision for Community Objections to geographic strings, and that the GAC (Governmental Advisory Committee) Beijing Advice represented a "new attempt to isolate strings that raise geographic issues" and acted "as an effective veto on Community-driven policies."⁹

In early July 2013, the U.S. Government stated its intent to "remain neutral" with respect to the Amazon Applications, "thereby allowing [the] GAC (Governmental Advisory Committee) to present consensus objections on these strings to the Board, if no other government objects."¹⁰ Also in early July 2013, the Requester wrote to the Board about its ongoing efforts to negotiate with Brazil and Peru regarding the Amazon Applications. The Requester also submitted proposed Public Interest Commitments.¹¹

On 18 July 2013, in its Durban Communiqué, the GAC (Governmental Advisory Committee) informed the Board that it had reached consensus on GAC (Governmental Advisory Committee) Objection Advice on the Amazon Applications.¹²

On 23 August 2013, the Requester responded to the GAC (Governmental Advisory Committee) Durban Advice, arguing that it: "(1) is inconsistent with international law; (2) would have discriminatory impacts that conflict directly with ICANN (Internet Corporation for Assigned Names and Numbers)'s Governing Documents; and (3) contravenes policy recommendations implemented within the [Guidebook] achieved by international consensus over many years."¹³

On 3 December 2013, the Requester sent another letter to the Board, providing further detail and clarification regarding the Requester's ongoing attempts to negotiate with the

governments of Brazil and Peru regarding the Amazon Applications.¹⁴ Just about a month later the Requester wrote to the Board contending that the Amazon Applications do not fall within any of the five Guidebook categories of "geographic names" requiring government or public authority support.¹⁵

On 30 May 2014, the Requester filed the instant Request, seeking reconsideration of the NGPC's acceptance of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the GAC (Governmental Advisory Committee) Durban Advice was untimely and was improperly accorded a strong presumption by the NGPC. In addition, the Requester argues that the NGPC considered false or inaccurate material information and failed to consider material information in accepting the advice.¹⁶

On 26 July 2014, the BGC asked the Requester for clarification regarding its allegation that the NGPC considered false or inaccurate material information in passing the Resolution. Amazon responded to the BGC's request clarifying the allegedly false or inaccurate material information that Amazon claims the NGPC relied upon in passing the Resolution. ("2 August Letter").¹⁷

III. Issues

The issues for reconsideration are whether the NGPC failed to consider material information or relied on false or inaccurate material information in:

1. Accepting the GAC (Governmental Advisory Committee) Durban Advice although it was filed after the close of the objection filing period¹⁸;
2. Individually considering the Amazon Applications, although the NGPC should only do so "under exceptional circumstances,"¹⁹;
3. Failing to adhere to appropriate GAC (Governmental Advisory Committee) Governing Principles by applying a "strong presumption" to the GAC (Governmental Advisory Committee) Durban Advice²⁰;
4. Improperly relying on the Early Warning as rationale for the GAC (Governmental Advisory Committee) Durban Advice²¹;
5. Improperly: (i) considering false or inaccurate material information in correspondence submitted from representatives of the governments of Brazil and Peru; and (ii) failing to consider material correspondence and comments from the Requester and other parties²²;
6. Failing to consider material information provided by the United States Government in its July 2013 statement²³;
7. Failing to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications²⁴;
8. Failing to consider the Expert Analysis and the Requester's request for additional studies²⁵;
9. Failing to consider its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws and Articles of Incorporation in accepting the GAC (Governmental Advisory Committee) Durban Advice²⁶; and
10. Failing to consider the fiscal implications of its acceptance of the GAC (Governmental Advisory Committee) Durban Advice.²⁷

IV. The Relevant Standards for Evaluating Reconsideration Requests

ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws call for the BGC to evaluate and, for challenged Board (or NGPC) action, make recommendations to the Board (or NGPC) with respect to Reconsideration Requests. See Article IV, Section 2 of the Bylaws. The NGPC, bestowed with the powers of the Board in this instance, has reviewed and thoroughly considered the BGC Recommendation on Request 14-27 and finds the analysis sound.²⁸

V. Analysis and Rationale

A. The Requester Has Not Stated a Proper Basis for Reconsideration with Respect to the Timeliness of the GAC (Governmental Advisory Committee) Durban Advice.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the timeliness of the GAC (Governmental Advisory Committee) Durban Advice. The Requester argues that the NGPC should not have accepted the GAC (Governmental Advisory Committee) Durban Advice because that advice was submitted on 18 July 2013, after the 13 March 2013 close of the objection filing period. The Requester, however, neither argues nor provides any evidence demonstrating that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the allegedly untimely GAC (Governmental Advisory Committee) Durban Advice. Accordingly, there is no basis for reconsideration.

Further, contrary to what the Requester argues, the NGPC must consider GAC (Governmental Advisory Committee) advice on new gTLDs submitted at any time. Notwithstanding the Guidebook, ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws affirmatively require the Board to consider any issues that the GAC (Governmental Advisory Committee) may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.) The provisions of the Guidebook regarding the treatment of GAC (Governmental Advisory Committee) Advice do not supplant the requirements of the Bylaws on this subject matter.

B. The Requester Has Not Stated A Proper Basis for Reconsideration With Respect To The NGPC's Consideration Of The Amazon Applications.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of the Amazon Applications. The Requester argues that the NGPC improperly "individually" considered the Amazon Applications failing to explain why the circumstances surrounding its Applications are sufficiently "exceptional" to warrant individual consideration.²⁹ Again, the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in passing the Resolution and therefore has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

In any event, Requester's argument contradicts Section 5.1 of the Guidebook, which explicitly provides for the Board to individually consider any new gTLD (generic Top Level Domain) application, including as the result of GAC (Governmental Advisory Committee) Advice:

The Board reserves the right to individually consider an application for a new gTLD (generic Top Level Domain) to determine whether approval would be in the best interest of the Internet Community. Under exceptional circumstances, the Board may individually consider a gTLD (generic Top Level Domain) application. ***For example, the Board might individually consider an application as a result of GAC (Governmental Advisory Committee) Advice on New gTLDs*** or of the use of an ICANN (Internet Corporation for Assigned Names and Numbers) accountability mechanism.

(Guidebook, § 5.1) (emphasis added). As the Guidebook makes clear, GAC (Governmental Advisory Committee) Advice is precisely the sort of "exceptional circumstance" that would justify the Board's individual consideration of a gTLD (generic Top Level Domain) application. Further, as discussed above, ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws affirmatively require the Board to consider any issues that the GAC (Governmental Advisory Committee) may put to the Board by way of comment or advice. (Bylaws, Art. XI, §§ 2.1.i and 2.1.j.)

c. The Requester's Claim that the NGPC Afforded a Strong Presumption to the GAC (Governmental Advisory Committee) Durban Advice Does Not Support Reconsideration.

The BGC concluded, and the NGPC agrees, that the Requester has not stated proper grounds for reconsideration with respect to the alleged presumption applied to the GAC (Governmental Advisory Committee) Durban Advice on the Amazon Applications.

Requester claims that the GAC (Governmental Advisory Committee) Durban Advice should not have created a strong presumption for the ICANN (Internet Corporation for Assigned Names and Numbers) Board that the Amazon Applications should not proceed.³⁰ In support, the Requester contends that because the GAC (Governmental Advisory Committee) Durban Advice was provided after the close of the objection period, it was not provided pursuant to the Guidebook, and thus was not subject to the presumption standards set forth therein regarding GAC (Governmental Advisory Committee) Advice.³¹ Once again, because the Requester does not argue that the NGPC considered false or inaccurate material information, or failed to consider material information, in accepting the GAC (Governmental Advisory Committee) Durban Advice, it has not stated proper grounds for reconsideration. (Bylaws, Art. IV, § 2.2.)

d. The NGPC Properly Considered The Rationale Given In Early Warnings

The BGC concluded, and the NGPC agrees, that the NGPC properly considered the rationale provided in the GAC (Governmental Advisory Committee) Early Warning submitted on behalf of the governments of Brazil and Peru. The Requester argues that the NGPC improperly considered the rationale given in the Early Warning because, the Requester claims, that rationale "reflects only the concerns of two governments and cannot be used as the consensus rationale of the entire GAC (Governmental Advisory Committee)."³² The Requester's claims do not support reconsideration.

In its rationale for the Resolution, the NGPC stated that although it "d[id] not have the benefit of the rationale relied upon by the GAC (Governmental Advisory Committee) in issuing [the GAC (Governmental Advisory Committee) Durban Advice], the NGPC considered the reason/rationale provided in the GAC (Governmental Advisory Committee) Early Warning submitted on behalf of the governments of Brazil and Peru ..."³³ The NGPC did not state that it considered or relied on the rationale of the Early Warning to represent the rationale for the GAC (Governmental Advisory Committee) Durban Advice—to the contrary, it explicitly stated that it "d[id] not have the benefit" of that rationale. There simply is no evidence that the NGPC relied on false or inaccurate material information in accepting the GAC (Governmental Advisory Committee) Durban Advice. Further, insofar as the Requester argues that the NGPC failed to consider material information in failing to "conduct further inquiry of the GAC (Governmental Advisory Committee) as to the basis and reason for the consensus advice,"³⁴ nothing in ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, the Guidebook, or the GAC (Governmental Advisory Committee)'s Operating Principles requires the GAC (Governmental Advisory Committee) to provide a rationale for its advice.

Finally, the BGC notes that the NGPC did not "rely" on the Early Warning in determining whether to accept the GAC (Governmental Advisory Committee) Durban Advice. Rather, as is reflected in the resolution, the NGPC considered, among other materials, numerous documents, legal advice and letters submitted by the Requester and by other community stakeholders.

e. The NGPC Did Not Rely on False or Inaccurate Material Information or Fail to Consider Material Information in its Consideration of Public Comments and Correspondence to the

Board.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC relied on false or inaccurate material information or failed to consider material relevant information with respect to public comments and correspondence to the Board.

The Requester argues that the NGPC: (i) relied on false or inaccurate material information in considering correspondence sent to the Board by the governments of Brazil and Peru; and (ii) failed to consider material information in failing to consider other correspondence, including correspondence sent by the Requester.³⁵

As to consideration of correspondence sent by the governments of Brazil and Peru, the Requester appears to argue that the "NGPC accepts the views of two governments and infers that these opinions represent consensus advice of all GAC (Governmental Advisory Committee) members."³⁶ The claim is unsupported. In its rationale for the Resolution, the NGPC stated only that it "considered as part of the NGPC's action" an 11 April 2014 letter from the Vice Minister of Foreign Affairs for Peru, and a 14 April 2014 letter from a Director in the Ministry of External Relations of Brazil. Nowhere does the NGPC state, or even imply, that it took the correspondence from Brazil and Peru as GAC (Governmental Advisory Committee) consensus advice. Furthermore, the Requester cites to no Guidebook or Bylaws provision that prohibits the NGPC from taking into consideration correspondence duly submitted to ICANN (Internet Corporation for Assigned Names and Numbers).

The Requester also argues that, although the 11 April 2014 letter from the Peruvian Government contained false information regarding whether Amazon has an ISO (International Organization for Standardization) 3166-2 code,³⁷ the NGPC "failed to identify any false and inaccurate information contained in the letter."³⁸ However, alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to a decision. The NGPC's rationale does not state that it relied on the Peruvian Government's representation regarding the ISO (International Organization for Standardization) 3166-2 code in deciding to accept the GAC (Governmental Advisory Committee) Durban Advice, and the Requester does not explain how the NGPC did so rely, or how the information is at all relevant.³⁹ Furthermore, the NGPC is not required to identify any and all false or inaccurate information contained in the correspondence it considers and explain that the NGPC did not rely on that specific information in reaching its determination, particularly when that information is not relevant or material to the decision being made.

Finally, in its 2 August Letter responding to the BGC's request for clarification, the Requester argues that the 14 April 2014 letter from the Brazilian government inaccurately states that "all steps prescribed in the gTLD (generic Top Level Domain) Applicant Guidebook in order to object to [the Amazon Applications] ... have been timely taken by Brazil and Peru ..."⁴⁰ The Requester claims that this statement is inaccurate because the GAC (Governmental Advisory Committee) Durban Advice was not timely. Again, the NGPC's alleged reliance on false or inaccurate information is a basis for reconsideration only if that information was material to the NGPC's determination. And, once again, the Requester does not explain how the NGPC relied upon the Brazilian Government's allegedly inaccurate representation in deciding to accept the GAC (Governmental Advisory Committee) Durban Advice. Further, as is discussed above, the Requester's argument regarding the alleged untimeliness of the GAC (Governmental Advisory Committee) Durban Advice is not a proper basis for reconsideration.⁴¹

The Requester also argues that the NGPC failed to consider material public comments and correspondence. For instance, the Requester argues that, while the NGPC considered the responses of the governments of Brazil and Peru to the Expert Analysis, it did not consider the Requester's response.⁴² However, in its

rationale the NGPC explicitly noted that it considered communications it received in response to the Expert Analysis, including the 14 April 2014 response from Scott Hayden, the Requester's Vice President, Intellectual Property, as well as letters from the Peruvian government and the Brazilian government. Additionally, the NGPC received and considered in its deliberations correspondence dated 4 September 2014 from Flip Petillion on behalf of the Requester regarding the BGC Recommendation on Reconsideration Request 14-27.⁴³ The Requester identifies no other specific public comment or piece of correspondence that it claims the NGPC failed to consider, and the NGPC's rationale for the Resolution clearly states that its "review of significant materials included, but [was] not limited to," the listed materials.⁴⁴ In any event, the Requester does not identify any provision in the Bylaws or Guidebook that would require the NGPC to consider (much less identify and discuss) every comment or piece of correspondence received.⁴⁵

F. The NGPC Did Not Fail to Consider Material Information from the United States Government.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the United States Government's statement.

The Requester argues that the NGPC failed to consider material information by failing to consider the July 2013 statement from the United States Government on geographic indicators.⁴⁶ In its statement, the United States Government expressed its intent to "remain neutral" on the Applications, so as to "allow[] the GAC (Governmental Advisory Committee) to present consensus objections on those strings to the Board, if no other government objects." Nonetheless, the Requester argues that "[t]he statement from the U.S. Government calls into direct question the belief that the GAC (Governmental Advisory Committee) Durban Advice is clearly representative of the consensus adoption of the entire GAC (Governmental Advisory Committee) of the opinion set forth by Brazil and Peru in its Early Warning or follow-up correspondence."⁴⁷

Further, the United States Government's statement does not negate the fact that the GAC (Governmental Advisory Committee) Durban Advice represents consensus GAC (Governmental Advisory Committee) Advice. Pursuant to GAC (Governmental Advisory Committee) Operating Principle 47, "consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection."⁴⁸ As the statement makes clear, the United States did not object to the GAC (Governmental Advisory Committee) Durban Advice. The mere fact that the United States remained neutral with respect to the GAC (Governmental Advisory Committee) Durban Advice was not material to the NGPC's consideration of that advice.

G. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Determination.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Determination.

The Requester argues that the NGPC improperly failed to consider the Expert Determination rejecting the IO's Community Objection to the Amazon Applications.⁴⁹ The Requester appears to contend that the Expert Determination was material because: (1) the objections of the Brazilian and Peruvian governments would have been properly raised in the context of a Community Objection—which those governments did not bring; and (2) a Community Objection by those governments would have failed, as is evidenced by the Expert Determination.⁵⁰

GAC (Governmental Advisory Committee) members are not limited to raising objections that could have been raised in, or that meet the standards required to

prevail upon, one of the four enumerated grounds for formal objections. (Guidebook Module 3, § 3.2.) Rather, GAC (Governmental Advisory Committee) Advice on new gTLD (generic Top Level Domain) applications is generally "intended to address applications that are identified by national governments to be problematic, e.g., that potentially violate national law or raise sensitivities." (Guidebook Module 3, § 3.1.) GAC (Governmental Advisory Committee) members' discretion with respect to their reasons for objecting to gTLD (generic Top Level Domain) applications is reflected in the fact that the GAC (Governmental Advisory Committee) is not required to issue a rationale for its advice. In any event, the briefing materials of the NGPC's 29 April 2014 and 14 May 2014 meetings reflect that the Expert Determination was considered by the NGPC during its deliberations on the Amazon Applications.⁵¹

H. The NGPC Did Not Fail to Consider Material Information with Respect to the Expert Analysis.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the Expert Analysis.

The Requester argues that ICANN (Internet Corporation for Assigned Names and Numbers) instructed Professor Passa "to address only whether under intellectual property laws, governments could claim legally recognized sovereign or geographic rights in the term 'Amazon' or whether ICANN (Internet Corporation for Assigned Names and Numbers) was 'obliged' to grant .AMAZON based on pre-existing trademark registrations," when "[t]he real question is whether, by accepting GAC (Governmental Advisory Committee) advice, which is not rooted in any existing law, ICANN (Internet Corporation for Assigned Names and Numbers) would be violating either national [or] international law."⁵²

The Guidebook sets forth the parameters in which GAC (Governmental Advisory Committee) Advice will be given under the New gTLD (generic Top Level Domain) Program:

ICANN (Internet Corporation for Assigned Names and Numbers) will consider the GAC (Governmental Advisory Committee) Advice on New gTLDs as soon as practicable. The Board **may consult with independent experts**, such as those designated to hear objections in the New gTLD (generic Top Level Domain) Dispute Resolution Procedure, in cases where the issues raised in the GAC (Governmental Advisory Committee) advice are pertinent to one of the subject matter areas of the objection procedures.

(Guidebook, § 3.1) (emphasis added). Under this provision, the Board has the discretion to seek an independent expert opinion on issues raised by GAC (Governmental Advisory Committee) Advice. The Board may also define the scope of its consultation with independent experts. As such, the Requester's objection to the scope of Professor Passa's assignment is not a basis for reconsideration.

The Requester has not cited to any provision of the Bylaws or Guidebook that would require ICANN (Internet Corporation for Assigned Names and Numbers) to commission additional legal studies at the request of a New gTLD (generic Top Level Domain) Applicant. Reconsideration for failure to consider material information is not proper where "the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of the action or refusal to act." (Bylaws, Art. IV, § 2.b.) The Requester was given multiple opportunities to present materials for the NGPC's consideration, including the opportunity—which it accepted—to respond to the Expert Analysis. In fact, the Requester attached to its response to the GAC (Governmental Advisory Committee) Durban Advice a lengthy excerpt from a legal treatise on the protection of geographic names.⁵³ If the Requester believed that additional legal

analysis was required, it was free to commission that analysis and submit it to the NGPC.

I. The NGPC Did Not Fail to Consider Material Information with Respect to Its Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The BGC concluded, and the NGPC agrees, that the Requester has not stated a proper basis for reconsideration with respect to the NGPC's consideration of its obligations under ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, Articles of Incorporation, and Affirmations of Commitment.

The Requester alleges that the NGPC failed to take into account material information regarding its obligations under Articles I.2, II.3, and III.1 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws; Article 4 of its Articles of Incorporation; and Sections 4, 5, 7, and 9.3 of its Affirmations of Commitment.⁵⁴ The Requester's disagreement with the Resolution does not, however, demonstrate that the NGPC failed to consider those obligations. And, as the rationale for the Resolution makes clear, the NGPC acted pursuant to its obligation under Article XI, Section 2.1 of the Bylaws, to duly address advice put to it by the GAC (Governmental Advisory Committee).⁵⁵

J. The NGPC Did Not Fail to Consider Material Information with Respect to the Fiscal Implications of the Resolution.

The BGC concluded, and the NGPC agrees, that the Requester has not demonstrated that the NGPC failed to consider material information with respect to the fiscal implications of the Resolution. The Requester contends that "[s]hould it be determined that the [Resolution] in fact violates various national and international laws, the costs of defending an action (whether through the Independent Review Process or through U.S. courts) will have significant fiscal impacts on ICANN (Internet Corporation for Assigned Names and Numbers)..."⁵⁶ The Requester has not demonstrated that the NGPC did not consider the potential for litigation arising out of the Resolution, including the potential fiscal impact of such litigation. In any event, the Requester has not demonstrated how the speculative possibility of litigation is material to the NGPC's determination here. As such, the Requester has not identified a proper ground for reconsideration.

VI. Decision

The NGPC had the opportunity to consider all of the materials submitted by or on behalf of the Requester or that otherwise relate to Request 14-27. Following consideration of all relevant information provided, the NGPC reviewed and has adopted the BGC's Recommendation on Request 14-27

(<https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf> ([/en/system/files/files/recommendation-amazon-22aug14-en.pdf](https://www.icann.org/en/system/files/files/recommendation-amazon-22aug14-en.pdf)) [PDF, 177 KB]), which shall be deemed a part of this Rationale and is attached to the Reference Materials to the NGPC Submission on this matter.

In terms of timing of the BGC's Recommendation, Sections 2.16 and 2.17 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation to the Board [or NGPC as appropriate] with respect to a Reconsideration Request within thirty days following receipt of the request, unless impractical and the Board [or NGPC as appropriate] shall issue its decision on the BGC's recommendation within 60 days of receipt of the Reconsideration Request, or as soon thereafter as feasible. (See Bylaws, Article IV, Sections 2.16 and 2.17.) The BGC required additional time to make its recommendation due to its request for clarification from the Requester, and due to the volume of Reconsideration Requests received within recent months. As such, the first practical opportunity for the BGC to make a decision on this Request was on 22 August 2014; it was impractical for the BGC to do so sooner. Then, the first feasible chance for the NGPC to consider Request 14-27 was on 8 September 2014.

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

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

d. Perceived Inconsistent String Confusion Objection Expert Determinations

The Committee continued its previous discussions about perceived inconsistent String Confusion Objection ("SCO") Expert Determinations. The Chair presented the Committee with potential options to address the perceived inconsistent SCO Expert Determinations, including adopting the review mechanism that was published for public comment in February 2014, or not adopting the review mechanism. The Committee also explored the boundaries of its discretionary authority to potentially individually consider and possibly send to the International Centre for Dispute Resolution ("ICDR") for further review, specific perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations.

Amy Stathos provided a summary of the public comments received on the review mechanism to address perceived inconsistent SCO Expert Determinations that was published for public comment.

The Committee engaged in a discussion of the relative merits and disadvantages of the various options presented to address the perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations. Mike Silber supported the idea of sending specific perceived inconsistent or otherwise seemingly unreasonable SCO Expert Determinations back to the ICDR for further review, and expressed dissatisfaction that the ICDR did not resolve internally the perceived inconsistencies at issue. Bill Graham and George Sadowsky agreed. Olga Madruga-Forti inquired about the rules and procedures that would be in place if this option were selected, and the Committee engaged in a discussion of the same.

The Committee also considered how the various options could be implemented if adopted.

The Committee requested that staff prepare additional briefing materials in light of the discussion so that the matter could be acted upon at its next meeting.

e. Any Other Business

The Committee was provided with a brief update on the Independent Review Process between DotConnectAfrica Trust and ICANN (Internet Corporation for Assigned Names and Numbers) regarding the .AFRICA new gTLD (generic Top Level Domain).

Erika Mann inquired about name collisions, and Akram Atallah provided an update on implementation of name collision controlled interruption periods by new gTLD (generic Top Level Domain) registry operators and whether the measures in the name collision framework adopted by the Committee on 30 July 2014 were effectively working.

The Chair called the meeting to a close.

Published on 13 October 2014

¹ 17 June 2013 Letter available at <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf> ([/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf](https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-17jun12-en.pdf)) [PDF, 74 KB] (emphasis in original).

² <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en> ([/resources/board-material/resolutions-new-gtld-2014-05-14-en](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en))

³ <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee> (<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>)

⁴ <https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

<https://gacweb.icann.org/display/gacweb/Governmental+Advisory+Committee>

⁵ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-05mar13-en.pdf)) [PDF, 93.9 KB]

⁶ Determination on Community Objection, ¶¶ 40, 59, *available at*
<http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/drsp/03feb14/determination-1-1-1315-58086-en.pdf>) [PDF, 553 KB].

⁷ Beijing Communiqué *available at* <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>
([/en/system/files/correspondence/gac-to-board-18apr13-en.pdf](https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf)) [PDF, 155 KB].

⁸ Response to GAC (Governmental Advisory Committee) Beijing Advice, at Pgs. 3-5, *available at*
<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 280 KB].

⁹ Response to GAC (Governmental Advisory Committee) Beijing Advice, at Pgs. 2-3, *available at*
<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 280 KB].

¹⁰ http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf
(http://www.ntia.doc.gov/files/ntia/publications/usg_nextsteps_07052013_0.pdf) [PDF, 11.4 KB]

¹¹ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-04jul13-en.pdf)) [PDF, 67.4 KB]

¹² Durban Communiqué *available at* <http://newgtlds.icann.org/en/applicants/gac-advice/durban47>
(<http://newgtlds.icann.org/en/applicants/gac-advice/durban47>).

¹³ Response to GAC (Governmental Advisory Committee) Durban Advice, at Pg. 2, *available at*
<http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>
(<http://newgtlds.icann.org/sites/default/files/applicants/03sep13/gac-advice-response-1-1315-58086-en.pdf>) [PDF, 6.10 MB].

¹⁴ <https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf>
([/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-chehade-et-al-03dec13-en.pdf)) [PDF, 129 KB]

¹⁵ <https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf>
([/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf](https://www.icann.org/en/system/files/correspondence/king-to-crocker-et-al-10jan14-en.pdf)) [PDF, 71.2 KB]

¹⁶ <https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf>
([/en/system/files/files/request-amazon-30may14-en.pdf](https://www.icann.org/en/system/files/files/request-amazon-30may14-en.pdf)) [PDF, 180 KB]

¹⁷ <https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf>
([/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf](https://www.icann.org/en/system/files/files/petillion-to-ngpc-bgc-02aug14-en.pdf)) [PDF, 475 KB]

¹⁸ See Request 14-27, § 8, Pgs. 6-7.

¹⁹ See Request 14-27, § 8, Pgs. 7-8.

²⁰ See Request 14-27, § 8, Pgs. 8-9.

²¹ See Request 14-27, § 8, Pgs. 10-11.

²² See Request 14-27, § 8, Pgs. 11-14.

²³ See Request 14-27, § 8, Pgs. 14-16.

²⁴ See Request 14-27, § 8, Pgs. 16-18.

²⁵ See Request 14-27, § 8, Pgs. 18-19.

²⁶ See Request 14-27, § 8, Pgs. 19-21.

²⁷ See Request 14-27, § 8, Pgs. 21-22.

²⁸ Having a reconsideration process whereby the BGC reviews and, if it chooses, makes a recommendation to the Board/NGPC for approval, positively affects ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability. It provides an avenue for the community to ensure that staff and the Board are acting in accordance with ICANN (Internet Corporation for Assigned Names and Numbers)'s policies, Bylaws, and Articles of Incorporation.

²⁹ See Request 14-27, § 8, Pg. 8.

³⁰ See Request 14-27, § 8, Pgs. 8-9.

³¹ See Request 14-27, § 8, Pgs. 8-9.

³² Request 14-27, § 8, Pg.10.

³³ Resolution 2014.05.14.NG03 Rationale available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-2.b> ([/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b)).

³⁴ Request 14-27, § 8, Pg. 10.

³⁵ See Request 14-27, § 8, Pgs. 11-14.

³⁶ See Request 14-27, § 8, Pg. 11; see also Request 14-27, § 8, Pgs. 13-14.

³⁷ The ISO (International Organization for Standardization) 3166-2 code is published by the International Organization for Standardization and assigns five-digit alphanumeric strings to countries' administrative divisions and dependent territories. (See http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3 (http://www.iso.org/iso/home/standards/country_codes/updates_on_iso_3166.htm?show=tab3).

³⁸ See Request 14-27, § 8, Pgs. 13-14.

³⁹ In its 2 August Letter responding to the BGC's request for clarification, the Requester adds that this same representation was made by Peru's GAC (Governmental Advisory Committee) representative to the GAC (Governmental Advisory Committee) prior to its vote on the GAC (Governmental Advisory Committee) Durban Advice. (2 August Letter at 1-2.) However, the GAC (Governmental Advisory Committee) is an independent advisory committee, and not part of ICANN (Internet Corporation for Assigned Names and Numbers)'s Board. As such, the materials considered by the GAC (Governmental Advisory Committee) in rendering its advice are not a proper basis for reconsideration.

⁴⁰ 2 August Letter, Pg. 2, available at <https://www.icann.org/en/system/files/files/petition-to-ngpc-bgc-02aug14-en.pdf> ([/en/system/files/files/petition-to-ngpc-bgc-02aug14-en.pdf](https://www.icann.org/en/system/files/files/petition-to-ngpc-bgc-02aug14-en.pdf)) [PDF, 475 KB]

⁴¹ In its 2 August Letter, the Requester also argues that following the issuance of the GAC (Governmental Advisory Committee) Durban Advice but prior to the NGPC vote on the Resolution, it requested, and was denied, the opportunity to meet with the NGPC to present its position. The Requester does not challenge this staff and/or Board action and points to no Bylaw or ICANN (Internet Corporation for Assigned Names and Numbers) policy or procedure that would require such a meeting.

⁴² See Request 14-27, § 8, Pg. 12.

⁴³ 4 September Letter, available at <https://www.icann.org/en/system/files/files/petition-to-ngpc-04sep14-en.pdf> ([/en/system/files/files/petition-to-ngpc-04sep14-en.pdf](https://www.icann.org/en/system/files/files/petition-to-ngpc-04sep14-en.pdf)) [PDF, 504 KB].

⁴⁴ Resolution 2014.05.14.NG03 Rationale available at <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en-2.b> ([/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b](https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-05-14-en#2.b)).

⁴⁵ The Requester also appears to argue that the NGPC should have solicited opinions from other governments. (Request, § 8, Pg. 12.) However, it cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

⁴⁶ See Request 14-27, § 8, Pgs. 14-15.

⁴⁷ See Request 14-27, § 8, Pg. 15.

⁴⁸ GAC (Governmental Advisory Committee) Operating Principle 47 *available at* [https://gacweb.icann.org/display/gacweb/GAC+\(Governmental+Advisory+Committee\)+Operating+Principles](https://gacweb.icann.org/display/gacweb/GAC+(Governmental+Advisory+Committee)+Operating+Principles) (<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>).

⁴⁹ See Request 14-27, § 8, Pgs. 16-17.

⁵⁰ See Request 14-27, § 8, Pg. 17.

⁵¹ Briefing materials of NGPC 29 April 2014 meeting *available at* <https://www.icann.org/en/system/files/bm/briefing-materials-1-29apr14-en.pdf> ([/en/system/files/bm/briefing-materials-1-29apr14-en.pdf](https://www.icann.org/en/system/files/bm/briefing-materials-1-29apr14-en.pdf)) [PDF, 485 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-29apr14-en.pdf> ([/en/system/files/bm/briefing-materials-2-29apr14-en.pdf](https://www.icann.org/en/system/files/bm/briefing-materials-2-29apr14-en.pdf)) [PDF, 950 KB]; Briefing materials of NGPC 14 May 2014 meeting *available at* <https://www.icann.org/en/system/files/bm/briefing-materials-1-14may14-en.pdf> ([/en/system/files/bm/briefing-materials-1-14may14-en.pdf](https://www.icann.org/en/system/files/bm/briefing-materials-1-14may14-en.pdf)) [PDF, 688 KB] and <https://www.icann.org/en/system/files/bm/briefing-materials-2-14may14-en.pdf> ([/en/system/files/bm/briefing-materials-2-14may14-en.pdf](https://www.icann.org/en/system/files/bm/briefing-materials-2-14may14-en.pdf)) [PDF, 1.62 MB].

⁵² Request 14-27, § 8, Pgs. 18-19 (emphasis in original).

⁵³ See Response to GAC (Governmental Advisory Committee) Durban Advice, Appx. A, *available at* <https://www.icann.org/en/system/files/files/request-annex-amazon-2-30may14-en.pdf> ([/en/system/files/files/request-annex-amazon-2-30may14-en.pdf](https://www.icann.org/en/system/files/files/request-annex-amazon-2-30may14-en.pdf)) [PDF, 19.8 MB].

⁵⁴ See Request 14-27, § 8, Pgs. 19-21.

⁵⁵ The Requester also argues that the NGPC "should have sought comment from the [Generic Names Supporting Organization (Supporting Organization) ("GNSO (Generic Names Supporting Organization)")] as to whether [the GAC (Governmental Advisory Committee) Durban Advice was] in violation of GNSO (Generic Names Supporting Organization) Policy." (Request, § 8, Pg. 21.) However, the Requester cites to no Bylaws or Guidebook provision that would require the NGPC to do so.

⁵⁶ Request 14-27, § 8, Pgs. 21-22.



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RSS Feeds ([/en/news/rss](https://www.icann.org/en/news/rss))



Community Wiki

<https://community.icann.org/>



ICANN Blog ([/en/news/blog](https://www.icann.org/en/news/blog))

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Staff (/en/about/staff)	AOC Review (http://forms.icann.org/en/about/aoc-review/contact)		Planning (/en/about/planning)	
Careers	Reviews (http://forms.icann.org/en/groups/reviews/contact)		Dashboard Beta (https://www.icann.org/dashboard)	
Newsletter (/en/news/newsletter)	Request a Speaker (http://forms.icann.org/en/contact/speakers)		RFPs (/en/news/rfps)	
Development and Public Responsibility (https://www.icann.org/dev4/en/news/press-and-public-responsibility)	For Journalists (/en/news/press)		Litigation (/en/news/litigation)	
			Correspondence (/en/news/correspondence)	

EXHIBIT C-070

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EXHIBIT C-071



February 25, 2015

VIA EMAIL (ombudsman@icann.org)

Mr. Chris LaHatte
Ombudsman
ICANN

Re: Board Governance Committee Review of and Action Upon
Amazon EU S.à.r.l. Request for Reconsideration No. 14-27

Dear Mr. LaHatte:

Thank you for meeting with us on February 6 about the complaint by Amazon EU S.à.r.l. (“Amazon”) that the ICANN Board Governance Committee unfairly treated Amazon’s Reconsideration Request 14-27 (the “Reconsideration Request”). You’ve asked us to detail why we believe we’ve been treated unfairly. In short, the only Board members reviewing Board decisions on new gTLD applications are the very Board members who made the decisions in the first place. Specifically, the May 14, 2014 decision by the New gTLD Program Committee (“NGPC”) to accept the tardy Governmental Advisory Committee advice that the .AMAZON Applications¹ should not proceed was first reviewed by a Board Governance Committee (“BGC”) comprised exclusively of the *same* ICANN Board members who made the NGPC decision under review. Compounding matters, the BGC then referred its recommendation back to the NGPC for final action by the *same* ICANN Board members who made the initial NGPC decision that prompted our Reconsideration Request. This process was fundamentally and inherently unfair, and precluded any meaningful and objective review of our Reconsideration Request. We urge you to recommend that our Reconsideration Request receive an unbiased review free from conflict of interest.

During our conversation, you suggested that Amazon might have consented to this process. We disagree, for several reasons.

First, Amazon did not have advance notice of this inherently unfair process when it filed its .AMAZON Applications. The January 2012 Applicant Guidebook, which applied during the new gTLD application window, made no mention of the fact that Requests for Reconsideration of Board action would be reviewed by the same ICANN Board members (as BGC members) that made the decision (as NGPC members) that is the subject of the Request for Reconsideration, or that final action on those Requests for Reconsideration would be made by the same ICANN Board members (once again as NGPC members).² Moreover, the ICANN Board had not publicly announced this process when Amazon filed its .AMAZON Applications. The ICANN Board created the NGPC on April 10, 2012.³ The ICANN community (including Amazon) first learned of the NGPC’s creation on April 13, 2012.⁴ But this was *after* ICANN opened the

¹ .AMAZON Applications refers to Amazon’s new gTLD applications for the strings .AMAZON (application ID 1-1315-58086), .アマゾン (application ID 1-1318-83995) and .亚马逊 (application ID 1-1318-5591).

² See the attached chart tracking the composition of the NGPC and BGC on the relevant dates.

³ See Board Resolutions from April 10, 2012 Special Meeting of the Board, available at <https://www.icann.org/resources/board-material/resolutions-2012-04-10-en>.

⁴ See April 13, 2012 message from ICANN Board Member Bruce Tonkin to GNSO Council mailing list, posting ICANN Board resolution establishing the New gTLD Program Committee, available at <http://gnso.icann.org/mailing-lists/archives/council/msg12925.html>.

gTLD application window⁵ and *after* we submitted our .AMAZON Applications that are the subject of our Reconsideration Request.

Amazon could not have consented to a process that did not even exist when we filed our .AMAZON Applications and did not waive this inherent conflict of interest by filing our .AMAZON Applications.

Second, ICANN – not Amazon, not any other new gTLD applicant, nor the ICANN community – is responsible for ensuring that the Request for Reconsideration process is a meaningful and fair accountability mechanism for Board action. Indeed, one of ICANN's core values is to “mak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness.”⁶ ICANN's Bylaws require “procedures designed to ensure fairness.”⁷ ICANN could have taken several steps to follow these principles, but failed to do so. For instance, ICANN could have selected for the BGC only those Board members who did not serve on the NGPC and did not have new gTLD conflicts. It did not. To the contrary, every BGC member either served on the NGPC or had new gTLD-related conflicts (which is why they weren't NGPC members). ICANN could have limited the number of NGPC members so that the BGC had enough members who did not serve on the NGPC and did not have new gTLD conflicts. It did not. The fact that ICANN failed to observe basic procedural fairness does not mean that Amazon somehow consented to the inherent conflict of interest of having the same Board members review their own decisions.

Moreover, BGC's history suggests a troubling neglect of procedural fairness. None of the BGC's posted annual reports since 2006 contain the bylaws-required discussion of whether “the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.”⁸ The omission of this discussion in one report could be inadvertent; the omission from *all* BGC annual reports since 2006 suggests that the BGC itself may be aware of this unfairness. Further, the BGC has denied all 22 Requests for Reconsideration relating to new gTLD applications and, like ours, based on Board action/inaction. This 0% success rate strongly suggests that BGC does not provide any meaningful and fair review of these NGPC decisions.⁹

Finally, the absence of objection by the ICANN community should not prevent you from recommending that our Reconsideration Request receive an unbiased review. Although the ICANN community has not broadly objected to the conflict of interest inherent in having the Board review its own decisions, it is not clear that the ICANN community is aware of these conflicts. A member of the ICANN community that is not a new gTLD applicant and has not filed a Request for Reconsideration of Board action would have no reason to be aware. Moreover, the current discussions about ICANN accountability suggest that these particular circumstances are not known by the broader community; had this conflict been widely known, we suspect more community members would have objected. Even if the ICANN community were aware of the problem, the absence of objection would not make the conflict of interest disappear, or transform a fundamentally unfair process into a fair one.

We understand that the potential consequence of recognizing that the complained-of process is unfair makes all of the decisions on reconsideration requests of Board action relating to new gTLD applications vulnerable to challenge. However, the fact that the Board designed and followed an inherently unfair process

⁵ The new gTLD application window opened on January 12, 2012. See About the New gTLD Program, available at <http://newgtlds.icann.org/en/about/program>.

⁶ ICANN Bylaws, Art. II, Sec. 2, ¶. 8.

⁷ Id., Art. III, Sec. 1.

⁸ Id., Art. IV, Sec. 2, ¶ 20(d).

⁹ In addition to the 0 for 22 success rate, ICANN's numbers are only slightly better for Requests for Reconsideration relating to new gTLD applications that are based on Staff action/inaction – the other basis on which reconsideration can be sought. For those, the BGC has granted only 2 of 45 requests, both of which related to determinations outsourced by ICANN (e.g., Community Objection and Community Priority Evaluation).

cannot insulate the decisions resulting from that process from further review. We urge you to recommend that our Reconsideration Request receive an unbiased review, free from conflict of interest. Please contact us if you have any questions or need any further information.

With best regards,

A handwritten signature in cursive script that reads "Kristina Rosette".

Kristina Rosette
Sr. Corporate Counsel

cc: Scott Hayden, Vice President, IP
Dana Northcott, Associate General Counsel, IP

Attachment A

Composition of New gTLD Program Committee and Board Governance Committee

NGPC Members Who Voted on May 14, 2014 Acceptance of GAC Advice that .AMAZON Applications Should Not Proceed	BGC Members Who Voted on August 22, 2014 to Recommend that NGPC Reject Amazon's Reconsideration Request	NGPC Members Who Voted on September 8, 2014 to Adopt BGC's Recommendation to Reject Amazon's Reconsideration Request
<p><i>Cherine Chalaby</i> <i>Chris Disspain</i> <i>Olga Madruga-Forti</i> <i>Mike Silber</i> Fadi Chehade Stephen Crocker Bill Graham Gonzalo Navarro George Sadowsky</p> <p>Unavailable to vote: Bruno Lanvin, Erika Mann, Raymond Plzak, Kuo-Wei Wu</p>	<p><i>Cherine Chalaby</i> <i>Chris Disspain</i> <i>Olga Madruga-Forti</i> <i>Mike Silber</i></p> <p>Unavailable to vote: Raymond Plzak, Ram Mohan</p> <p>Abstained due to conflict: Bruce Tonkin</p>	<p><i>Cherine Chalaby</i> <i>Chris Disspain</i> <i>Olga Madruga-Forti</i> <i>Mike Silber</i> Fadi Chehadé Steve Crocker Bill Graham Bruno Lanvin Erika Mann Gonzalo Navarro George Sadowsky Kuo-Wei Wu</p> <p>Unavailable to vote: Raymond Plzak</p>

Board members whose names appear in bold and italics participated in all three decisions.

EXHIBIT C-072



April 21, 2015

VIA EMAIL (ombudsman@icann.org)

Mr. Chris LaHatte
Ombudsman
ICANN

Re: Board Governance Committee Review of and Action Upon
Amazon EU S.à.r.l. Request for Reconsideration No. 14-27

Dear Mr. LaHatte:

We appreciate the opportunity to review and comment on your March 27 draft report regarding the complaint by Amazon EU S.à.r.l. (“Amazon”) that the ICANN Board Governance Committee (“BGC”) unfairly treated Amazon’s Reconsideration Request 14-27 (the “Reconsideration Request”). Our February 25, 2015 letter to you detailed why we believe we’ve been treated unfairly, namely, that the only Board members reviewing Board decisions on new gTLD applications are the very Board members who made the decisions in the first place. We contend that this process was fundamentally and inherently unfair, and precluded any meaningful and objective review of our Reconsideration Request. For the reasons set out below, we respectfully disagree with the result you recommended in the draft report. Although we object to your conclusions, we highlight below the three primary points of difference.

First, we disagree with your apparent contention that all new gTLD applicants waived any and all conflicts relating to their use of ICANN accountability mechanisms because they filed their new gTLD applications with knowledge (actual or presumed) of the existence of those accountability mechanisms. The conflict we have raised – that the only Board members reviewing Board decisions on new gTLD applications are the very Board members who made the decisions in the first place – was not disclosed and was not reasonably foreseeable.

Second, we are confused by your discussion about the formation of the New gTLD Program Committee (“NGPC”). In your January email to our counsel and during our February meeting in Singapore, you had taken the position that Amazon had advance notice of this inherently unfair process when it filed its .AMAZON Applications because the NGPC had already been formed. Our February 25 letter to you noted that (i) the January 2012 Applicant Guidebook did not mention that Requests for Reconsideration of Board action would be reviewed by the same ICANN Board members (as BGC members) that made the decision (as NGPC members) that is the subject of the Request for Reconsideration, or that final action on those Requests for Reconsideration would be made by the same ICANN Board members (once again as NGPC members); and (ii) the ICANN Board had not publicly announced this process when Amazon filed its .AMAZON Applications. This demonstrates that Amazon could not have consented to a process that did not even exist when we filed our .AMAZON Applications and did not waive this inherent conflict of interest by filing our .AMAZON Applications.

Now, however, your draft report appears to suggest that we (along with every other new gTLD applicant) did consent to the conflict because the Board’s creation of the NGPC after we filed our .AMAZON Applications “was an entirely predictable and appropriate use of the board’s resources.” Respectfully, whether the creation of subcommittees of the Board was predictable is beside the point. As we have

noted, the conflict here existed because there was no independent review of that subcommittee's decision on the .AMAZON Applications – the same Board members who made the original decision then reviewed that decision. If you maintain that this conflict was “entirely predictable,” we request that your final report clarify what facts or historical precedent would lead applicants to expect such conflicts would permeate review of decisions on their applications.

Third, contrary to your draft report, we specifically raised the conflict of interest in connection with our Request for Reconsideration. Our counsel's June 3, 2014 letter to the BGC:

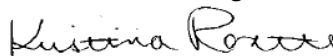
- Asked how the BGC intended to address the review of Amazon's Request for Reconsideration given that “BGC members are now asked to review and consider a decision in which the majority of BGC members were involved and with which they agreed”;
- Noted that “One BGC member (who is currently a non-voting member of the BGC) may have a conflict as his company is the backend registry provider of record for three of Amazon's applications . . . This leaves only one member of the BGC without apparent relationship to the parties involved or prior involvement in the matter”;
- Asked how the BGC “will make a recommendation on the merits of the Request for Reconsideration. Will this recommendation be addressed to the full Board of Directors, the Board of Directors without the NGPC members (who took part in the decision), or will the NGPC be asked to make a determination on a Request for Reconsideration concerning the NGPC's own actions”;
- and
- Asked how the BGC “will be administering the conflicts review as the BGC is also responsible for making a determination regarding potential conflicts.”

ICANN **never responded** to these questions or the observation that the BGC had only one member “without apparent relationship to the parties involved or prior involvement in the matter.” Attached for your convenience is a copy of the letter, which ICANN posted on its website page for our Request for Reconsideration. We did *not* waive the conflict.

We agree with your acknowledgement that the “existing structure has some issues.” However, the suggestion that the fundamental and inherent unfairness we have identified can be rectified in the future through the current accountability structures review and the review of the New gTLD Program does not address our request that our Reconsideration Request receive an unbiased review.

Finally, once your final report is completed, we request that you publish it without redaction along with both this letter and our February 25, 2015 letter.

With best regards,



Kristina Rosette
Sr. Corporate Counsel

cc: Scott Hayden, Vice President, IP
Dana Northcott, Associate General Counsel, IP

Attachment

EXHIBIT C-073

ICANN Ombudsman Blog Creating Dialogue Affirming Fairness

Office of the Ombudsman

Case 14-00333

In a matter of a Complaint by Amazon EU S.a.r.l.

Report dated 28th May 2015

Introduction

This investigation is about an application for a new generic top level domain string for .amazon, by Amazon EU Sa.r.l, a subsidiary of the well known Amazon company known for on line sales of a wide range of products, throughout the world. They sought the use of this string as a natural flow on from the use of the corporate name and trademark in the word Amazon. The application for this string attracted considerable opposition from several South American countries, who channeled this through the Government Advisory Committee (GAC), an advisory committee to ICANN. The GAC then provided advice to the New gTLD Program Committee (NGPC), a committee of the ICANN Board, objecting to the delegation. This advice and objection procedure was enabled by the Applicant Guidebook, created by ICANN and the ICANN Community for the purpose of stating the necessary procedure for applicants for the new strings.

The NGPC accepted the GAC advice and as a result the application for the string came to a halt. Amazon then sought a reconsideration request, as provided in the ICANN Bylaws for such decisions, numbered 14 – 27 in the ICANN system. The resulting decision from the ICANN Board Governance Committee (BGC) who have the delegated power to decide reconsideration requests, declined to do so. As is the current practice, the BGC suggested that if Amazon was unhappy with the result, then they could ask the Ombudsman to review the decision, and Amazon have chosen to do so.

Facts

The essence of the complaint is that Amazon have complained that they have been treated unfairly because there is a conflict of interest by the members of the two ICANN committees who have considered the issues and made a number of decisions. Both the NGPC and BGC committees are made up of ICANN Board members, and have some but not all members in common.

The first decision was made by the NGPC to accept GAC advice that the string for .amazon should not proceed. Amazon then used the reconsideration process to ask the ICANN Board to review that decision. The BGC then made a recommendation which was referred back to the NGPC for final action. The effect is that the application for the string was not able to proceed. Amazon however assert that there is a conflict of interest created by the fact that the NGPC and BGC committees of the board have the same ICANN board members. They say that this made the process fundamentally and inherently unfair, and submit that the process precluded any meaningful and objective review of the reconsideration request.

Investigation

To undertake this investigation I have read the application for reconsideration request and related papers sent to ICANN by Amazon, the minutes of the two ICANN committees and the final reconsideration decision. I have discussed the matter with ICANN and with representatives of Amazon. I have sought comment on specific aspects including a specific request from me, to comment on the knowledge of the Applicant Guidebook. I was concerned that community, and specifically Amazon, as part of the community would have been aware of the terms of the AGB and the procedure. The AGB was issued in a number of iterations, and developed in a policy development process by the community, and the version relevant to the Amazon application, was January 2012. Subsequent to the guidebook

being developed and published, the ICANN board specifically created a new committee to deal with the new generic names, which was the NGPC committee. This was created by a resolution on 10 April 2012. This committee then proceeded to deal with various aspects of the program, and in due course the decision from the GAC, which effectively halted the Amazon application.

Amazon note in their submissions to me, that by the time this committee had been created they had already filed their application for the .Amazon string.

Issues

The issue which I am required to investigate is whether there is a conflict of interest of such a nature which made the decisions unfair. The issue which flows from this is whether the members of the ICANN committees can reach their decisions having regard to their dual capacity as members of both committees. In other words does membership of the NGPC taint any decisions made subsequently as a member of the BGC? Do the openly disclosed declarations of conflict made by the members of the committees make the decision acceptable?

Jurisdiction

This is a matter where I clearly have jurisdiction. If there is a conflict of interest in a decision made by the board or committees of the board, then I have jurisdiction to make a recommendation about the procedure and the result. I do not have the power to set aside the result but only to suggest that the matter be reviewed, if the process was tainted by a conflict of interest, if one existed.

Reasoning

It must be assumed that the applicants for all of the new generic top level domains would have spent some time familiarising themselves with the AGB and the process. The procedure for reviewing board decisions by the reconsideration procedure is also well established, although perhaps not as well known at the start of the programme, as the present, after so many new gTLD applicants have used the procedure. The point is that when the applicants made their applications for the new names, they should have also considered the process and the procedure which would be needed, particularly when dealing with adverse decisions.

It would be well known to applicants that any decisions made by the ICANN board were subject to the accountability functions of the ombudsman, reconsideration request and independent review panel. So in terms of fairness, all of the applicants would be aware that the process for dealing with issues of procedural fairness would need to be undertaken using those accountability functions. They have signed up to the process in other words.

Amazon has however been concerned that the NGPC committee was only formed after the applications had been filed. They raise the issue that they did not know that such a committee would be formed, and therefore could not have waived any right to object to this committee and the BGC making decisions on the reconsideration process. The NGPC committee was of course set up to deal specifically with the process, but it is important to note that it is a committee of the ICANN board, which has the power to delegate decision-making in this fashion. The alternative way of dealing with the issues arising out of the new gTLD program would have been to place these before the board as a whole, but obviously this would be cumbersome. So the creation of this subcommittee is not of itself unfair or using an unfair process. So in my view there is nothing problematic in the creation of this committee after the various applications for the new names were made. It was a predictable and appropriate use of the board's resources.

Amazon state that they could not have consented to any process that did not even exist when they filed the application and therefore could not waive any potential conflict of interest. They submit that there was never any consent, and that they specifically objected to the conflict of interest in the Request for Reconsideration with a specific reference in a letter of 3 June 2014 to the BGC, raising the issues of conflict. They sought specific comment from the BGC, but assert they do not ever receive a response from ICANN. This appears to be one of their principal concerns. The real difficulty arises because the board is relatively small, and the committees required a minimum number to be able to properly consider the issues. If the decisions had been made by the entire board that would not have resolved any potential conflict of course. But it is also important to note the procedure for identifying potential conflicts and the requirement by board members to complete forms relating to any potential conflict. In addition, they are expected to identify any new conflicts which arise during any discussion and decision making.

It is also important to note that there is a different issue with conflict which arises during a judicial process and decisions made by a corporate board. A difficulty does arise when the board is acting in a quasi-judicial capacity, as with the reconsideration. Then the issue is whether a higher standard of conflict of interest should apply?

The key issue with any conflict of interest is disclosure of the conflict. Some conflicts will require recusal from decision making but others will just require disclosure, but the board member can still vote on the issue. As long as the parties are aware of the decision makers, and their role, and importantly, do not object at the appropriate time to the decisions being made by the board committees. The membership of the committees is an open matter, and available on the ICANN website. So by opting to use the reconsideration process, Amazon were on notice that the membership was common to both. But although they did raise this when making the application for reconsideration, nothing was done by ICANN. If they had asked for a BGC committee to be constituted of non NGPC members to reconsider, then this would have resolved any conflict. In terms of the standard test has this created a perception of bias on the part of the BGC?

I have been troubled by this issue. On one hand the members of the ICANN board are both required to be, and have been transparent in disclosing any potential conflicts of interest. But because Amazon raised the issue of the perception of conflict, without this being addressed, should this affect the fairness of the process? My jurisdiction is to examine the fairness of the process. This is not an abstract exercise, and for me to make a recommendation about the reconsideration decision, I must be able to identify something about the process which is caused a disadvantage to Amazon.

It is important to note that the scope for the BGC to reopen the decision is in very narrow focus in any event. The jurisdiction to set aside a reconsideration decision can only focus on quite specific issues which are set out in the bylaw as follows:-

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

- a. one or more staff actions or inactions that contradict established ICANN policy(ies); or
- b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

Of course, in the course of a review of fairness, I cannot address the reasons for the decision. But it is important to note in practical terms, that the BGC simply does not have much room to move on setting aside the NGPC decision. This includes the power to reject the application. Provided the BGC adheres to the limits of its jurisdiction, and makes a decision consistent with the specific power, then issues of unfairness will be limited in scope.

It is also important to note that these are decisions of a corporate entity rather than a formally constituted tribunal or court. The ICANN board is made up of volunteers, and relies upon advice from counsel within ICANN, and with some exceptions, they are not qualified or practising lawyers. The necessary standard of conflict of interest and disclosure appears to be of a high standard compared to many other corporate entities. From considering the decisions made from time to time, and reading the minutes of the board it is apparent that the possibility of conflict of interest is frequently examined, and board members do recuse themselves on a regular basis when making decisions.

In this situation, what should the ICANN BGC committee have done when Amazon raised the issue of the perception of bias? The best way to resolve an issue of perception of bias, is to answer this with a robust response, with transparency and openness. In this case, the issue has not been addressed by ICANN. My discussions with ICANN staff have certainly made it clear that they do not regard this as an issue which affects the result. The appropriate way to resolve such a perception of bias would be to recommend a rehearing. I have considered this matter at some length because of the importance of the issue. There are two factors which need to be considered, the first being the issue of proportionality. I have already discussed the different standard for a corporate board of directors from a judicial tribunal. When this is placed in proportion, it seems to me the standard, in proportion, may not require a rehearing. The second factor in combination with proportionality, is that if there was a rehearing, could the BGC, with the constraints on its ability to examine the decision, reach a different result? I am not sure that they would be able to do so, because there is no change in the factual matrix and other issues.

As I have been considering this report, there has been a contemporaneous debate about the accountability functions within ICANN, including considerable criticism of the reconsideration process. It appears to be accepted that there are limitations with reconsideration because of the very specific jurisdiction, which only provides a narrow scope for setting aside a decision. It may be useful to consider some protections to avoid assertions of conflict of interest, if the reconsideration model is to be re-examined and modified.

Result

As a result of this investigation, I consider that the existing structure has some issues, but that this is a matter for perhaps the current examination of accountability structures and the review of the New GTLD programme in the future. Although this comes close to the need for a recommendation for a rehearing, on the balance I cannot therefore recommend this.

Chris LaHatte
Ombudsman

EXHIBIT C-074

GAC Operating Principles

Dedicated to preserving the central co-ordinating functions of the global Internet for the public good.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)

GOVERNMENTAL ADVISORY COMMITTEE (GAC) - OPERATING PRINCIPLES

As amended, GAC Buenos Aires meeting in June, 2015

[ARTICLE I - SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE](#)

[ARTICLE II - MEETINGS](#)

[ARTICLE III - AGENDA](#)

[ARTICLE IV - MEMBERSHIP](#)

[ARTICLE V - OBSERVERS](#)

[ARTICLE VI - REPRESENTATION](#)

[ARTICLE VII - CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES](#)

[ARTICLE VIII - POWERS OF THE CHAIR](#)

[ARTICLE IX - ELECTION OF CHAIR AND VICE CHAIRS](#)

[ARTICLE X - CONDUCT OF BUSINESS](#)

[ARTICLE XI - THE SECRETARIAT](#)

[ARTICLE XII - PROVISION OF ADVICE TO THE ICANN BOARD](#)

[ARTICLE XIII - RECORDS](#)

[ARTICLE XIV - PUBLICITY OF MEETINGS](#)

[ARTICLE XV - REVISION](#)

[ARTICLE XVI - GENERAL PROVISIONS](#)

Whereas:

1. The functions and responsibilities of the Internet Assigned Numbers Authority (IANA) are being transferred to a new private not for profit corporation, the Internet Corporation for Assigned Names and Numbers (ICANN).
2. ICANN's functions and responsibilities will affect the functioning of the global Internet.
3. ICANN's Articles of Incorporation establish that the corporation shall operate for the benefit of the Internet community as a whole and shall pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by performing and co-ordinating functions associated with the technical management of Internet names and addresses.

4. a) The Articles of Incorporation and Bylaws establish that ICANN shall carry out its activities in conformity with relevant principles of international law and applicable international conventions and local law. b) ICANN is committed to carrying out its activities based on the principles of stability, competition, private bottom-up coordination, and representation.

5. ICANN's Bylaws, Article XI Advisory Committees, Section 2.1 provide for a Governmental Advisory Committee The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments and where they may affect public policy issues. The Advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account by ICANN, both in the formulation and adoption of policies.

6. The GAC commits itself to implement efficient procedures in support of ICANN and to provide thorough and timely advice and analysis on relevant matters of concern with regard to government and public interests

Considering that:

1. The Internet naming and addressing system is a public resource that must be managed in the interests of the global Internet community;

2. The management of Internet names and addresses must be facilitated by organisations that are global in character.

3. ICANN's decision making should take into account public policy objectives including, among other things:

- secure, reliable and affordable functioning of the Internet, including uninterrupted service and universal connectivity;
- the robust development of the Internet, in the interest of the public good, for government, private, educational, and commercial purposes, world wide;
- transparency and non-discriminatory practices in ICANN's role in the allocation of Internet names and address;
- effective competition at all appropriate levels of activity and conditions for fair competition, which will bring benefits to all categories of users including, greater choice, lower prices, and better services;
- fair information practices, including respect for personal privacy and issues of consumer concern; and
- freedom of expression.

4. Country code top level domains are operated in trust by the Registry for the public interest, including the interest of the Internet community, on behalf of the relevant public authorities including governments, who ultimately have public policy authority over their ccTLDs, consistent with universal connectivity of the Internet.

ARTICLE I - SCOPE OF THE GOVERNMENTAL ADVISORY COMMITTEE

Principle 1

The Governmental Advisory Committee (GAC) shall consider and provide advice on the activities of ICANN as they relate to concerns of governments, multinational governmental organisations and treaty organisations, and distinct economies as recognised in international fora, including matters where there may be an interaction between ICANN's policies and various laws and international agreements and public policy objectives.

Principle 2

The GAC shall provide advice and communicate issues and views to the ICANN Board. The GAC is not a decision making body. Such advice given by the GAC shall be without prejudice to the responsibilities of any public authority with regard to the bodies and activities of ICANN, including the Supporting Organisations and Councils.

Principle 3

The GAC shall report its findings and recommendations in a timely manner to the ICANN Board through the Chair of the GAC.

Principle 4

The GAC shall operate as a forum for the discussion of government and other public policy interests and concerns.

Principle 5

The GAC shall have no legal authority to act for ICANN.

II. ARTICLE II - MEETINGS

Principle 6

The GAC shall meet at least once annually; notwithstanding this designated annual meeting, the GAC shall meet as appropriate.

Principle 7

A meeting may be convened on the initiative of the Chair, at the request of a Member or at the request of the ICANN Board, concurred in by one third (1/3) of the Current Membership.

Principle 8

Face-to-face meetings of the GAC shall be convened by the Chair, by a notice issued not less than twenty-eight (28) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via airmail.

Principle 9

Online and electronic meetings of the GAC shall be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting.

This notice may be issued electronically, via telefacsimile, or via airmail.

Principle 10

An emergency meeting of the GAC may be convened by the Chair, by a notice issued not less than ten (10) calendar days prior to the date set for the meeting. This notice may be issued electronically, via telefacsimile, or via airmail. Principle 11 In addition to face-to-face meetings, meetings and discussions may be conducted online via secure communications. "Online" includes electronic mail, web-based communications, and teleconferences.

II. ARTICLE III - AGENDA

Principle 12

A proposed agenda for the meeting shall be communicated to Members prior to the meeting.

Principle 13

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat of the GAC in writing, either via electronic mail, telefacsimile or airmail.

III. ARTICLE IV - MEMBERSHIP

Principle 14

Members of the GAC shall be national governments, multinational governmental organisations and treaty organisations, and public authorities, each of which may appoint one representative and one alternate representative to the GAC. The accredited representative of a Member may be accompanied by advisers. The accredited representative, alternate and advisers must hold a formal official position with the Member's public administration. The term 'official' includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organisation, and whose primary function with such government, public authority or organisation is to develop or influence governmental or public policies.

Principle 15

Membership is open to all national governments. Membership is also open to distinct economies as recognised in international fora. Multinational governmental organisations and treaty organisations, may also participate as observers, on the invitation of the GAC through the Chair.

Principle 16

Accredited representatives of governments and other public authorities, Members of GAC, have voting rights. Accredited representatives of International Organisations and entities other than public authorities participate fully in the GAC and its Committees and Working Groups, as Observers, but do not have voting rights.

Principle 17

Those who constitute the Current Membership are defined as those Members from whom the Chair has received formal notification of the name and contact details of their accredited representative. The list of current Members shall be updated regularly and be posted online.

IV. ARTICLE V - OBSERVERS

Principle 18

Representatives of invited UN Inter-governmental Organisations, non-member public authorities and other relevant entities may attend meetings of the GAC as observers, at the discretion of the Chair.

V. ARTICLE VI - REPRESENTATION

Principle 19

If a Member's accredited representative, or alternate representative, is not present at a meeting, then it shall be taken that the Member government or organisation is not represented at that meeting. Any decision made by the GAC without the participation of a Member's accredited representative shall stand and nonetheless be valid.

Principle 20

In consideration of the GAC's commitment to efficiency, there shall be no attendance or voting by proxy. Members may only be represented at meetings, both face-to-face and electronic, by their accredited representative, or designated alternate representative.

VI. ARTICLE VII - CHAIR, VICE CHAIRS, OTHER OFFICERS AND COMMITTEES

Principle 21

If the GAC moves to require additional officers other than the Chair, then five (5) Vice-Chairs shall be elected from among the Members. To the extent possible, the Vice-Chairs should appropriately reflect the geographic and development diversity of the membership. The Chair shall hold office for a term of two (2) years, renewable once. The Vice-Chairs shall hold office for a term of one (1) year and may be re-elected; however no person may serve as Vice-Chair for more than two consecutive terms.

Principle 22

The GAC Chair and Vice Chairs shall be elected by the Members of the GAC from among the accredited representatives of governments and other public authorities, Members of GAC, pursuant to procedures outlined under Article IX (Election of Office Holders) of these Operating Principles. The elections of the Chair and Vice Chairs will be concurrent, as provided for in Principle 34.

Principle 23

The GAC may designate other officers as necessary.

Principle 24

The Chair shall normally participate in the proceedings as such and not as the accredited representative of a Member, in which case the Member may accredit another representative. The Chair may, however, at any time request permission to act in either capacity. The Vice Chairs shall participate in the proceedings as accredited representatives of a Member.

Principle 25

If the Chair is absent from any meeting or part thereof, one of the five (5) Vice-Chairs shall perform the functions of the Chair. If no Vice-Chairs were elected or if no Vice-Chair is present the GAC shall elect an interim Chair for that meeting or that part of the meeting.

Principle 26

If the Chair can no longer perform the functions of the office, the GAC shall designate one of the Vice-Chairs referred to in Principle 22 of these Operating Principles to perform those functions pending election of a new Chair in pursuant to procedures outlined under Article IX (Election of Chair and Vice Chairs) of these Operating Principles. If no Vice-Chair was elected, the GAC shall elect an interim Chair to perform those functions pending the election of a new Chair.

Principle 27

The Chair may call for the creation of Committees and Working Groups to address matters that relate to concerns of governments and where they may affect public policy issues. Accredited representatives may designate advisers to serve on such committees.

VII. ARTICLE VIII - POWERS OF THE CHAIR

Principle 28

In addition to exercising the power conferred elsewhere by these Principles, the Chair shall declare the opening and closing of each meeting shall direct the discussion, accord the right to speak, submit questions for decisions, announce decisions, rule on points of order and subject to these rules, have control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

Principle 29

The Chair, with the consent of the meeting, may limit the time allowed to each speaker.

Principle 30

The Chair shall not normally have voting power; however in the event of a tie, the Chair shall have a casting vote.

VIII.ARTICLE IX - ELECTION OF CHAIR AND VICE CHAIRS

Principle 31

Elections for the GAC Chair shall take place during the final meeting of every second year (even years) unless the Chair can no longer perform the functions of the office. If Chair can no longer perform the functions during the first year in the office, the elections shall be organized for the remaining term in the office during the next GAC meeting. If Chair can no longer perform the functions during the second year in the office, the GAC shall decide which of the Vice Chairs should replace the Chair until the regular elections are held.

Elections for the five Vice Chairs shall normally take place during the final meeting of the year. If Vice Chair can no longer perform the functions before the full term has finished, new elections shall be organized for the remaining term in the office during the next GAC meeting. The results of each election shall formally be announced at the end of any meeting in which an election has taken place, and shall take effect at the end of the next GAC meeting.

Principle 32

In the event of a single candidate he or she shall be elected by acclamation. If there is more than one candidate for the position of Chair, or more than five (5) candidates for the positions of Vice Chairs, an election will be held. For elections, the candidate or candidates with the most votes shall be elected to the position(s) that he or she has stood for.

In case of a tie ballot for two leading candidates, an additional ballot shall be held restricted to these candidates after an interval of at least one hour.

Elections shall be valid if more than 1/3 of the GAC members participate in the voting in person and by electronic mail. In case of the second round of voting, only present at the meeting GAC members participate.

Principle 33

Nominations for candidates to the official position of Chair and/or Vice Chair of the GAC shall normally start during the GAC meeting which precedes the meeting in which the confirmation is due to take place. In any event, the nomination procedure will close 45 days before the start of the meeting at which the confirmation of appointment is due to take place and a list of candidates should be posted on the GAC website within 14 days. In the event that there are more candidates than positions

available, the GAC Chair will notify members that an election will be organized in accordance with principles 34 to 36 of this document.

Principle 34

For elections, votes shall be taken by secret ballot. It will be a matter for each voting Member to decide if they wish to make his or her choice public. This includes the taking of votes in person, or ballots transmitted by electronic mail. The GAC Secretariat will organize the voting procedure and count the votes under the supervision of the Chair or Vice Chairs who do not stand for re-election.

Principle 35

For votes to be taken in person, the GAC Secretariat will distribute ballot papers to Members' accredited representatives at that meeting, and arrange for a ballot box to be placed in the conference room.

Principle 36

Members unable to attend in person, should notify the Secretariat no less than 7 days before the beginning of the meeting in which the election is due to take place. They will then be provided with the opportunity to cast their votes by electronic mail addressed to the Secretariat, which shall then be added to the votes cast by other members during the meeting. Any Member from whom a vote has not been received within such a time-limit shall be regarded as not voting.

IX. ARTICLE X - CONDUCT OF BUSINESS

Principle 40

One third of the representatives of the Current Membership with voting rights shall constitute a quorum at any meeting. A quorum shall only be necessary for any meeting at which a decision or decisions must be made. The GAC may conduct its general business face-to-face or online.

A Member may initiate an online discussion of a question by forwarding to the Chair a request for the opening of an online discussion on a specific topic. The GAC Secretariat will initiate this discussion and all Members may post their contributions during a period of time established by the Chair, the period of which is to be no longer than sixty (60) calendar days. At the end of this discussion period, the Chair will summarise the results of the discussion and may forward the results to the ICANN Board. Nothing in this Principle overrides the decision making processes set out elsewhere in these Operating Principles.

Principle 41

Representatives of Members shall endeavour, to the extent that a situation permits, to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in fuller detail may circulate a written statement for distribution to Members.

Principle 42

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

Principle 43

In order to expedite the conduct of business, the Chair may invite representatives who wish to express their support for a given proposal to show their hands, in order to be duly recorded in the records of the GAC as supporting statements; thus only representatives with dissenting view or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition of points already made, and will not preclude any representative who so wishes from taking the floor.

X.ARTICLE XI - THE SECRETARIAT

Principle 44

The Secretariat of the Governmental Advisory Committee shall undertake such administrative, coordination, liaison and research activities as shall be necessary for the efficient functioning of the GAC. The Secretariat shall facilitate communications among the GAC Chair, Vice Chairs, other Officers, the GAC membership and with ICANN. The Secretariat participates in all GAC meetings.

Principle 45

The Secretariat shall be financed by such means as shall be agreed by the GAC members.

XI.ARTICLE XII - PROVISION OF ADVICE TO THE ICANN BOARD

Principle 46

Advice from the GAC to the ICANN Board shall be communicated through the Chair.

Principle 47

The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice^[1], consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.

Principle 48

The GAC may deliver advice on any other matter within the functions and responsibilities of ICANN, at the request of the ICANN Board or on its own initiative. The ICANN Board shall consider any advice from the GAC prior to taking action.

XII.ARTICLE XII - RECORDS

Principle 49

Records of the meetings of the GAC shall be in the form of Executive Minutes.

XIII.ARTICLE XIII - PUBLICITY OF MEETINGS

Principle 50

The meetings of the GAC shall ordinarily be held in private. The Chair may decide that a particular meeting, or part of a particular meeting, should be held in public.

Principle 51

After a private meeting has been held, the Chair may issue a communiqué to the Media, such communiqué having been approved by the GAC beforehand.

XIV.ARTICLE XIV - REVISION

Principle 52

The GAC may decide at any time to revise these Operating Principles or any part of them.

Principle 53

A Member or Members may move, at a meeting, for these Operating Principles to be open to revision. If so moved, the Chair shall call for the movement to be seconded. If so seconded, then the Chair shall call for a vote to support the resolution. The deciding vote may be by ballot, by the raising or cards, or by roll call, and shall constitute a simple majority of the Members who are present at the meeting at which it was moved for these Operating Principles to be revised. If so resolved in favour of a revision of these Operating Principles, then the proposal shall sit for consultation for a period of sixty (60) days. At the next meeting following the sixty days, the Chair shall call for a vote for or against the proposal. The deciding vote may be taken by ballot, by the raising or cards, or by roll call, and shall be a simple majority of the Members who are present at the meeting at which the vote takes place.

XV.ARTICLE XV - GENERAL PROVISIONS

Principle 54

Whenever there is a difference in interpretation between the principles set out in these Operating Principles and ICANN's Articles of Incorporation and Bylaws, ICANN's Articles of Incorporation and Bylaws shall prevail.

[1] In United Nations practice, the concept of "consensus" is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner. Thus, in the event that consensus or general agreement is achieved, the resolutions and decisions of the United Nations meetings and conferences have been adopted without a vote. In this connection, it

should be noted that the expressions "without a vote", "by consensus" and "by general agreement" are, in the practice of the United Nations, synonymous and therefore interchangeable.

EXHIBIT C-075



The Internet Corporation for Assigned Names and Numbers

February 19, 2016

The Honorable Ted Cruz
United States Senate
Washington, DC 20510

The Honorable James Lankford
United States Senate
Washington, DC 20510

The Honorable Michael S. Lee
United States Senate
Washington, DC 20510

Dear Senators Cruz, Lankford and Lee:

I write in response to your letter of February 4, 2016. As my term as ICANN's President and CEO draws to a close, I thank you and your colleagues for your interest and attention to the multistakeholder model reflected in ICANN and the transition of the stewardship of the IANA functions to the multistakeholder community. We appreciate your leadership in supporting ICANN's role in Internet governance and upholding the multistakeholder governance values that both the U.S. Senate and House of Representatives endorsed in their concurrent resolution passed in S.Con.Res.50 (112th Congress).

Throughout my time at ICANN, I have worked alongside my staff to build global support for the multistakeholder model as one of the clearest ways to maintain a globally interoperable, stable and secure Internet. I share the longstanding belief that such freedom from government control over the technical functioning and interoperability of the Internet is best achieved as the United States leads by example, transitioning its own oversight to the community over the past two decades. The transition of the stewardship of the IANA functions is the next logical step in that path.

Thank you for your questions regarding the Wuzhen World Internet Conference and giving me the opportunity to explain ICANN's role and my participation in that conference. Attending conferences such as the Wuzhen World Internet Conference is just one way that ICANN does the outreach that has enabled a global shift towards preserving a globally interoperable Internet. ICANN participates in many other international conferences, such as the Internet Governance Forum, the World Economic Forum Annual Meeting, as well as regional Internet Governance Forum events and technical events across the world. In 2014, I participated in the World Internet Conference's opening ceremony in my role as ICANN's President and CEO. My return to the

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2015 meeting as ICANN's President and CEO was a natural continuation of ICANN's work. Of course, ICANN's attendance at a conference does not represent an endorsement of every viewpoint expressed at that conference. In this fragile time, ICANN cannot ignore potential challenges to the values of multistakeholderism and to ICANN's mission. It is even more important to be present for those tough conversations, perform outreach, and maintain a supportive environment for the secure, unified operation of the Internet. Contrary to what is suggested in your letter, staying away from the World Internet Conference, particularly to make a political statement on issues outside of ICANN's mission, would not have served the global Internet community.

After the 2015 World Internet Conference, it was announced that I will serve as a co-chair of a high level advisory committee to the World Internet Conference's organizing committee. I have confirmed that my service in this role is a post-ICANN effort that is in my personal capacity, with my first meeting as co-chair to occur later this year. I will be joined on the advisory committee by executives from Microsoft, Nokia, Brookings Institution, as well as Bruce McConnell, former U.S. Department of Homeland Security Deputy Undersecretary for Cybersecurity, among others. My goal in participating on the high level advisory committee is to continue to advocate for global multistakeholder governance and a single, open, and interoperable Internet. I publicly declared that goal in my announcement of being appointed, and reconfirm it here for you today. I have not received any form of gift, reimbursement, compensation, or any other form of personal enrichment, direct or indirect, for this post-ICANN effort, though I understand that travel costs to the World Internet Conference will be covered while I serve on the high level advisory committee. I do not have any plans to seek any form of employment with the Chinese government.

As to my other post-ICANN plans, in August 2015, I announced that one of my primary post-ICANN activities will be serving as a Senior Advisor on Digital Strategy for ABRY Partners, a Boston-based private equity investment firm. In January of this year, it was announced that I will also serve as senior advisor to the Executive Chairman of the World Economic Forum, advising on the Global Challenge Initiative on the Future of the Internet.

ICANN maintains strong practices as it relates to conflicts of interest. I am fully in compliance with ICANN's Conflict of Interest policies and practices. We have a publicly available Conflicts of Interest policy, at <https://www.icann.org/resources/pages/governance/coi-en>. In its role in performing the IANA Functions Contract, ICANN follows Section C.6 of the contract on Conflict of Interest Requirements as well as the Organizational Conflict of Interest requirements set out at Section H.9.

Let me be clear: ICANN's participation in global conferences should not be in any way used to distract us from the commitment the U.S. Government has made to the world since 2000 to remove the central role of governments from the technical administration of the one global

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Internet. Failure to deliver on this commitment in 2016 would have grave repercussions on the U.S. and global economies and will undermine multistakeholder governance, potentially leading to the fragmentation of the Internet.

As I prepare to leave ICANN after the ICANN55 meeting in Marrakech, Morocco, I continue to focus all of my efforts on ICANN's providing superior operations, and towards delivering to NTIA the proposals for the transition of the stewardship of the IANA functions. Once approved, the transition will be the single greatest step to supporting the global, interoperable Internet. The courage and wisdom of the United States in fulfilling its commitment to transition its stewardship of the IANA functions will be a demonstration to governments around the world that, like the Internet, the multistakeholder model works. Thank you for the support that the U.S. Government has provided to ICANN during my tenure as the President and CEO.

Sincerely,

Fadi Chehadé
President & CEO, ICANN

Cc: Dr. Stephen D. Crocker, Chairman, ICANN Board of Directors

The Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, U.S Department of Commerce