

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

AFILIAS DOMAINS NO. 3 LIMITED,

Claimant

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. _____

**EXHIBITS TO
WITNESS STATEMENT OF RAM MOHAN**

LIST OF EXHIBITS

Exhibit No.	Description
RM-1	ICANN, Amended and Restated Articles of Incorporation of Internet Corporation for Assigned Names and Numbers (approved on 9 Aug. 2016, filed on 3 Oct. 2016), <i>available at</i> https://www.icann.org/resources/pages/governance/articles-en
RM-2	ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers (18 June 2018), <i>available at</i> https://www.icann.org/resources/pages/governance/bylaws-en
RM-3	ICANN-GNSO, <i>Final Report: Introduction of New Generic Top-Level Domains, Part A</i> (8 Aug. 2007), <i>available at</i> https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
RM-4	ICANN, <i>News & Media: New gTLD Frequently Asked Questions</i> , <i>available at</i> https://newgtlds.icann.org/en/applicants/global-support/faqs/faqs-en
RM-5	ICANN, <i>gTLD Applicant Guidebook</i> (4 June 2012)
RM-6	ICANN, Board of Directors' Code of Conduct (18 July 2018), <i>available at</i> https://www.icann.org/resources/pages/governance/code-of-conduct-en
RM-7	ICANN, <i>Economic Case for Auctions in New gTLDs</i> (8 Aug. 2008)
RM-8	ICANNWiki, Google, <i>available at</i> https://icannwiki.org/Google
RM-9	Web.com, 2017 Annual Report (23 Feb. 2018)
RM-10	J. O'Dell, "Web.com acquires Network Solutions for \$405M plus stock," <i>VentureBeat</i> (3 Aug. 2011), <i>available at</i> https://venturebeat.com/2011/08/03/web-com-acquires-network-solutions/
RM-11	Radix, <i>Radix in the News: .FUN has just begun!</i> (undated), <i>available at</i> https://radix.website/fun-has-just-begun
RM-12	Donuts Inc., About: Top-level domains, <i>available at</i> https://donuts.domains/what-we-do/top-level-domains
RM-13	United Internet, 2017 Annual Report
RM-14	Letter from Christine A. Willett (ICANN) to .WEB Auction Members (13 July 2016)
RM-15	Determination of the Board Governance Committee (BGC), Reconsideration Request 16-9 by Ruby Glen, LLC and Radix FZC (21 July 2016)
RM-16	Verisign Inc., <i>Form 10-Q (Quarterly Report)</i> (28 July 2016)
RM-17	Verisign, <i>Verisign Statement Regarding .Web Auction Results</i> (1 Aug. 2016)
RM-18	Letter from Scott Hemphill (Afilias) to Akram Atallah (ICANN) (8 Aug. 2016)
RM-19	Letter from Scott Hemphill (Afilias) to Akram Atallah (ICANN) (9 Sept. 2016)

Exhibit No.	Description
RM-20	Letter from John Kane (Afilias) to Christine A. Willett (ICANN) (7 Oct. 2016)

EXHIBIT RM-1



Resources

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

As approved by the ICANN Board on 9 August 2016, and filed with the California Secretary of State on 3 October 2016

The undersigned certify that:

1. They are the president and the secretary, respectively, of Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:
 - I. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the "**Corporation**").
 - II. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the 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 future 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 IV 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 carrying out the mission set forth in the bylaws of the Corporation (“**Bylaws**”). Such global public interest may be determined from time to time. Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.

- III. The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law and 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.
- IV. Notwithstanding any other provision 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 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 II hereof.
- V. 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 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 V shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.

- VI. 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 II 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.
- VII. Any amendment to these Articles shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community, a California nonprofit association established by the Bylaws (the “**Empowered Community**”), following procedures set forth in Article 25.2 of the Bylaws.
- VIII. Any transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community prior to the consummation of the transaction, following procedures set forth in Article 26 of the Bylaws.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the board of directors.

4. The corporation has no members.

We further declare under penalty of perjury under the laws of the State of

California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: 30 September 2016

Göran Marby, President

John Jeffrey, Secretary



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EXHIBIT RM-2



Resources

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

As amended 18 June 2018

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ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

Section 1.1. MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("**ICANN**") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN:

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("**DNS**") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("**IETF**") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN's authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016^[1], including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B) any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C) ICANN's Five-Year Strategic Plan and Five-Year Operating Plan existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN.

(iv) ICANN shall have the ability to negotiate, enter into and enforce agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2. COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

(i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

- (ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;
- (iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;
- (iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;
- (v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and
- (vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN:

- (i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies;
- (ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;
- (iii) Where feasible and appropriate, depending on market mechanisms to

promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect ICANN's fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to ICANN's activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

ARTICLE 2 POWERS

Section 2.1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the powers of ICANN shall be exercised by, and its property controlled and its business and affairs conducted by or under the direction of, the Board (as defined in Section 7.1). With respect to any matters that would fall within the provisions of Section 3.6(a)-(c), the Board may act only by a majority vote of all Directors. In all other matters, except as otherwise provided in these Bylaws or by law, the Board may act by majority vote of the Directors present at any annual, regular, or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those Directors present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "of all Directors."

Section 2.2. RESTRICTIONS

ICANN shall not act as a Domain Name System Registry or Registrar or Internet Protocol Address Registry in competition with entities affected by the policies of ICANN. Nothing in this Section 2.2 is intended to prevent ICANN from taking whatever steps are necessary to protect the operational stability of the Internet in the event of financial failure of a Registry or Registrar or other emergency.

Section 2.3. NON-DISCRIMINATORY TREATMENT

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

ARTICLE 3 TRANSPARENCY

Section 3.1. OPEN AND TRANSPARENT

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness, including implementing procedures to (a) provide advance notice to facilitate stakeholder engagement in policy development decision-making and cross-community deliberations, (b) maintain responsive consultation procedures that provide detailed explanations of the basis for decisions (including how comments have influenced the development of policy considerations), and (c) encourage fact-based policy development work. ICANN shall also implement procedures for the documentation and public disclosure of the rationale for decisions made by the Board and ICANN's constituent bodies (including the detailed explanations discussed above).

Section 3.2. WEBSITE

ICANN shall maintain a publicly-accessible Internet World Wide Web site (the "**Website**"), which may include, among other things, (a) a calendar of scheduled meetings of the Board, the EC (as defined in Section 6.1(a)), Supporting Organizations (as defined in Section 11.1), and Advisory Committees (as defined in Section 12.1); (b) a docket of all pending policy development matters, including their schedule and current status; (c) specific meeting notices and agendas as described below; (d) information on the ICANN Budget (as defined in Section 22.4(a)(i)), the IANA Budget (as defined in Section 22.4(b)(i)), annual audit, financial contributors and the amount of their contributions, and related matters; (e) information about the availability of accountability mechanisms, including reconsideration, independent review, and Ombudsman activities, as well as information about the outcome of specific requests and complaints invoking these mechanisms; (f) announcements about ICANN activities of interest to significant segments of the ICANN community; (g) comments received from the community on policies being developed and other matters; (h) information about ICANN's physical meetings and public forums; and (i) other information of interest to the ICANN community.

Section 3.3. MANAGER OF PUBLIC PARTICIPATION

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

Section 3.4. MEETING NOTICES AND AGENDAS

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

Section 3.5. MINUTES AND PRELIMINARY REPORTS

- a. All minutes of meetings of the Board, the Advisory Committees and Supporting Organizations (and any councils thereof) shall be approved promptly by the originating body and provided to the ICANN Secretary ("**Secretary**") for posting on the Website. All proceedings of the EC Administration (as defined in Section 6.3) and the EC shall be provided to the Secretary for posting on the Website.

- b. No later than 11:59 p.m. on the second business day after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any resolutions passed by the Board at that meeting shall be made publicly available on the Website; provided, however, that any actions relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the resolutions made publicly available. The Secretary shall send notice to the Board and the Chairs of the Supporting Organizations (as set forth in Article 9 through Article 11) and Advisory Committees (as set forth in Article 12) informing them that the resolutions have been posted.
- c. No later than 11:59 p.m. on the seventh business days after the conclusion of each meeting (as calculated by local time at the location of ICANN's principal office), any actions taken by the Board shall be made publicly available in a preliminary report on the Website, subject to the limitations on disclosure set forth in Section 3.5(b) above. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant preliminary report the reason for such nondisclosure.
- d. No later than the day after the date on which they are formally approved by the Board (or, if such day is not a business day, as calculated by local time at the location of ICANN's principal office, then the next immediately following business day), the minutes of the Board shall be made publicly available on the Website; provided, however, that any minutes of the Board relating to personnel or employment matters, legal matters (to the extent the Board determines it is necessary or appropriate to protect the interests of ICANN), matters that ICANN is prohibited by law or contract from disclosing publicly, and other matters that the Board determines, by a three-quarters (3/4) vote of Directors present at the meeting and voting, are not appropriate for public distribution, shall not be included in the minutes made publicly available. For any matters that the Board determines not to disclose, the Board shall describe in general terms in the relevant minutes the reason for such nondisclosure.

Section 3.6. NOTICE AND COMMENT ON POLICY ACTIONS

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

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

(ii) provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, to see the comments of others, and to reply to those comments (such comment period to be aligned with ICANN's public comment practices), prior to any action by the Board; and

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

(b) Where both practically feasible and consistent with the relevant policy development process, an in-person public forum shall also be held for discussion of any proposed policies as described in Section 3.6(a)(ii), prior to any final Board action.

(c) After taking action on any policy subject to this Section 3.6, the Board shall publish in the meeting minutes the rationale for any resolution adopted by the Board (including the possible material effects, if any, of its decision on the global public interest, including a discussion of the material impacts to the security, stability and resiliency of the DNS, financial impacts or other issues that were considered by the Board in approving such resolutions), the vote of each Director voting on the resolution, and the separate statement of any Director desiring publication of such a statement.

(d) Where a Board resolution is consistent with GAC Consensus Advice (as defined in Section 12.2(a)(x)), the Board shall make a determination whether the GAC Consensus Advice was a material factor in the Board's adoption of such resolution, in which case the Board shall so indicate in such resolution approving the decision (a "**GAC Consensus Board Resolution**") and shall cite the applicable GAC Consensus Advice. To the extent practical, the Board shall ensure that GAC Consensus Board Resolutions only relate to the matters that were the subject of the applicable GAC Consensus Advice and not matters unrelated to the applicable GAC Consensus Advice. For the avoidance of doubt: (i) a GAC Consensus Board Resolution shall not have the effect of making any other Board resolutions in the same set or series so designated, unless other resolutions are

specifically identified as such by the Board; and (ii) a Board resolution approving an action consistent with GAC Consensus Advice received during a standard engagement process in which input from all Supporting Organizations and Advisory Committees has been requested shall not be considered a GAC Consensus Board Resolution based solely on that input, unless the GAC Consensus Advice was a material factor in the Board's adoption of such resolution.

(e) GAC Carve-out

(i) Where a Board resolution is consistent with GAC Consensus Advice and the Board has determined that the GAC Consensus Advice was a material factor in the Board's adoption of such resolution as described in the relevant GAC Consensus Board Resolution, the Governmental Advisory Committee shall not participate as a decision-maker in the EC's exercise of its right to challenge the Board's implementation of such GAC Consensus Advice. In such cases, the Governmental Advisory Committee may participate in the EC in an advisory capacity only with respect to the applicable processes described in Annex D, but its views will not count as support or an objection for purposes of the thresholds needed to convene a community forum or exercise any right of the EC ("**GAC Carve-out**"). In the case of a Board Recall Process (as defined in Section 3.3 of Annex D), the GAC Carve-out shall only apply if an IRP Panel has found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles of Incorporation or these Bylaws.

(ii) When the GAC Carve-out applies (A) any petition notice provided in accordance with Annex D or Approval Action Board Notice (as defined in Section 1.2 of Annex D) shall include a statement that cites the specific GAC Consensus Board Resolution and the line item or provision that implements such specific GAC Consensus Board Resolution ("**GAC Consensus Statement**"), (B) the Governmental Advisory Committee shall not be eligible to support or object to any petition pursuant to Annex D or Approval Action (as defined in Section 1.1 of Annex D), and (C) any EC Decision (as defined in Section 4.1(a) of Annex D) that requires the support of four or more Decisional Participants (as defined in Section 6.1(a)) pursuant to Annex D shall instead require the support of three or more Decisional Participants with no more than one Decisional Participant objecting.

(iii) For the avoidance of doubt, the GAC Carve-out shall not apply to the exercise of the EC's rights where a material factor in the Board's decision

was advice of the Governmental Advisory Committee that was not GAC Consensus Advice.

Section 3.7. TRANSLATION OF DOCUMENTS

As appropriate and to the extent provided in the ICANN Budget, ICANN shall facilitate the translation of final published documents into various appropriate languages.

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for certain actions as set forth in these Bylaws and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

(b) The EC may file a Reconsideration Request (as defined in Section 4.2(c)) if approved pursuant to Section 4.3 of Annex D ("**Community Reconsideration Request**") and if the matter relates to the exercise of the powers and rights of the EC of these Bylaws. The EC Administration shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Community Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.

(c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("**Reconsideration Request**") to the extent that the Requestor

has been adversely affected by:

(i) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);

(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

(i) Disputes relating to country code top-level domain ("ccTLD") delegations and re-delegations;

(ii) Disputes relating to Internet numbering resources; and

(iii) Disputes relating to protocol parameters.

(e) The Board has designated the Board Accountability Mechanisms Committee to review and consider Reconsideration Requests. The Board Accountability Mechanisms Committee shall have the authority to:

(i) Evaluate Reconsideration Requests;

(ii) Summarily dismiss insufficient or frivolous Reconsideration Requests;

(iii) Evaluate Reconsideration Requests for urgent consideration;

(iv) Conduct whatever factual investigation is deemed appropriate;

(v) Request additional written submissions from the affected party, or from

other parties; and

(vi) Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ICANN shall absorb the normal administrative costs of the Reconsideration Request process. Except with respect to a Community Reconsideration Request, ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

(g) All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Accountability Mechanisms Committee:

(i) For Reconsideration Requests that are not Community Reconsideration Requests, such Reconsideration Requests must be submitted:

(A) for requests challenging Board actions, within 30 days after the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;

(B) for requests challenging Staff actions, within 30 days after the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or

(C) for requests challenging either Board or Staff inaction, within 30 days after the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(ii) For Community Reconsideration Requests, such Community Reconsideration Requests must be submitted in accordance with the timeframe set forth in Section 4.3 of Annex D.

(h) To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at

<https://www.icann.org/resources/pages/accountability/reconsideration-en>.

Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

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

(j) Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) The Board Accountability Mechanisms Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Accountability Mechanisms Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Accountability Mechanisms Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in Section 4.2(l)(iii) and Community Reconsideration Requests, the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Accountability Mechanisms Committee his or her substantive evaluation of the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Accountability Mechanisms Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the

Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his or her role as the Ombudsman pursuant to Article 5 of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself or herself and the Board Accountability Mechanisms Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) The Board Accountability Mechanisms Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) The Board Accountability Mechanisms Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Accountability Mechanisms Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation.

(o) The Board Accountability Mechanisms Committee may also request information relevant to the Reconsideration Request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Accountability Mechanisms Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.

(p) The Board Accountability Mechanisms Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the Requestor, by the ICANN Staff, and by any third party.

(q) The Board Accountability Mechanisms Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Accountability Mechanisms Committee shall endeavor to produce its final recommendation to the Board within 90 days of

receipt of the Reconsideration Request. The final recommendation of the Board Accountability Mechanisms Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document, not including exhibits, in rebuttal to the Board Accountability Mechanisms Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Accountability Mechanisms Committee's final recommendation; and (ii) not offer new evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

(r) The Board shall not be bound to follow the recommendations of the Board Accountability Mechanisms Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Accountability Mechanisms Committee within 45 days of receipt of the Board Accountability Mechanisms Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of initial receipt of the Reconsideration Request by the Board Accountability Mechanisms Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3 of these Bylaws. If the Requestor so requests, the Board shall post both a recording and a transcript of the substantive Board discussion from the meeting at which the Board considered the Board Accountability Mechanisms Committee's recommendation. All briefing materials supplied to the Board shall be provided to the Requestor. The Board may redact such briefing materials and the recording and transcript on the basis that such information (i) relates to confidential personnel matters, (ii) is covered by attorney-client privilege, work product doctrine or other recognized legal privilege, (iii) is subject to a legal obligation that ICANN maintain its confidentiality, (iv) would disclose trade secrets, or (v) would present a material risk of negative impact to the security, stability or resiliency of the Internet. In the case of any redaction, ICANN will provide the Requestor a written rationale for such redaction. If a Requestor believes that a redaction was improper, the Requestor may use an appropriate accountability mechanism to challenge the scope of ICANN's redaction.

(s) If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this Section 4.2 are too long, the Requestor may apply to

the Board Accountability Mechanisms Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN's principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

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

(u) The Board Accountability Mechanisms Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

(i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;

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

(iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and

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

Section 4.3. INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in [Section 4.2](#), ICANN shall have a separate process for independent third-party review of Disputes (defined in [Section 4.3\(b\)\(iii\)](#)) alleged by a Claimant (as defined in [Section 4.3\(b\)\(i\)](#)) to be within the scope of the Independent Review Process ("IRP"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

- (i) Ensure that [ICANN](#) does not exceed the scope of its Mission and otherwise complies with its Articles of Incorporation and Bylaws.
- (ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable and accessible expert review of Covered Actions (as defined in [Section 4.3\(b\)\(i\)](#)).
- (iii) Ensure that [ICANN](#) is accountable to the global Internet community and Claimants.
- (iv) Address claims that [ICANN](#) has failed to enforce its rights under the [IANA Naming Function Contract](#) (as defined in [Section 16.3\(a\)](#)).
- (v) Provide a mechanism by which direct customers of the [IANA](#) naming functions may seek resolution of PTI (as defined in [Section 16.1](#)) service complaints that are not resolved through mediation.
- (vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers (as defined in [Section 15.1](#)), Staff members, [Supporting Organizations](#), [Advisory Committees](#), and the global Internet community in connection with policy development and implementation.
- (vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.
- (viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.
- (ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes of the IRP.

(b) The scope of the IRP is defined with reference to the following terms:

(i) A "**Claimant**" is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A)The EC is deemed to be materially affected by all Covered Actions. ICANN shall not assert any defenses of standing or capacity against the EC in any forum.

(B)ICANN shall not object to the standing of the EC, a Supporting Organization, or an Advisory Committee to participate in an IRP, to compel an IRP, or to enforce an IRP decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant's capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel (as defined in Section 4.3(g)) concludes based on evidence submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(A)Claims that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

(1) exceeded the scope of the Mission;

(2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;

(4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

(5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws.

(B) Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN's contractual rights with respect to the IANA Naming Function Contract, and

(C) Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

(c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

(i) EC challenges to the result(s) of a PDP, unless the Supporting Organization(s) that approved the PDP supports the EC bringing such a challenge;

(ii) Claims relating to ccTLD delegations and re-delegations;

(iii) Claims relating to Internet numbering resources, and

(iv) Claims relating to protocol parameters.

(d) An IRP shall commence with the Claimant's filing of a written statement of a Dispute (a "**Claim**") with the IRP Provider (described in Section 4.3(m) below). For the EC to commence an IRP ("**Community IRP**"), the EC shall first comply with the procedures set forth in Section 4.2 of Annex D.

(e) Cooperative Engagement Process

(i) Except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process ("**CEP**") for the purpose of attempting to resolve

and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.

(ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with this Section 4.3 and Section 4.2 of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN is the prevailing party in the IRP, the IRP Panel shall award to ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

(iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator ("**IRP Mediator**") after at least one CEP meeting.

(iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in Section 4.3(j) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

(f) ICANN hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code ("**CCC**") against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is ultra vires.

(g) Upon the filing of a Claim, an Independent Review Process Panel ("**IRP Panel**", described in Section 4.3(k) below) shall be selected in accordance with the Rules of Procedure (as defined in Section 4.3(n)(i)). Following the selection of an IRP Panel, that IRP Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN's written response ("**Response**") in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is timely filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.

(h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.

(i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.

(i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.

(ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.

(iii) For Claims arising out of the Board's exercise of its fiduciary duties, the IRP Panel shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.

(iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at Section 4.3(a)(iv) above, shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the "**Standing Panel**") each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet's unique identifiers and other appropriate training as recommended by the IRP Implementation Oversight Team (described in Section 4.3(n)(i)).

(ii) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

(A) ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the "**IRP Implementation Oversight Team**" (described in Section 4.3(n)(i)) on a draft tender document.

(B) ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C) The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D) Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.

(iii) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity. The recall process shall be developed by the IRP Implementation Oversight Team.

(iv) Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region (as defined in Section 7.5).

(k) IRP Panel

(i) A three-member IRP Panel shall be selected from the Standing Panel to hear a specific Dispute.

(ii) The Claimant and ICANN shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is

not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider's rules shall apply to selection of the third panelist.

(iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members' individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.

(iv) Upon request of an IRP Panel, the IRP Panel shall have access to independent skilled technical experts at the expense of ICANN, although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.

(v) IRP Panel decisions shall be made by a simple majority of the IRP Panel.

(l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.

(m) IRP Provider

(i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider ("**IRP Provider**"). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at the direction of the IRP Panel, and shall function independently from ICANN.

(n) Rules of Procedure

(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP

Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.

(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN, and take effect upon approval by the Board, such approval not to be unreasonably withheld.

(iii) The Standing Panel may recommend amendments to such Rules of Procedure as it deems appropriate to fulfill the Purposes of the IRP, however no such amendment shall be effective without approval by the Board after publication and a period of public comment that complies with the designated practice for public comment periods within ICANN.

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

(B) Issues relating to joinder, intervention, and consolidation of Claims;

(C) Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and expert), including its length, both in support of a Claimant's Claim and in support of ICANN's Response;

(D) Availability and limitations on discovery methods;

(E) Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F) Procedures if ICANN elects not to respond to an IRP; and

(G) The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this Section 4.3, each IRP Panel shall have the authority to:

(i) Summarily dismiss Disputes that are brought without standing, lack substance, or are frivolous or vexatious;

(ii) Request additional written submissions from the Claimant or from other parties;

(iii) Declare whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws, declare whether ICANN failed to enforce ICANN's contractual rights with respect to the IANA Naming Function Contract or resolve PTI service complaints by direct customers of the IANA naming functions, as applicable;

(iv) Recommend that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) Consolidate Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) Determine the timing for each IRP proceeding; and

(vii) Determine the shifting of IRP costs and expenses consistent with Section 4.3(r).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3(o)(iv), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;
- (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
- (iii) A balance of hardships tipping decidedly toward the party seeking relief.

(q) Conflicts of Interest

(i) Standing Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria:

(A) Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

(B) Additional independence requirements to be developed by the IRP Implementation Oversight Team, including term limits and restrictions on post-term appointment to other ICANN positions.

(ii) The IRP Provider shall disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.

(r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Except as otherwise provided in Section 4.3(e)(ii), each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.

(s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an

early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure. The preceding sentence does not provide the basis for a Covered Action.

(t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.

(u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.

(v) Subject to this [Section 4.3](#), all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP decisions decided under the same (or an equivalent prior) version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.

(w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.

(x) The IRP is intended as a final, binding arbitration process.

(i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law.

(ii) IRP Panel decisions and decisions of an en banc Standing Panel upon an appeal are intended to be enforceable in any court with jurisdiction over [ICANN](#) without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, with respect to factual findings or conclusions of law.

(iii) [ICANN](#) intends, agrees, and consents to be bound by all IRP Panel

decisions of Disputes of Covered Actions as a final, binding arbitration.

(A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If an IRP Panel decision in a Community IRP is in favor of the EC, the Board shall comply within 30 days of such IRP Panel decision.

(C) If the Board rejects an IRP Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Administration may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action.

(iv) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP decision is not intended to be and shall not be enforceable.

(y) ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.

Section 4.4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

(a) The Board shall cause a periodic review of the performance and operation of each Supporting Organization, each Supporting Organization Council, each Advisory Committee (other than the Governmental Advisory Committee), and the Nominating Committee (as defined in Section 8.1) by an entity or entities independent of the organization under review. The goal of the review, to be undertaken pursuant to such criteria and standards as the Board shall direct, shall be to determine (i) whether that organization, council or committee has a continuing purpose in the ICANN structure, (ii) if so, whether any change in structure or operations is desirable to improve its effectiveness and (iii) whether that organization, council or committee is accountable to its constituencies,

stakeholder groups, organizations and other stakeholders.

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

The results of such reviews shall be posted on the Website for public review and comment, and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days. The consideration by the Board includes the ability to revise the structure or operation of the parts of ICANN being reviewed by a two-thirds vote of all Directors, subject to any rights of the EC under the Articles of Incorporation and these Bylaws.

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

Section 4.5. ANNUAL REVIEW

ICANN will produce an annual report on the state of the accountability and transparency reviews, which will discuss the status of the implementation of all review processes required by Section 4.6 and the status of ICANN's implementation of the recommendations set forth in the final reports issued by the review teams to the Board following the conclusion of such review ("**Annual Review Implementation Report**"). The Annual Review Implementation Report will be posted on the Website for public review and comment. Each Annual Review Implementation Report will be considered by the Board and serve as an input to the continuing process of implementing the recommendations from the review teams set forth in the final reports of such review teams required in Section 4.6.

Section 4.6. SPECIFIC REVIEWS

(a) Review Teams and Reports

(i) Review teams will be established for each applicable review, which will include both a limited number of members and an open number of observers. The chairs of the Supporting Organizations and Advisory Committees participating in the applicable review shall select a group of up to 21 review team members from among the prospective members nominated by the Supporting Organizations and Advisory Committees,

balanced for diversity and skill. In addition, the Board may designate one Director or Liaison to serve as a member of the review team. Specific guidance on the selection process is provided within the operating standards developed for the conduct of reviews under this Section 4.6 (the "**Operating Standards**"). The Operating Standards shall be developed through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN. The Operating Standards must be aligned with the following guidelines:

(A) Each Supporting Organization and Advisory Committee participating in the applicable review may nominate up to seven prospective members for the review team;

(B) Any Supporting Organization or Advisory Committee nominating at least one, two or three prospective review team members shall be entitled to have those one, two or three nominees selected as members to the review team, so long as the nominees meet any applicable criteria for service on the team; and

(C) If any Supporting Organization or Advisory Committee has not nominated at least three prospective review team members, the Chairs of the Supporting Organizations and Advisory Committees shall be responsible for the determination of whether all 21 SO/AC member seats shall be filled and, if so, how the seats should be allocated from among those nominated.

(ii) Members and liaisons of review teams shall disclose to ICANN and their applicable review team any conflicts of interest with a specific matter or issue under review in accordance with the most recent Board-approved practices and Operating Standards. The applicable review team may exclude from the discussion of a specific complaint or issue any member deemed by the majority of review team members to have a conflict of interest. Further details on the conflict of interest practices are included in the Operating Standards.

(iii) Review team decision-making practices shall be specified in the Operating Standards, with the expectation that review teams shall try to operate on a consensus basis. In the event a consensus cannot be found among the members of a review team, a majority vote of the members may be taken.

(iv) Review teams may also solicit and select independent experts to render advice as requested by the review team. ICANN shall pay the reasonable

fees and expenses of such experts for each review contemplated by this [Section 4.6](#) to the extent such fees and costs are consistent with the budget assigned for such review. Guidelines on how review teams are to work with and consider independent expert advice are specified in the Operating Standards.

(v) Each review team may recommend that the applicable type of review should no longer be conducted or should be amended.

(vi) Confidential Disclosure to Review Teams

(A) To facilitate transparency and openness regarding [ICANN's](#) deliberations and operations, the review teams, or a subset thereof, shall have access to [ICANN](#) internal information and documents pursuant to the Confidential Disclosure Framework set forth in the Operating Standards (the "**Confidential Disclosure Framework**"). The Confidential Disclosure Framework must be aligned with the following guidelines:

(1) [ICANN](#) must provide a justification for any refusal to reveal requested information. [ICANN's](#) refusal can be appealed to the Ombudsman and/or the [ICANN](#) Board for a ruling on the disclosure request.

(2) [ICANN](#) may designate certain documents and information as "for review team members only" or for a subset of the review team members based on conflict of interest. [ICANN's](#) designation of documents may also be appealed to the Ombudsman and/or the [ICANN](#) Board.

(3) [ICANN](#) may require review team members to sign a non-disclosure agreement before accessing documents.

(vii) Reports

(A) Each report of the review team shall describe the degree of consensus or agreement reached by the review team on each recommendation contained in such report. Any member of a review team not in favor of a recommendation of its review team (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such recommendation, which shall be included in the report of the review team. The review team shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(B) At least one draft report of the review team shall be posted on the Website for public review and comment. The review team must consider the public comments received in response to any posted draft report and shall

amend the report as the review team deems appropriate and in the public interest before submitting its final report to the Board. The final report should include an explanation of how public comments were considered as well as a summary of changes made in response to public comments.

(C) Each final report of a review team shall be published for public comment in advance of the Board's consideration. Within six months of receipt of a final report, the Board shall consider such final report and the public comments on the final report, and determine whether to approve the recommendations in the final report. If the Board does not approve any or all of the recommendations, the written rationale supporting the Board's decision shall include an explanation for the decision on each recommendation that was not approved. The Board shall promptly direct implementation of the recommendations that were approved.

(b) Accountability and Transparency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making reflect the public interest and are accountable to the Internet community ("**Accountability and Transparency Review**").

(ii) The issues that the review team for the Accountability and Transparency Review (the "**Accountability and Transparency Review Team**") may assess include, but are not limited to, the following:

(A) assessing and improving Board governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which the Board's composition and allocation structure meets ICANN's present and future needs, and the appeal mechanisms for Board decisions contained in these Bylaws;

(B) assessing the role and effectiveness of the GAC's interaction with the Board and with the broader ICANN community, and making recommendations for improvement to ensure effective consideration by ICANN of GAC input on the public policy aspects of the technical coordination of the DNS;

(C) assessing and improving the processes by which ICANN receives public input (including adequate explanation of decisions taken and the rationale

thereof);

(D) assessing the extent to which ICANN's decisions are supported and accepted by the Internet community;

(E) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development; and

(F) assessing and improving the Independent Review Process.

(iii) The Accountability and Transparency Review Team shall also assess the extent to which prior Accountability and Transparency Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(iv) The Accountability and Transparency Review Team may recommend to the Board the termination or amendment of other periodic reviews required by this Section 4.6, and may recommend to the Board the creation of additional periodic reviews.

(v) The Accountability and Transparency Review Team should issue its final report within one year of convening its first meeting.

(vi) The Accountability and Transparency Review shall be conducted no less frequently than every five years measured from the date the previous Accountability and Transparency Review Team was convened.

(c) Security, Stability, and Resiliency Review

(i) The Board shall cause a periodic review of ICANN's execution of its commitment to enhance the operational stability, reliability, resiliency, security, and global interoperability of the systems and processes, both internal and external, that directly affect and/or are affected by the Internet's system of unique identifiers that ICANN coordinates ("**SSR Review**").

(ii) The issues that the review team for the SSR Review ("**SSR Review Team**") may assess are the following:

(A) security, operational stability and resiliency matters, both physical and network, relating to the coordination of the Internet's system of unique identifiers;

(B) conformance with appropriate security contingency planning framework for the Internet's system of unique identifiers; and

(C) maintaining clear and globally interoperable security processes for those portions of the Internet's system of unique identifiers that ICANN coordinates.

(iii) The SSR Review Team shall also assess the extent to which ICANN has successfully implemented its security efforts, the effectiveness of the security efforts to deal with actual and potential challenges and threats to the security and stability of the DNS, and the extent to which the security efforts are sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the DNS, consistent with ICANN's Mission.

(iv) The SSR Review Team shall also assess the extent to which prior SSR Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The SSR Review shall be conducted no less frequently than every five years, measured from the date the previous SSR Review Team was convened.

(d) Competition, Consumer Trust and Consumer Choice Review

(i) ICANN will ensure that it will adequately address issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection prior to, or concurrent with, authorizing an increase in the number of new top-level domains in the root zone of the DNS pursuant to an application process initiated on or after the date of these Bylaws ("**New gTLD Round**").

(ii) After a New gTLD Round has been in operation for one year, the Board shall cause a competition, consumer trust and consumer choice review as specified in this Section 4.6(d) ("**CCT Review**").

(iii) The review team for the CCT Review ("**CCT Review Team**") will examine (A) the extent to which the expansion of gTLDs has promoted competition, consumer trust and consumer choice and (B) the effectiveness of the New gTLD Round's application and evaluation process and

safeguards put in place to mitigate issues arising from the New gTLD Round.

(iv) For each of its recommendations, the CCT Review Team should indicate whether the recommendation, if accepted by the Board, must be implemented before opening subsequent rounds of new generic top-level domain applications periods.

(v) The CCT Review Team shall also assess the extent to which prior CCT Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(e) Registration Directory Service Review

(i) Subject to applicable laws, ICANN shall use commercially reasonable efforts to enforce its policies relating to registration directory services and shall work with Supporting Organizations and Advisory Committees to explore structural changes to improve accuracy and access to generic top-level domain registration data, as well as consider safeguards for protecting such data.

(ii) The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data ("**Directory Service Review**").

(iii) The review team for the Directory Service Review ("**Directory Service Review Team**") will consider the Organisation for Economic Co-operation and Development ("OECD") Guidelines on the Protection of Privacy and Transborder Flows of Personal Data as defined by the OECD in 1980 and amended in 2013 and as may be amended from time to time.

(iv) The Directory Service Review Team shall assess the extent to which prior Directory Service Review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect.

(v) The Directory Service Review shall be conducted no less frequently than every five years, measured from the date the previous Directory Service

Review Team was convened, except that the first Directory Service Review to be conducted after 1 October 2016 shall be deemed to be timely if the applicable Directory Service Review Team is convened on or before 31 October 2016.

Section 4.7. COMMUNITY MEDIATION

(a) If the Board refuses or fails to comply with a duly authorized and valid EC Decision under these Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a mediation process pursuant to this Section 4.7. The Board shall be deemed to have refused or failed to comply with a duly authorized and valid EC Decision if the Board has not complied with the EC Decision within 30 days of being notified of the relevant EC Decision.

(b) If a Mediation Initiation Notice (as defined in Section 4.1(a) of Annex D) is delivered to the Secretary pursuant to and in compliance with Section 4.1(a) of Annex D, as soon as reasonably practicable thereafter, the EC Administration shall designate individuals to represent the EC in the mediation ("**Mediation Administration**") and the Board shall designate representatives for the mediation ("**Board Mediation Representatives**"). Members of the EC Administration and the Board can designate themselves as representatives. ICANN shall promptly post the Mediation Initiation Notice on the Website.

(c) There shall be a single mediator who shall be selected by the agreement of the Mediation Administration and Board Mediation Representatives. The Mediation Administration shall propose a slate of at least five potential mediators, and the Board Mediation Representatives shall select a mediator from the slate or request a new slate until a mutually-agreed mediator is selected. The Board Mediation Representatives may recommend potential mediators for inclusion on the slates selected by the Mediation Administration. The Mediation Administration shall not unreasonably decline to include mediators recommended by the Board Mediation Representatives on proposed slates and the Board Mediation Representatives shall not unreasonably withhold consent to the selection of a mediator on slates proposed by the Mediation Administration.

(d) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC. The mediator must confirm in writing that he or she is

not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, any Supporting Organization (or constituent thereof), any Advisory Committee (or constituent thereof), the EC Administration or the EC.

(e) The mediator shall conduct the mediation in accordance with these Bylaws, the laws of California and the rules and procedures of a well-respected international dispute resolution provider, which may be the IRP Provider. The arbitration will be conducted in the English language consistent with the provisions relevant for mediation under the IRP Rules of Procedure and will occur in Los Angeles County, California, unless another location is mutually-agreed between the Mediation Administration and Board Mediation Representatives.

(f) The Mediation Administration and the Board Mediation Representatives shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.

(g) ICANN shall bear all costs of the mediator.

(h) If the Mediation Administration and the Board Mediation Representatives have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, the Mediation Administration or the Board Mediation Representatives may terminate the mediation at any time by declaring an impasse.

(i) If a resolution to the dispute is reached by the Mediation Administration and the Board Mediation Representatives, the Mediation Administration and the Board Mediation Representatives shall document such resolution including recommendations ("**Mediation Resolution**" and the date of such resolution, the "**Mediation Resolution Date**"). ICANN shall promptly post the Mediation Resolution on the Website (in no event later than 14 days after mediation efforts are completed) and the EC Administration shall promptly notify the Decisional Participants of the Mediation Resolution.

(j) The EC shall be deemed to have accepted the Mediation Resolution if it has not delivered an EC Community IRP Initiation Notice (as defined in Section 4.2(e) of Annex D) pursuant to and in compliance with Section 4.2 of Annex D within eighty (80) days following the Mediation Resolution Date.

ARTICLE 5 OMBUDSMAN

Section 5.1. OFFICE OF OMBUDSMAN

(a) ICANN shall maintain an Office of Ombudsman ("**Office of Ombudsman**"), to

be managed by an ombudsman ("**Ombudsman**") and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position, with salary and benefits appropriate to the function, as determined by the Board.

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

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

(d) The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual ICANN Budget process. The Ombudsman shall submit a proposed budget to the President, and the President shall include that budget submission in its entirety and without change in the general ICANN Budget recommended by the ICANN President to the Board. Nothing in this Section 5.1 shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 5.2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Independent Review Process set forth in Section 4.3 have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness, and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results. With respect to the Reconsideration Request Process set forth in Section 4.2 , the Ombudsman shall serve the function expressly provided for in Section 4.2 .

Section 5.3. OPERATIONS

The Office of Ombudsman shall:

(a) facilitate the fair, impartial, and timely resolution of problems and complaints that affected members of the ICANN community (excluding employees and vendors/suppliers of ICANN) may have with specific actions or failures to act by the Board or ICANN staff which have not otherwise become the subject of either a Reconsideration Request or Independent Review Process;

(b) perform the functions set forth in Section 4.2 relating to review and consideration of Reconsideration Requests;

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

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

(e) heighten awareness of the Ombudsman program and functions through routine interaction with the ICANN community and online availability;

(f) maintain neutrality and independence, and have no bias or personal stake in an outcome; and

(g) comply with all ICANN conflicts of interest and confidentiality policies.

Section 5.4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

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

(b) ICANN staff and other ICANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by that Office.

(c) Contact with the Ombudsman shall not constitute notice to ICANN of any

particular action or cause of action.

(d) The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

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

Section 5.5. ANNUAL REPORT

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

ARTICLE 6 EMPOWERED COMMUNITY

Section 6.1. COMPOSITION AND ORGANIZATION OF THE EMPOWERED COMMUNITY

(a) The Empowered Community ("EC") shall be a nonprofit association formed under the laws of the State of California consisting of the ASO, the ccNSO (as defined in Section 10.1), the GNSO (as defined in Section 11.1), the ALAC (as defined in Section 12.2(d)(i)) and the GAC (each a "**Decisional Participant**" or "associate," and collectively, the "**Decisional Participants**").

(b) This Article 6 shall constitute the articles of association of the EC and shall be considered the formational "governing document" (as defined in Section 18008 of the CCC) of the EC, and the terms contained herein and in these Bylaws relating to the EC shall be the EC's "governing principles" (as defined in Section 18010 of the CCC), which may only be amended as set forth in Section 25.2. Where necessary for purposes of interpretation of these Bylaws, an "associate" shall be deemed to be a "member" of the EC as defined in Section 18015 of the CCC. Any change in the number and/or identity of Decisional Participants for any reason (including the resignation of any Decisional Participant or the addition of new Decisional Participants as a result of the creation of additional Supporting Organizations or Advisory Committees), and any corresponding changes in the

voting thresholds for exercise of the EC's rights described in Annex D of these Bylaws, will only be effective following the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D. The EC may not be dissolved except upon the completion of the process for amending Fundamental Bylaws described in Section 25.2 and Annex D.

(c) The sole purpose of the EC is to exercise its rights and perform its obligations under ICANN's Articles of Incorporation and these Bylaws, and the EC shall have no other powers or rights except as expressly provided therein. The EC may only act as provided in these Bylaws. Any act of the EC that is not in accordance with these Bylaws shall not be effective.

(d) The EC shall not acquire, hold, manage, encumber or transfer any interest in real or personal property, nor have any directors, officers or employees. The EC shall not merge with or into another entity nor shall it dissolve, except with the approval of the Board and as part of a Fundamental Bylaw Amendment (as defined in Section 25.2(b)).

(e) Decisional Participants shall not transfer their right to be an associate of the EC. Any attempted transfer by any Decisional Participant of its right to be an associate of the EC shall be void ab initio.

(f) The location and street address of the EC shall be the principal office of ICANN.

(g) Each Decisional Participant shall, except as otherwise provided in Annex D, adopt procedures for exercising the rights of such Decisional Participant pursuant to the procedures set forth in Annex D, including (i) who can submit a petition to such Decisional Participant, (ii) the process for an individual to submit a petition to such Decisional Participant, including whether a petition must be accompanied by a rationale, (iii) how the Decisional Participant determines whether to accept or reject a petition, (iv) how the Decisional Participant determines whether an issue subject to a petition has been resolved, (v) how the Decisional Participant determines whether to support or object to actions supported by another Decisional Participant, and (vi) the process for the Decisional Participant to notify its constituents of relevant matters.

Section 6.2. POWERS AND ACKNOWLEDGMENTS

(a) Pursuant to and in compliance with the terms and conditions of these Bylaws, the EC shall have the powers and rights, as set forth more fully elsewhere in these Bylaws, to:

- (i) Appoint and remove individual Directors (other than the President);
- (ii) Recall the entire Board;
- (iii) Reject ICANN Budgets, IANA Budgets, Operating Plans (as defined in Section 22.5(a)(i)) and Strategic Plans (as defined in Section 22.5(b)(i));
- (iv) Reject Standard Bylaw Amendments (as defined in Section 25.1(a));
- (v) Approve Fundamental Bylaw Amendments, Articles Amendments (as defined in Section 25.2(b)), and Asset Sales (as defined in Article 26(a));
- (vi) Reject PTI Governance Actions (as defined in Section 16.2(d));
- (vii) Require the ICANN Board to re-review its rejection of IFR Recommendation Decisions (as defined in Section 18.6(d)), Special IFR Recommendation Decisions (as defined in Section 18.12(e)), SCWG Creation Decisions (as defined in Section 19.1(d)) and SCWG Recommendation Decisions (as defined in Section 19.4(d));
- (viii) Initiate a Community Reconsideration Request, mediation or a Community IRP; and
- (ix) Take necessary and appropriate action to enforce its powers and rights, including through the community mechanism contained in Annex D or an action filed in a court of competent jurisdiction.

(b) The EC may pursue an action in any court with jurisdiction over ICANN to enforce the EC's rights under these Bylaws. ICANN acknowledges the EC's legal personhood and shall not raise the EC's legal personhood as a defense in any proceeding between ICANN and the EC. ICANN shall not assert as a defense that prior filing or completion of a Reconsideration Request or an IRP Claim was a prerequisite to an action in court regarding the EC's power to appoint or remove an individual Director or recall the Board (except to the extent an IRP Panel award is applicable pursuant to Section 3.6(e)).

(c) By nominating a Director for designation by the EC or exercising the community mechanism contained in Annex D with respect to any rights granted to the EC pursuant to these Bylaws, the EC and each of its Decisional Participants agrees and consents to the terms of these Bylaws and intends to be legally bound hereby.

Section 6.3. EC ADMINISTRATION

(a) The Decisional Participants shall act through their respective chairs or such other persons as may be designated by the Decisional Participants (collectively, such persons are the "**EC Administration**"). Each Decisional Participant shall deliver annually a written certification from its chair or co-chairs to the Secretary designating the individual who shall represent the Decisional Participant on the EC Administration.

(b) In representing a Decisional Participant on the EC Administration, the representative individual shall act solely as directed by the represented Decisional Participant and in accordance with processes developed by such Decisional Participant in accordance with Section 6.1(g).

(c) In representing the EC Administration, the individuals serving thereon shall act as required for the EC to follow the applicable procedures in Annex D, and to implement EC decisions made in accordance with such procedures.

(d) All communications and notices required or permitted to be given under these Bylaws by a Decisional Participant shall be provided by the Decisional Participant's representative on the EC Administration. All communications and notices required or permitted to be given under these Bylaws by the EC shall be provided by any member of the EC Administration. Where a particular Bylaws notice provision does not require notice to the Secretary, the EC and the Decisional Participants shall provide a copy of the notice to the Secretary in accordance with Section 21.5, and ICANN shall post it on the Website.

(e) ICANN shall be entitled to rely on notices from a Decisional Participant's representative or an individual serving on the EC Administration delivered in accordance with Section 21.5 as evidence that the actions set forth therein have been approved by or are the actions of the Decisional Participant, the EC or the EC Administration, as applicable, pursuant to and in compliance with the requirements of these Bylaws (including Annex D) .

(f) No person participating in the EC, the EC Administration or a Decisional Participant shall be liable for any debt, obligation or liability of ICANN or the EC, other than in the case of a fraudulent act committed by such person.

Section 6.4. CONSENT TO BOARD-INITIATED REMOVAL OF DIRECTOR WITHOUT CAUSE

In the event the EC Administration receives from the Secretary a valid notice as described in Section 7.11(a)(i)(B), indicating that the Board has voted to remove a Director without cause pursuant to Section 7.11(a)(i)(B), the EC shall without

deliberation consent to such removal, and the EC Administration shall provide notice to the Secretary of such consent.

ARTICLE 7 BOARD OF DIRECTORS

Section 7.1. COMPOSITION OF THE BOARD

The ICANN Board of Directors ("**Board**") shall consist of sixteen voting directors ("**Directors**"). In addition, four non-voting liaisons ("**Liaisons**") shall be appointed for the purposes set forth in Section 7.9. Only Directors shall be included in determining the existence of quorums, and in establishing the validity of votes taken by the Board.

Section 7.2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIR AND VICE-CHAIR

(a) As of the effective date of the amendment and restatement of these Bylaws on 1 October 2016, the EC shall be the sole designator of ICANN and shall designate, within the meaning of Section 5220 of the CCC, all Directors except for the President ex officio. The EC shall notify promptly the Secretary in writing of the following designations:

(i) Eight Directors nominated by the Nominating Committee to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seats 1 through 8.

(ii) Two Directors nominated by the ASO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 9 and Seat 10.

(iii) Two Directors nominated by the ccNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 11 and Seat 12.

(iv) Two Directors nominated by the GNSO to be designated as Directors by the EC. These seats on the Board are referred to in these Bylaws as Seat 13 and Seat 14.

(v) One Director nominated by the At-Large Community to be designated as Directors by the EC. This seat on the Board is referred to in these Bylaws as Seat 15.

In addition to the Directors designated by the EC, the President shall serve ex officio as a Director. The seat held by the President on the Board is referred to in these Bylaws as Seat 16.

(b) In carrying out its responsibilities to nominate the Directors for Seats 1 through 8 for designation by the EC, the Nominating Committee shall ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. At no time when it makes its nomination shall the Nominating Committee nominate a Director to fill any vacancy or expired term whose designation would cause the total number of Directors (not including the President) from countries in any one Geographic Region to exceed five; and the Nominating Committee shall ensure when it makes its nominations that the Board includes at least one Director who is from a country in each ICANN Geographic Region ("**Diversity Calculation**"). For purposes of this Section 7.2(b), if any candidate for director maintains citizenship of more than one country, or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("**Domicile**"), that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this Section 7.2(b), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(c) In carrying out their responsibilities to nominate Directors for Seats 9 through 15 for designation by the EC, the Supporting Organizations and the At-Large Community shall seek to ensure that the Board is composed of Directors who, in the aggregate, display diversity in geography, culture, skills, experience, and perspective, by applying the criteria set forth in Section 7.3, Section 7.4 and Section 7.5. The Supporting Organizations shall ensure that, at any given time, no two Directors nominated by a Supporting Organization are citizens from the same country or of countries located in the same Geographic Region. For purposes of this Section 7.2(c), if any candidate for Director maintains citizenship or Domicile of more than one country, that candidate may be deemed to be from either country and must select in his or her Statement of Interest the country of citizenship or Domicile that he or she wants the Supporting Organization or the At-Large Community, as applicable, to use for nomination purposes. For purposes of this Section 7.2(c), a person can only have one Domicile, which shall be determined by where the candidate has a permanent residence and place of habitation.

(d) The Board shall annually elect a Chair and a Vice-Chair from among the Directors, not to include the President.

(e) The EC shall designate each person nominated as a Director by the Nominating Committee, the ASO, the ccNSO, the GNSO and the At-Large Community in accordance with this Section 7.2.

(f) As a condition to sitting on the Board, each Director other than the President ex officio shall sign a pre-service letter pursuant to which such Director:

(i) acknowledges and agrees to the EC's right to remove the Director at any time and for any reason following the processes set forth in these Bylaws;

(ii) acknowledges and agrees that serving as a Director shall not establish any employment or other relationship (whether to ICANN, the EC, any body entitled to nominate a Director, or any of their agents) that provides any due process rights related to termination of service as a Director; and

(iii) conditionally and irrevocably resigns as a Director automatically effective upon communication to the Director or, in the case of Board recall, communication to the Board of a final determination of removal following the processes set forth in these Bylaws.

Section 7.3.CRITERIA FOR NOMINATION OF DIRECTORS

Directors shall be:

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

(b) Persons with an understanding of ICANN's Mission and the potential impact of ICANN decisions on the global Internet community, and committed to the success of ICANN;

(c) Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section 7.3;

(d) Persons who, in the aggregate, have personal familiarity with the operation of gTLD registries and registrars; with ccTLD registries; with IP address registries; with Internet technical standards and protocols; with policy-development procedures, legal traditions, and the public interest; and with the broad range of business, individual, academic, and non-commercial users of the Internet; and

(e) Persons who are able to work and communicate in written and spoken English.

Section 7.4. ADDITIONAL QUALIFICATIONS

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

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

(c) Persons serving in any capacity on the Nominating Committee shall be ineligible for nomination or designation to positions on the Board as provided by Section 8.8.

(d) No person who serves on the EC Administration while serving in that capacity shall be considered for nomination or designated to the Board, nor serve simultaneously on the EC Administration and as a Director or Liaison to the Board.

Section 7.5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board, the nomination of Directors by the Nominating Committee, each Supporting Organization and the At-Large Community shall comply with all applicable diversity provisions of these

Bylaws or of any memorandum of understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that at all times each Geographic Region shall have at least one Director, and at all times no Geographic Region shall have more than five Directors on the Board (not including the President). As used in these Bylaws, each of the following is considered to be a "**Geographic Region**": (a) Europe; (b) Asia/Australia/Pacific; (c) Latin America/Caribbean islands; (d) Africa; and (e) North America. The specific countries included in each Geographic Region shall be determined by the Board, and this Section 7.5 shall be reviewed by the Board from time to time (and in any event at least once every three years) to determine whether any change is appropriate, taking account of the evolution of the Internet.

Section 7.6. DIRECTORS' CONFLICTS OF INTEREST

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

Section 7.7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of ICANN and not as representatives of the EC, the Nominating Committee, Supporting Organization or Advisory Committee that nominated them, as applicable, their employers, or any other organizations or constituencies.

Section 7.8. TERMS OF DIRECTORS

(a) The regular term of office of Director Seats 1 through 15 shall begin as follows:

- (i) The regular terms of Seats 1 through 3 shall begin at the conclusion of each ICANN annual meeting every third year after 2003;

(ii) The regular terms of Seats 4 through 6 shall begin at the conclusion of each ICANN annual meeting every third year after 2004;

(iii) The regular terms of Seats 7 and 8 shall begin at the conclusion of each ICANN annual meeting every third year after 2005;

(iv) The terms of Seats 9 and 12 shall begin at the conclusion of each ICANN annual meeting every third year after 2015;

(v) The terms of Seats 10 and 13 shall begin at the conclusion of each ICANN annual meeting every third year after 2013; and

(vi) The terms of Seats 11, 14 and 15 shall begin at the conclusion of each ICANN annual meeting every third year after 2014.

(b) Each Director holding any of Seats 1 through 15, including a Director nominated and designated to fill a vacancy, shall hold office for a term that lasts until the next term for that Seat commences and until a successor has been designated and qualified or until that Director resigns or is removed in accordance with these Bylaws. For the avoidance of doubt, the new governance provisions effective as of the amendment and restatement of these Bylaws on 1 October 2016 shall not have the effect of shortening or terminating the terms of any Directors serving at the time of the amendment and restatement.

(c) At least two months before the commencement of each annual meeting, the Nominating Committee shall give the EC Administration (with a copy to the Decisional Participants and Secretary) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(d) At least six months before the date specified for the commencement of the term as specified in Section 7.8(a)(iv) through Section 7.8(a)(vi) above, any Supporting Organization or the At-Large Community entitled to nominate a Director for a Seat with a term beginning that year shall give the EC Administration (with a copy to the Secretary and the Decisional Participants) written notice of its nomination of Directors for seats with terms beginning at the conclusion of the annual meeting, and the EC Administration shall promptly provide the Secretary (with a copy to the Decisional Participants) with written notice of the designation of those Directors. All such notices shall be posted promptly to the Website.

(e) No Director may serve more than three consecutive terms. For these

purposes, a person designated to fill a vacancy in a term shall not be deemed to have served that term.

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

Section 7.9. NON-VOTING LIAISONS

(a) The non-voting Liaisons shall include:

- (i) One appointed by the Governmental Advisory Committee;
- (ii) One appointed by the Root Server System Advisory Committee established by Section 12.2(c);
- (iii) One appointed by the Security and Stability Advisory Committee established by Section 12.2(b); and
- (iv) One appointed by the Internet Engineering Task Force.

(b) The Liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a Liaison shall give the Secretary written notice of its appointment.

(c) Each Liaison may be reappointed, and shall remain in that position until a successor has been appointed or until the Liaison resigns or is removed in accordance with these Bylaws.

(d) The Liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section 7.9(d) for the purpose of consulting with their respective committee or organization.

Section 7.10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CCC, any Director or Liaison may resign at any

time by giving written notice thereof to the Chair of the Board, the President, the Secretary, or the Board. Such resignation shall take effect at the time specified, and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

(a) Directors

(i) Any Director designated by the EC may be removed without cause:

(A) by the EC pursuant to and in compliance with procedures in Section 3.1 or Section 3.2 of Annex D, as applicable, or

(B) following notice to that Director, by a three-fourths (3/4) majority vote of all Directors; provided, however, that (x) each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director; and (y) such removal shall not be effective until the Secretary has provided notice to the EC Administration of the Board's removal vote and the requirements of Section 6.4 have been met.

(ii) The Board may remove any Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Sections 5230 through 5239 of the CCC, and in the case of such removal, the Secretary shall promptly notify the EC Administration in writing, with a copy to the body that nominated such Director, and shall promptly post such notification to the Website. The vacancies created by such removal shall be filled in accordance with Section 7.12(a).

(iii) All Directors (other than the President) may be removed at the same time by the EC by the EC Administration delivering an EC Board Recall Notice to the Secretary pursuant to and in compliance with Section 3.3 of Annex D. The vacancies created by such removal shall be filled by the EC in accordance with Section 7.12(b).

(b) With the exception of the Liaison appointed by the Governmental Advisory Committee, any Liaison may be removed following notice to that Liaison and to the organization which selected that Liaison, by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that Liaison

following such notice. The vacancies created by such removal shall be filled in accordance with Section 7.12. The Board may request the Governmental Advisory Committee to consider the replacement of the Governmental Advisory Committee Liaison if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 7.12. VACANCIES

(a) This Section 7.12(a) shall apply to Board vacancies other than those occurring by recall of all Directors (other than the President). A vacancy or vacancies in the Board shall be deemed to exist in the case of the death, resignation, or removal of any Director or Interim Director (as defined in Section 7.12(b)), or if the authorized number of Directors is increased. Vacancies occurring in Seats 1 through 15 shall be filled by the EC after nomination as provided in Section 7.2 and Articles 8 through 12. A vacancy in Seat 16 shall be filled as provided in Article 15. A Director designated by the EC to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been designated and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.

(b) This Section 7.12(b) shall apply to Board vacancies occurring when all Directors (other than the President) are recalled as provided by Section 7.11(a) (iii). Concurrently with delivery of any EC Board Recall Notice (as defined in Section 3.3(f) of Annex D), the EC Administration shall provide written notice of the EC's designation of individuals to fill such vacancies (each such individual, an "**Interim Director**") to the Decisional Participants and to the Secretary, who shall cause such notice to be promptly posted to the Website. An Interim Director must meet the criteria specified in Section 7.3, Section 7.4 and Section 7.5, as applicable. An Interim Director shall hold office until the EC designates the Interim Director's successor in accordance with Section 7.12(a), and the successor's designation shall occur within 120 days of the Interim Director's designation. For avoidance of doubt, persons designated as Interim Directors may be eligible for designation as Directors as well.

(c) The organizations selecting the Liaisons identified in Section 7.9 are responsible for determining the existence of, and filling, any vacancies in those positions. Such organizations shall give the Secretary written notice of their appointments to fill any such vacancies, subject to the requirements set forth in Section 7.4, as applicable.

Section 7.13. ANNUAL MEETINGS

Annual meetings of ICANN shall be held for the purpose of electing Officers and

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

Section 7.14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board. In the absence of other designation, regular meetings shall be held at the principal office of ICANN.

Section 7.15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the Directors, by the Chair of the Board or the President. A call for a special meeting shall be made by the Secretary. Special meetings shall be held at the principal office of ICANN unless otherwise specified in the notice of the meeting.

Section 7.16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and Liaison, or sent by first-class mail (air mail for addresses outside the United States) or facsimile, charges prepaid, addressed to each Director and Liaison at the Director's or Liaison's address as it is shown on the records of ICANN. In case the notice is mailed, it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting. In case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. Notwithstanding anything in this Section 7.16 to the contrary, notice of a meeting need not be given to any Director or Liaison who signed a waiver of notice or a Director who signed a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 7.17. QUORUM

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

Section 7.18. ACTIONS BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Directors and Liaisons may participate in a meeting of the Board or Board Committee (as defined in Section 14.1) through use of (a) conference telephone or similar communications equipment, provided that all Directors participating in such a meeting can speak to and hear one another or (b) electronic video screen communication or other communication equipment; provided that (i) all Directors participating in such a meeting can speak to and hear one another, (ii) all Directors are provided the means of fully participating in all matters before the Board or Board Committee, and (iii) ICANN adopts and implements means of verifying that (A) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (B) all actions of, or votes by, the Board or Board Committee are taken or cast only by Directors and not persons who are not Directors. Participation in a meeting pursuant to this Section 7.18 constitutes presence in person at such meeting. ICANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit Directors and Liaisons to participate by telephone.

Section 7.19. ACTION WITHOUT MEETING

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

Section 7.20. ELECTRONIC MAIL

If permitted by applicable law, communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. ICANN shall take such steps as it deems appropriate under the circumstances to

assure itself that communications by electronic mail are authentic.

Section 7.21. BOARD RIGHTS OF INSPECTION

(a) Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind, and to inspect the physical properties of ICANN.

(b) ICANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 7.22. COMPENSATION

(a) Except for the President of ICANN, who serves ex officio as a Director, each of the Directors shall be entitled to receive compensation for his or her services as a Director. The President shall receive only his or her compensation for service as President and shall not receive additional compensation for service as a Director.

(b) If the Board determines to offer a compensation arrangement to one or more Directors (other than the President) for services to ICANN as Directors, the Board shall follow the process that is calculated to pay an amount for service as a Director that is not an excess benefit under the standards set forth in Section 4958 of the Internal Revenue Code of 1986, as amended (the "**Code**").

(c) As part of the process, the Board shall retain an Independent Valuation Expert (as defined in Section 7.22(g)(i)) to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion (as defined in Section 7.22(g)(ii)) from such expert regarding the ranges of Reasonable Compensation (as defined in Section 7.22(g)(iii)) for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director, including offices held on the Board, attendance at Board and Board Committee meetings, the nature of service on the Board and on Board Committees, and appropriate data as to comparability regarding director compensation arrangements for U.S.-based, nonprofit, tax-exempt organizations possessing a global employee base.

(d) After having reviewed the Independent Valuation Expert's Reasoned Written Opinion, the Board shall meet with the expert to discuss the expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon, and the conclusions reached by the expert.

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

(f) In addition to authorizing payment of compensation for services as Directors as set forth in this Section 7.22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by Liaisons performing their duties as Directors or Liaisons.

(g) As used in this Section 7.22, the following terms shall have the following meanings:

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

(ii) A "**Reasoned Written Opinion**" means a written opinion of a valuation expert who meets the requirements of Section 7.22(g)(i)(A) through (D). To be reasoned, the opinion must be based upon a full disclosure by ICANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion, the opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangement, the opinion must apply those standards to such compensation arrangement, and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.

(iii) "**Reasonable Compensation**" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.

(h) Each of the Liaisons, with the exception of the Governmental Advisory Committee Liaison, shall be entitled to receive compensation for his or her

services as a Liaison. If the Board determines to offer a compensation arrangement to one or more Liaisons, the Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 7.23. PRESUMPTION OF ASSENT

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

Section 7.24 INTERIM BOARD

Except in circumstances in which urgent decisions are needed to protect the security, stability or resilience of the DNS or to the extent necessary to comply with its fiduciary obligations under applicable law, a Board that consists of a majority or more of Interim Directors (an "**Interim Board**") shall (a) consult with the chairs of the Supporting Organizations and Advisory Committees before making major decisions and (b) consult through a community forum (in a manner consistent with the process for a Rejection Action Community Forum pursuant to Section 2.3 of Annex D) prior to taking any action that would, if implemented, materially change ICANN's strategy, policies or management, including replacement of the then-serving President. Interim Directors shall be entitled to compensation as provided in this Article 7.

Section 7.25 COMMUNICATION OF DESIGNATION

Upon its receipt of nominations as provided in Articles 7 through 12, the EC Administration, on behalf of the EC, shall promptly notify the Secretary of the EC's designation of individuals to fill seats on the Board. ICANN shall post all such designations promptly to the Website.

ARTICLE 8 NOMINATING COMMITTEE

Section 8.1. DESCRIPTION

There shall be a Nominating Committee of ICANN ("**Nominating Committee**"), responsible for nominating all Directors except the President and those Directors nominated by Decisional Participants; for nominating two directors of PTI (in

accordance with the articles of incorporation and bylaws of PTI); and for such other selections as are set forth in these Bylaws. Notification of the Nominating Committee's Director nominations shall be given by the Nominating Committee Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25. Notification of the Nominating Committee's PTI director nomination shall be given to the Secretary.

Section 8.2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

- (a) A non-voting Chair, appointed by the Board;
- (b) A non-voting Chair-Elect, appointed by the Board as a non-voting advisor;
- (c) A non-voting liaison appointed by the Root Server System Advisory Committee established by Section 12.2(c);
- (d) A non-voting liaison appointed by the Security and Stability Advisory Committee established by Section 12.2(b);
- (e) A non-voting liaison appointed by the Governmental Advisory Committee;
- (f) Five voting delegates selected by the At-Large Advisory Committee established by Section 12.2(d);
- (g) Voting delegates to the Nominating Committee shall be selected from the Generic Names Supporting Organization established by Article 11, as follows:
 - (i) One delegate from the Registries Stakeholder Group;
 - (ii) One delegate from the Registrars Stakeholder Group;
 - (iii) Two delegates from the Business Constituency, one representing small business users and one representing large business users;
 - (iv) One delegate from the Internet Service Providers and Connectivity Providers Constituency (as defined in Section 11.5(a)(iii));
 - (v) One delegate from the Intellectual Property Constituency; and
 - (vi) One delegate from consumer and civil society groups, selected by the Non-Commercial Users Constituency.

(h) One voting delegate each selected by the following entities:

(i) The Council of the Country Code Names Supporting Organization established by Section 10.3;

(ii) The Council of the Address Supporting Organization established by Section 9.2; and

(iii) The Internet Engineering Task Force.

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

Section 8.3. TERMS

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

(b) The regular term of each voting delegate shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the immediately following ICANN annual meeting.

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

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

(e) Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant

pursuant to Section 8.3(d), or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 8.2(i).

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

Section 8.4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the ICANN Nominating Committee shall be:

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

(b) Persons with wide contacts, broad experience in the Internet community, and a commitment to the success of ICANN;

(c) Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities;

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

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

(f) Persons who are able to work and communicate in written and spoken English.

Section 8.5. DIVERSITY

In carrying out its responsibilities to nominate Directors to fill Seats 1 through 8 (and selections to any other ICANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the Board (and such other bodies), and seek to ensure that the persons it nominates to serve as Director and selects shall, to the extent feasible and consistent with the other criteria required to be

applied by Section 8.4, be guided by Section 1.2(b)(ii).

Section 8.6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 8.7. PROCEDURES

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

Section 8.8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

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

Section 8.9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to ICANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in Section 8.2.

ARTICLE 9 ADDRESS SUPPORTING ORGANIZATION

Section 9.1. DESCRIPTION

(a) The Address Supporting Organization ("**Address Supporting Organization**" or "**ASO**") shall advise the Board with respect to policy issues relating to the operation, assignment, and management of Internet addresses.

(b) The ASO shall be the entity established by the Memorandum of Understanding entered on 21 October 2004 between ICANN and the Number Resource Organization ("**NRO**"), an organization of the existing RIRs.

Section 9.2. ADDRESS COUNCIL

(a) The ASO shall have an Address Council, consisting of the members of the NRO Number Council.

(b) The Address Council shall nominate individuals to fill Seats 9 and 10 on the Board. Notification of the Address Council's nominations shall be given by the Address Council in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

ARTICLE 10 COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 10.1. DESCRIPTION

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

(a) developing and recommending to the Board global policies relating to country-code top-level domains;

(b) Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs;

(c) Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN;

(d) Nominating individuals to fill Seats 11 and 12 on the Board; and

(e) Other responsibilities of the ccNSO as set forth in these Bylaws.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to Section 10.4(j) and Section 10.4(k). However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Section 10.2. ORGANIZATION

The ccNSO shall consist of (a) ccTLD managers that have agreed in writing to be members of the ccNSO (see Section 10.4(b)) and (b) a ccNSO Council responsible for managing the policy-development process of the ccNSO.

Section 10.3. ccNSO COUNCIL

(a) The ccNSO Council shall consist of three ccNSO Council members selected by the ccNSO members within each of ICANN's Geographic Regions in the manner described in Section 10.4(g) through Section 10.4(i); (ii) three ccNSO Council members selected by the ICANN Nominating Committee; (iii) liaisons as described in Section 10.3(b); and (iv) observers as described in Section 10.3(c).

(b) There shall also be one liaison to the ccNSO Council from each of the following organizations, to the extent they choose to appoint such a liaison: (i) the Governmental Advisory Committee; (ii) the At-Large Advisory Committee; and (iii) each of the Regional Organizations described in Section 10.5. These liaisons shall not be members of or entitled to vote on the ccNSO Council, but otherwise shall be entitled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair, and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

(d) (i) the regular term of each ccNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the third ICANN annual meeting thereafter; (ii) the regular terms of the three ccNSO Council members selected by the ccNSO members within each ICANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three, and the third member's term begins in the second year following a year divisible by three; and (iii) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

(e) A ccNSO Council member may resign at any time by giving written notice to the ICANN Secretary, with a notification copy to the ccNSO Council Chair.

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

(g) A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the ICANN Secretary written notice of its selection, with a notification copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in Section 10.4(g) through (i).

(h) The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings, including an annual meeting, of ccNSO members as described in Section 10.4(f)) and to manage the development of policy recommendations in accordance with Section 10.6(a). The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.

(i) The ccNSO Council shall nominate individuals to fill Seats 11 and 12 on the Board by written ballot or by action at a meeting; any such nomination must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's nominations shall be given by the ccNSO Council Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

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

(k) The ccNSO Council, subject to direction by the ccNSO members, shall adopt such rules and procedures for the ccNSO as it deems necessary, provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.

(l) Except as provided by Section 10.3(i) and Section 10.3(j), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines, but not fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means, provided that all ccNSO Council members are permitted to participate by at least one means described in Section 10.3(n). Except where determined by a majority vote of the members of the ccNSO Council present that a closed session is appropriate, physical meetings shall be open to attendance by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

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

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

Section 10.4. MEMBERSHIP

(a) The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager that meets the membership qualifications stated in Section

10.4(b) shall be entitled to be members of the ccNSO. For purposes of this Article 10, a ccTLD manager is the organization or entity responsible for managing an ISO 3166 country-code top-level domain, or under any later variant, for that country-code top-level domain.

(b) Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. The application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (i) to adhere to rules of the ccNSO, including membership rules, (ii) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (ii) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation the ccTLD manager ceases to agree to (A) adhere to rules of the ccNSO, including membership rules, (B) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by Section 10.4(j) and Section 10.4(k), and (C) to pay ccNSO membership fees established by the ccNSO Council under Section 10.7(c). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

(c) Neither membership in the ccNSO nor membership in any Regional Organization described in Section 10.5 shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

(d) The Geographic Regions of ccTLDs shall be as described in Section 7.5. For purposes of this Article 10, managers of ccTLDs within a Geographic Region that are members of the ccNSO are referred to as ccNSO members "within" the Geographic Region, regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear, the ccTLD member should self-select according to procedures adopted by the ccNSO Council.

(e) Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager. In the absence of such a designation, the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the IANA database.

(f) There shall be an annual meeting of ccNSO members, which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend, and a reasonable opportunity shall be provided for ccTLD managers that are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable, annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board, or of one or more of ICANN's other Supporting Organizations.

(g) The ccNSO Council members selected by the ccNSO members from each Geographic Region (see Section 10.3(a)(i)) shall be selected through nomination, and if necessary election, by the ccNSO members within that Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council, or upon the occurrence of a vacancy in the seat of such a ccNSO Council member, the ccNSO Council shall establish a nomination and election schedule, which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.

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

(i) If at the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region, then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise, an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances), with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election, a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum, and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the ICANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.

(j) Subject to Section 10.4(k), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (i) only address issues that are within scope of the ccNSO according to Section 10.6(a) and Annex C; (ii) have been developed through the ccPDP as described in Section 10.6, and (iii) have been recommended as such by the ccNSO to the Board, and (iv) are adopted by the Board as policies, provided that such policies

do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

(k) A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (i) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)), and (ii) failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements. After investigation, the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees, the ccNSO Council shall review the situation after a six-month period. At the end of that period, the ccNSO Council shall make findings as to (A) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j)) and (B) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 10.5. REGIONAL ORGANIZATIONS

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

Section 10.6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

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

(b) In developing global policies within the scope of the ccNSO and

recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process ("ccPDP"). The ccPDP shall be as stated in Annex B to these Bylaws; modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Section 10.7. STAFF SUPPORT AND FUNDING

(a) Upon request of the ccNSO Council, a member of the ICANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively, the ccNSO Council may designate, at ccNSO expense, another person to serve as ccNSO Staff Manager. The work of the ccNSO Staff Manager on substantive matters shall be assigned by the Chair of the ccNSO Council, and may include the duties of ccPDP Issue Manager.

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

(c) The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in Section 10.7(a) and Section 10.7(b), as approved by the ccNSO members.

(d) Written notices given to the Secretary under this Article 10 shall be permanently retained, and shall be made available for review by the ccNSO Council on request. The Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative, and which shall be posted on the Website.

ARTICLE 11 GENERIC NAMES SUPPORTING ORGANIZATION

Section 11.1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**")), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

Section 11.2. ORGANIZATION

The GNSO shall consist of:

- (a) A number of Constituencies, where applicable, organized within the Stakeholder Groups as described in Section 11.5;
- (b) Four Stakeholder Groups organized within Houses as described in Section 11.5;
- (c) Two Houses within the GNSO Council as described in Section 11.3(h);
- (d) A GNSO Council responsible for managing the policy development process of the GNSO, as described in Section 11.3; and
- (e) Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own charters with the approval of their members and of the Board.

Section 11.3. GNSO COUNCIL

(a) Subject to Section 11.5, the GNSO Council shall consist of:

- (i) three representatives selected from the Registries Stakeholder Group;
- (ii) three representatives selected from the Registrars Stakeholder Group;
- (iii) six representatives selected from the Commercial Stakeholder Group;
- (iv) six representatives selected from the Non-Commercial Stakeholder Group; and
- (v) three representatives selected by the ICANN Nominating Committee, one of which shall be non-voting, but otherwise entitled to participate on equal footing with other members of the GNSO Council including, e.g. the making and seconding of motions and of serving as Chair if elected. One Nominating Committee appointee voting representative shall be assigned to each House (as described in Section 11.3(h)) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council

at the same time.

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

There may also be liaisons to the GNSO Council from other ICANN Supporting Organizations and/or Advisory Committees, from time to time. The appointing organization shall designate, revoke, or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the ICANN Secretary. Liaisons shall not be members of or entitled to vote, to make or second motions, or to serve as an officer on the GNSO Council, but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

(b) The regular term of each GNSO Council member shall begin at the conclusion of an ICANN annual meeting and shall end at the conclusion of the second ICANN annual meeting thereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other representative selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from that Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until that member resigns or is removed in accordance with these Bylaws.

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

(c) A vacancy on the GNSO Council shall be deemed to exist in the case of the

death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause: (i) stated by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned; or (ii) stated by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see Section 11.3(h)). Such removal shall be subject to reversal by the ICANN Board on appeal by the affected GNSO Council member.

(d) The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "**GNSO Operating Procedures**") as it sees fit to carry out that responsibility, provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period, and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in Section 11.6.

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

(f) The GNSO shall nominate by written ballot or by action at a meeting individuals to fill Seats 13 and 14 on the Board. Each of the two voting Houses of the GNSO, as described in Section 11.3(h), shall make a nomination to fill one of two Board seats, as outlined below; any such nomination must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

(i) the Contracted Parties House (as described in Section 11.3(h)(i)) shall select a representative to fill Seat 13; and

(ii) the Non-Contracted Parties House (as described in Section 11.3(h)(ii)) shall select a representative to fill Seat 14.

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat nominations shall be given by the GNSO Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(g) The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies, but not longer than one year. Each House (as described in Section 11.3(h)) shall select a Vice-Chair, who will be a Vice-Chair of the whole of the GNSO Council, for a term the GNSO Council specifies, but not longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as Interim GNSO Co-Chairs until a successful election can be held.

(h) Except as otherwise required in these Bylaws, for voting purposes, the GNSO Council (see Section 11.3(a)) shall be organized into a bicameral House structure as described below:

(i) the Contracted Parties House includes the Registries Stakeholder Group (three members), the Registrars Stakeholder Group (three members), and one voting member appointed by the ICANN Nominating Committee for a total of seven voting members; and

(ii) the Non Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the ICANN Nominating Committee to that House for a total of thirteen voting members.

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

(i) Except as otherwise specified in these Bylaws, Annex A, Annex A-1 or Annex A-2 hereto, or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

(i) Create an Issues Report: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

- (ii) Initiate a Policy Development Process ("**PDP**") Within Scope (as described in Annex A): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- (iii) Initiate a PDP Not Within Scope: requires an affirmative vote of GNSO Supermajority (as defined in Section 11.3(i)(xix)).
- (iv) Approve a PDP Team Charter for a PDP Within Scope: requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- (v) Approve a PDP Team Charter for a PDP Not Within Scope: requires an affirmative vote of a GNSO Supermajority.
- (vi) Changes to an Approved PDP Team Charter: For any PDP Team Charter approved under (iv) or (v) above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.
- (vii) Terminate a PDP: Once initiated, and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause, upon a motion that passes with a GNSO Supermajority Vote in favor of termination.
- (viii) Approve a PDP Recommendation Without a GNSO Supermajority: requires an affirmative vote of a majority of each House and further requires that one GNSO Council member representative of at least 3 of the 4 Stakeholder Groups supports the Recommendation.
- (ix) Approve a PDP Recommendation With a GNSO Supermajority: requires an affirmative vote of a GNSO Supermajority,
- (x) Approve a PDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.
- (xi) Modification of Approved PDP Recommendation: Prior to Final Approval by the Board, an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote.
- (xii) Initiation of an Expedited Policy Development Process ("**EPDP**"):
requires an affirmative vote of a GNSO Supermajority.
- (xiii) Approve an EPDP Team Charter: requires an affirmative vote of a

GNSO Supermajority.

(xiv) Approval of EPDP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xv) Approve an EPDP Recommendation Imposing New Obligations on Certain Contracting Parties: where an ICANN contract provision specifies that "a two-thirds vote of the council" demonstrates the presence of a consensus, the GNSO Supermajority vote threshold will have to be met or exceeded.

(xvi) Initiation of a GNSO Guidance Process ("**GGP**"): requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.

(xvii) Rejection of Initiation of a GGP Requested by the Board: requires an affirmative vote of a GNSO Supermajority.

(xviii) Approval of GGP Recommendations: requires an affirmative vote of a GNSO Supermajority.

(xix) A "**GNSO Supermajority**" shall mean: (A) two-thirds (2/3) of the Council members of each House, or (B) three-fourths (3/4) of the Council members of one House and a majority of the Council members of the other House.

(j) The voting thresholds described below shall apply to the following GNSO actions as a Decisional Participant in the Empowered Community. For any action not listed, the default threshold for the GNSO to act as a Decisional Participant in the Empowered community requires a simple majority vote of each House:

(i) Amendment of PTI Articles of Incorporation as contemplated in Section 16.2: requires an affirmative vote of a GNSO Supermajority.

(ii) GNSO Council Inspection Request as contemplated in Section 22.7: requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iii) GNSO Council Inspection Remedy, as contemplated in Section 22.7 - e, and Stakeholder Group / Constituency Inspection Remedy, as contemplated in Section 22.7 – e(ii) and e(iii), for an inspection requested by the GNSO as a Decisional Participant in the Empowered Community: requires an

affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.

(iv) Amendments to Fundamental Bylaws and Article Amendments as contemplated by Section 25.2 of the Bylaws, Asset Sales, as contemplated by Article 26 of the Bylaws, amendments to ICANN Articles of Incorporation: requires an affirmative vote of a GNSO Supermajority.

(v) Approval of a Nominating Committee Director Removal Petition as contemplated in Annex D, Article 3, Section 3.1(b) and support for a petition submitted by a Petitioning Decisional Participant as contemplated in Section 3.2(d): requires an affirmative vote of a GNSO Supermajority.

(vi) Approval of a Nominating Committee Director Removal Supported Petition as contemplated in Annex D, Article 3, Section 3.1(f): requires an affirmative vote of a GNSO Supermajority.

(vii) Approval of a petition to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(a): requires an affirmative vote of at least three-fourths (3/4) of the House that appointed that Director.

(viii) Approval of a petition notice to remove a director holding seat 13 or 14 as contemplated in Annex D, Article 3, Section 3.2(f): requires an affirmative vote of at least three-fourths (3/4) of the GNSO Council and at least three-fourths (3/4) of the House that appointed that Director.

(ix) Approval of a Board Recall Petition as contemplated in Annex D, Article 3, Section 3.3(b) and support for another Petitioning Decisional Participant: requires an affirmative vote of a GNSO Supermajority.

(x) Approval of a Board Recall Supported Petition as contemplated in Annex D, Article 3, Section 3.3(e): requires an affirmative vote of a GNSO Supermajority.

Section 11.4. STAFF SUPPORT AND FUNDING

(a) A member of the ICANN staff shall be assigned to support the GNSO, whose work on substantive matters shall be assigned by the Chair of the GNSO Council, and shall be designated as the GNSO Staff Manager ("**Staff Manager**").

(b) ICANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for ICANN to fund travel expenses incurred by GNSO participants for travel to any

meeting of the GNSO or for any other purpose. ICANN may, at its discretion, fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 11.5. STAKEHOLDER GROUPS

(a) The following "**Stakeholder Groups**" are hereby recognized as representative of a specific group of one or more "**Constituencies**" or interest groups:

(i) Registries Stakeholder Group representing all gTLD registries under contract to ICANN;

(ii) Registrars Stakeholder Group representing all registrars accredited by and under contract to ICANN;

(iii) Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet ("**Commercial Stakeholder Group**"), which includes the Business Constituency ("**Business Constituency**"), Intellectual Property Constituency ("**Intellectual Property Constituency**") and the Internet Service Providers and Connectivity Providers Constituency ("**Internet Service Providers and Connectivity Providers Constituency**"); and

(iv) Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet.

(b) Each Stakeholder Group is assigned a specific number of GNSO Council seats in accordance with Section 11.3(a).

(c) Each Stakeholder Group identified in Section 11.3(a) and each of its associated Constituencies, where applicable, shall maintain recognition with the ICANN Board. Recognition is granted by the Board based upon the extent to which, in fact, the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board.

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

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

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

(iii) A recommendation for organizational placement within a particular Stakeholder Group; and

(iv) A proposed charter that adheres to the principles and procedures contained in these Bylaws.

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

(e) The Board may create new Constituencies as described in Section 11.5(c) in response to such a petition, or on its own motion, if the Board determines that such action would serve the purposes of ICANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment, and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment, the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action.

Section 11.6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws. These procedures may be supplemented or revised in the manner stated in Section 11.3(d).

ARTICLE 12 ADVISORY COMMITTEES

Section 12.1. GENERAL

The Board may create one or more "Advisory Committees" in addition to those set forth in this Article 12. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also

include non-voting or alternate members. Advisory Committees shall have no legal authority to act for ICANN, but shall report their findings and recommendations to the Board.

Section 12.2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

(a) Governmental Advisory Committee

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

(ii) Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Distinct Economies as recognized in international fora, and multinational governmental organizations and treaty organizations, on the invitation of the Governmental Advisory Committee through its Chair.

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

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

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

(vi) The Governmental Advisory Committee shall annually appoint one Liaison to the Board, without limitation on reappointment, and shall annually appoint one non-voting liaison to the ICANN Nominating Committee.

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

(viii) The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of the Supporting Organizations or Advisory Committees seeks public comment, and shall take duly into account any timely response to that notification prior to taking action.

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

(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC Consensus Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

(xi) If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

(b) Security and Stability Advisory Committee

(i) The role of the Security and Stability Advisory Committee ("**Security and Stability Advisory Committee**" or "**SSAC**") is to advise the ICANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:

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

(B) To engage in ongoing threat assessment and risk analysis of the Internet naming and address allocation services to assess where the principal threats to stability and security lie, and to advise the ICANN community accordingly. The SSAC shall recommend any necessary audit activity to assess the current status of DNS and address allocation security in relation to identified risks and threats.

(C) To communicate with those who have direct responsibility for Internet naming and address allocation security matters (IETF, RSSAC (as defined in Section 12.2(c)(i)), RIRs, name registries, etc.), to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The SSAC shall monitor these activities and inform the ICANN community and Board on their progress, as appropriate.

(D) To report periodically to the Board on its activities.

(E) To make policy recommendations to the ICANN community and Board.

(ii) The SSAC's chair and members shall be appointed by the Board. SSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. 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 the power to remove SSAC appointees as recommended by or in consultation

with the SSAC.

(iii) The SSAC shall annually appoint a Liaison to the Board according to Section 7.9.

(c) Root Server System Advisory Committee

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

(A) Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the ICANN community. The RSSAC shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.

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

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

(D) Respond to requests for information or opinions from the Board.

(E) Report periodically to the Board on its activities.

(F) Make policy recommendations to the ICANN community and Board.

(ii) The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.

(A) RSSAC membership appointment shall be for a three-year term, commencing on 1 January and ending the second year thereafter on 31 December. Members may be re-appointed, and there are no limits to the number of terms the members may serve. The RSSAC 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 the power to remove RSSAC appointees as recommended by or in consultation with the RSSAC.

(B) The RSSAC shall recommend the appointment of the chairs to the Board following a nomination process that it devises and documents.

(iii) The RSSAC shall annually appoint a Liaison to the Board according to Section 7.9.

(d) At-Large Advisory Committee

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

(ii) The ALAC shall consist of (A) two members selected by each of the Regional At-Large Organizations ("**RALOs**") established according to Section 12.2(d)(vii), and (B) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to Section 7.5.

(iii) The regular terms of members of the ALAC shall be as follows:

(A) The term of one member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an even-numbered year.

(B) The term of the other member selected by each RALO shall begin at the conclusion of an ICANN annual meeting in an odd-numbered year.

(C) The terms of three of the members selected by the Nominating

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

(D) The regular term of each member shall end at the conclusion of the second ICANN annual meeting after the term began.

(iv) The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the ALAC.

(v) The ALAC shall, after consultation with each RALO, annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region) to the Nominating Committee.

(vi) The At-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council.

(vii) There shall be one RALO for each Geographic Region established according to Section 7.5. Each RALO shall serve as the main forum and coordination point for public input to ICANN in its Geographic Region and shall be a non-profit organization certified by ICANN according to criteria and standards established by the Board based on recommendations of the At-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with ICANN addressing the respective roles and responsibilities of ICANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability, and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent At-Large Structures ("**At-Large Structures**").

(viii) Each RALO shall be comprised of self-supporting At-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with ICANN according to Section 12.2(d)(ix). If so provided by its Memorandum of Understanding with ICANN, a RALO may also include individual Internet users who are citizens or residents of countries within the RALO's Geographic Region.

(ix) Membership in the At-Large Community

(A) The criteria and standards for the certification of At-Large Structures within each Geographic Region shall be established by the Board based on

recommendations from the ALAC and shall be stated in the Memorandum of Understanding between ICANN and the RALO for each Geographic Region.

(B) The criteria and standards for the certification of At-Large Structures shall be established in such a way that participation by individual Internet users who are citizens or residents of countries within the Geographic Region of the RALO will predominate in the operation of each At-Large Structure within the RALO, while not necessarily excluding additional participation, compatible with the interests of the individual Internet users within the region, by others.

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

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

(E) Once the criteria and standards have been established as provided in this Section 12.2(d)(ix), the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for At-Large Structure accreditation.

(F) Decisions to certify or decertify an At-Large Structure shall be made as decided by the ALAC in its rules of procedure, save always that any changes made to the rules of procedure in respect of an At-Large Structure applications shall be subject to review by the RALOs and by the Board.

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

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

(x) The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities:

(A) Nominating individuals to fill Seat 15 on the Board. Notification of the At-

Large Community's nomination shall be given by the ALAC Chair in writing to the EC Administration, with a copy to the Secretary, and the EC shall promptly act on it as provided in Section 7.25.

(B) Keeping the community of individual Internet users informed about the significant news from ICANN;

(C) Distributing (through posting or otherwise) an updated agenda, news about ICANN, and information about items in the ICANN policy-development process;

(D) Promoting outreach activities in the community of individual Internet users;

(E) Developing and maintaining on-going information and education programs, regarding ICANN and its work;

(F) Establishing an outreach strategy about ICANN issues in each RALO's Geographic Region;

(G) Participating in the ICANN policy development processes and providing input and advice that accurately reflects the views of individual Internet users;

(H) Making public, and analyzing, ICANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region;

(I) Offering Internet-based mechanisms that enable discussions among members of At-Large Structures; and

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

Section 12.3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements; provided that each Advisory Committee shall ensure that the advice provided to the Board by such Advisory Committee is communicated in a clear and unambiguous written statement, including the rationale for such advice. The Board will respond in a timely manner to formal advice from all Advisory

Committees explaining what action it took and the rationale for doing so.

Section 12.4. TERM OF OFFICE

The chair and each member of an Advisory Committee shall serve until his or her successor is appointed, or until such Advisory Committee is sooner terminated, or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the Advisory Committee.

Section 12.5. VACANCIES

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

Section 12.6. COMPENSATION

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

ARTICLE 13 OTHER ADVISORY MECHANISMS

Section 13.1. EXTERNAL EXPERT ADVICE

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

(b) Types of Expert Advisory Panels

(i) On its own initiative or at the suggestion of any ICANN body, the Board may appoint, or authorize the President to appoint, Expert Advisory Panels consisting of public or private sector individuals or entities. If the advice sought from such Panels concerns issues of public policy, the provisions of Section 13.1(c) shall apply.

(ii) In addition, in accordance with Section 13.1(c), the Board may refer

issues of public policy pertinent to matters within ICANN's Mission to a multinational governmental or treaty organization.

(c) Process for Seeking Advice: Public Policy Matters

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

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

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

(d) Process for Seeking and Advice: Other Matters. Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with Section 13.1(b)(i) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed.

(e) Receipt of Expert Advice and its Effect. External advice pursuant to this Section 13.1 shall be provided in written form. Such advice is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.

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

Section 13.2. TECHNICAL LIAISON GROUP

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

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

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

(i) In response to a request for information, to connect the Board or other ICANN body with appropriate sources of technical expertise. This component of the TLG role covers circumstances in which ICANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, that request shall be directed to that TLG organization.

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

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

structures within the TLG for the development of technical standards or for any other purpose.

(e) Technical Work with the IETF. The TLG shall have no involvement with ICANN's work for the Internet Engineering Task Force (IETF), Internet Research Task Force, or the Internet Architecture Board (IAB), as described in the IETF-ICANN Memorandum of Understanding Concerning the Technical Work of the Internet Assigned Numbers Authority ratified by the Board on 10 March 2000 and any supplemental agreements thereto.

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

ARTICLE 14 BOARD AND TEMPORARY COMMITTEES

Section 14.1. BOARD COMMITTEES

The Board may establish one or more committees of the Board (each, a "**Board Committee**"), which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; provided, that a Liaison may be appointed as a liaison to a Committee of the Board consistent with their non-voting capacity. If a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee, who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all Directors; provided, however, that in no event shall a Director be removed from a committee unless such removal is approved by not less than a majority of all Directors.

Section 14.2. POWERS OF BOARD COMMITTEES

(a) The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:

(i) The filling of vacancies on the Board or on any committee;

- (ii) The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation;
- (iii) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable;
- (iv) The appointment of committees of the Board or the members thereof;
- (v) The approval of any self-dealing transaction, as such transactions are defined in Section 5233(a) of the CCC;
- (vi) The approval of the ICANN Budget or IANA Budget required by Section 22.4 or the Operating Plan or Strategic Plan required by Section 22.5; or
- (vii) The compensation of any Officer described in Article 15.

(b) The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings of committees shall be governed by the provisions of Article 7 applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time, as the Board may require.

Section 14.3. TEMPORARY COMMITTEES

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

ARTICLE 15 OFFICERS

Section 15.1. OFFICERS

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

Section 15.2. ELECTION OF OFFICERS

The officers of ICANN shall be elected annually by the Board, pursuant to the recommendation of the President or, in the case of the President, of the Chair of the Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 15.3. REMOVAL OF OFFICERS

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

Section 15.4. PRESIDENT

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

Section 15.5. SECRETARY

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

Section 15.6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("**CFO**") shall be the chief financial officer of ICANN. If required by the Board, the CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of ICANN and shall keep or cause to be kept, in books belonging to ICANN, full and accurate amounts of all receipts and disbursements, and shall deposit all money and other valuable effects in the name of ICANN in such depositories as may be designated

for that purpose by the Board. The CFO shall disburse the funds of ICANN as may be ordered by the Board or the President and, whenever requested by them, shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of ICANN. The CFO shall be responsible for ICANN's financial planning and forecasting and shall assist the President in the preparation of the ICANN Budget, the IANA Budget and Operating Plan. The CFO shall coordinate and oversee ICANN's funding, including any audits or other reviews of ICANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of ICANN.

Section 15.7. ADDITIONAL OFFICERS

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

Section 15.8. COMPENSATION AND EXPENSES

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

Section 15.9. CONFLICTS OF INTEREST

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

ARTICLE 16 POST-TRANSITION IANA ENTITY

Section 16.1. DESCRIPTION

ICANN shall maintain as a separate legal entity a California nonprofit public benefit corporation (["**PTI**"]) for the purpose of providing IANA services, including providing IANA naming function services pursuant to the IANA Naming Function Contract, as well as other services as determined by ICANN in coordination with the direct and indirect customers of the IANA functions. ICANN shall at all times be the sole member of PTI as that term is defined in Section 5056 of the CCC ("**Member**"). For the purposes of these Bylaws, the "IANA naming function" does not include the Internet Protocol numbers and Autonomous System numbers

services (as contemplated by Section 1.1(a)(iii)), the protocol ports and parameters services and the root zone maintainer function.

Section 16.2. PTI Governance

(a) ICANN, in its capacity as the sole Member of PTI, shall elect the directors of PTI in accordance with the articles of incorporation and bylaws of PTI and have all other powers of a sole Member under the CCC except as otherwise provided in these Bylaws.

(b) No amendment or modification of the articles of incorporation of PTI shall be effective unless approved by the EC (pursuant to the procedures applicable to Articles Amendments described in Section 25.2, as if such Article Amendment referenced therein refers to an amendment of PTI's articles of incorporation).

(c) ICANN shall not amend or modify the bylaws of PTI in a manner that would effect any of the matters set forth in clauses (i) through (xiv) below (a "**PTI Bylaw Amendment**") if such PTI Bylaw Amendment has been rejected by the EC pursuant to the procedures described in Section 16.2(e):

(i) any change to the corporate form of PTI to an entity that is not a California nonprofit public benefit corporation organized under the CCC or any successor statute;

(ii) any change in the corporate mission of PTI that is materially inconsistent with ICANN's Mission as set forth in these Bylaws;

(iii) any change to the status of PTI as a corporation with members;

(iv) any change in the rights of ICANN as the sole Member of PTI, including voting, classes of membership, rights, privileges, preferences, restrictions and conditions;

(v) any change that would grant rights to any person or entity (other than ICANN) with respect to PTI as designators or otherwise to: (A) elect or designate directors of PTI; or (B) approve any amendments to the articles of incorporation or bylaws of PTI;

(vi) any change in the number of directors of the board of directors of PTI (the "**PTI Board**");

(vii) any changes in the allocation of directors on the PTI Board between independent directors and employees of ICANN or employees of PTI or to

the definition of "independent" (as used in PTI's bylaws) for purposes of determining whether a director of PTI is independent;

(viii) the creation of any committee of the PTI Board with the power to exercise the authority of the PTI Board;

(ix) any change in the procedures for nominating independent PTI directors;

(x) the creation of classes of PTI directors or PTI directors with different terms or voting rights;

(xi) any change in PTI Board quorum requirements or voting requirements;

(xii) any change to the powers and responsibilities of the PTI Board or the PTI officers;

(xiii) any change to the rights to exculpation and indemnification that is adverse to the exculpated or indemnified party, including with respect to advancement of expenses and insurance, provided to directors, officers, employees or other agents of PTI; or

(xiv) any change to the requirements to amend the articles of incorporation or bylaws of PTI.

(d) ICANN shall not take any of the following actions (together with the PTI Bylaw Amendments, "**PTI Governance Actions**") if such PTI Governance Action has been rejected by the EC pursuant to the procedures described in Section 16.2(e).

(i) Any resignation by ICANN as sole Member of PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of its membership in PTI or any transfer, disposition, cession, expulsion, suspension or termination by ICANN of any right arising from its membership in PTI.

(ii) Any sale, transfer or other disposition of PTI's assets, other than (A) in the ordinary course of PTI's business, (B) in connection with an IANA Naming Function Separation Process (as defined in Section 19.1(a)) that has been approved in accordance with Article 19 or (C) the disposition of obsolete, damaged, redundant or unused assets.

(iii) Any merger, consolidation, sale or reorganization of PTI.

(iv) Any dissolution, liquidation or winding-up of the business and affairs of PTI or the commencement of any other voluntary bankruptcy proceeding of PTI.

(e) Promptly after the Board approves a PTI Governance Action (a "**PTI Governance Action Approval**"), the Secretary shall provide a notice of the Board's decision to the EC Administration and the Decisional Participants ("**Board Notice**"), which Board Notice shall enclose a copy of the PTI Governance Action that is the subject of the PTI Governance Action Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A PTI Governance Action shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice (as defined in Section 2.2(c)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant (as defined in Section 2.2(c)(i) of Annex D) to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice (as defined in Section 2.2(c)(ii) of Annex D) is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Period (as defined in Section 2.2(b) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition (as defined in Section 2.2(d)(i) of Annex D) is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following

the expiration of the Rejection Action Petition Support Period (as defined in Section 2.2(d)(i) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice (as defined in Section 2.4(b) of Annex D) is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the PTI Governance Action that is the subject of the PTI Governance Action Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period (as defined in Section 2.4(a) of Annex D) relating to such PTI Governance Action Approval and the effectiveness of such PTI Governance Action shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(ii) A PTI Governance Action that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(iii) Following receipt of an EC Rejection Notice relating to a PTI Governance Action, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the PTI Governance Action in determining whether or not to develop a new PTI Governance Action and the substance of such new PTI Governance Action, which shall be subject to the procedures of this Section 16.2.

Section 16.3. IANA NAMING FUNCTION CONTRACT

(a) On or prior to 1 October 2016, ICANN shall enter into a contract with PTI for the performance of the IANA naming function (as it may be amended or modified, the "IANA Naming Function Contract") and a related statement of work (the "IANA Naming Function SOW"). Except as to implement any modification, waiver or amendment to the IANA Naming Function Contract or IANA Naming Function SOW related to an IFR Recommendation or Special IFR Recommendation approved pursuant to Section 18.6 or an SCWG Recommendation approved pursuant to Section 19.4 (which, for the avoidance of doubt, shall not be subject to this Section 16.3(a)), ICANN shall not agree to modify, amend or waive any

Material Terms (as defined below) of the IANA Naming Function Contract or the IANA Naming Function SOW if a majority of each of the ccNSO and GNSO Councils reject the proposed modification, amendment or waiver. The following are the "**Material Terms**" of the IANA Naming Function Contract and IANA Naming Function SOW:

- (i) The parties to the IANA Naming Function Contract and IANA Naming Function SOW;
- (ii) The initial term and renewal provisions of the IANA Naming Function Contract and IANA Naming Function SOW;
- (iii) The manner in which the IANA Naming Function Contract or IANA Naming Function SOW may be terminated;
- (iv) The mechanisms that are available to enforce the IANA Naming Function Contract or IANA Naming Function SOW;
- (v) The role and responsibilities of the CSC (as defined in Section 17.1), escalation mechanisms and/or the IFR (as defined in Section 18.1);
- (vi) The IANA Naming Function Contract's provisions requiring that fees charged by PTI be based on direct costs and resources incurred by PTI;
- (vii) The IANA Naming Function Contract's prohibition against subcontracting;
- (viii) The availability of the IRP as a point of escalation for claims of PTI's failure to meet defined service level expectations;
- (ix) The IANA Naming Function Contract's audit requirements; and
- (x) The requirements related to ICANN funding of PTI.

(b) ICANN shall enforce its rights under the IANA Naming Function Contract and the IANA Naming Function SOW.

ARTICLE 17 CUSTOMER STANDING COMMITTEE

Section 17.1. DESCRIPTION

ICANN shall establish a Customer Standing Committee ("**CSC**") to monitor PTI's

performance under the IANA Naming Function Contract and IANA Naming Function SOW.

The mission of the CSC is to ensure continued satisfactory performance of the IANA naming function for the direct customers of the naming services. The direct customers of the naming services are top-level domain registry operators as well as root server operators and other non-root zone functions.

The CSC will achieve this mission through regular monitoring of the performance of the IANA naming function against the IANA Naming Function Contract and IANA Naming Function SOW and through mechanisms to engage with PTI to remedy identified areas of concern.

The CSC is not authorized to initiate a change in PTI through a Special IFR (as defined in Section 18.1), but may escalate a failure to correct an identified deficiency to the ccNSO and GNSO, which might then decide to take further action using consultation and escalation processes, which may include a Special IFR. The ccNSO and GNSO may address matters escalated by the CSC, pursuant to their operating rules and procedures.

Section 17.2. COMPOSITION, APPOINTMENT, TERM AND REMOVAL

(a) The CSC shall consist of:

- (i) Two individuals representing gTLD registry operators appointed by the Registries Stakeholder Group;
- (ii) Two individuals representing ccTLD registry operators appointed by the ccNSO; and
- (iii) One individual liaison appointed by PTI,

each appointed in accordance with the rules and procedures of the appointing organization; provided that such individuals should have direct experience and knowledge of the IANA naming function.

(b) If so determined by the ccNSO and GNSO, the CSC may, but is not required to, include one additional member: an individual representing top-level domain registry operators that are not considered a ccTLD or gTLD, who shall be appointed by the ccNSO and the GNSO. Such representative shall be required to

submit a letter of support from the registry operator it represents.

(c) Each of the following organizations may also appoint one liaison to the CSC in accordance with the rules and procedures of the appointing organization: (i) GNSO (from the Registrars Stakeholder Group or the Non-Contracted Parties House), (ii) ALAC, (iii) either the NRO or ASO (as determined by the ASO), (iv) GAC, (v) RSSAC, (vi) SSAC and (vii) any other Supporting Organization or Advisory Committee established under these Bylaws.

(d) The GNSO and ccNSO shall approve the initial proposed members and liaisons of the CSC, and thereafter, the ccNSO and GNSO shall approve each annual slate of members and liaisons being recommended for a new term.

(e) The CSC members and liaisons shall select from among the CSC members who will serve as the CSC's liaison to the IFRT (as defined in Section 18.1) and any Separation Cross-Community Working Group ("**SCWG**").

(f) Any CSC member or liaison may be removed and replaced at any time and for any reason or no reason by the organization that appointed such member or liaison.

(g) In addition, the Chair of the CSC may recommend that a CSC member or liaison be removed by the organization that appointed such member or liaison, upon any of the following: (i) (A) for not attending without sufficient cause a minimum of nine CSC meetings in a one-year period (or at least 75% of all CSC meetings in a one-year period if less than nine meetings were held in such one-year period) or (B) if such member or liaison has been absent for more than two consecutive meetings without sufficient cause; or (ii) for grossly inappropriate behavior.

(h) A vacancy on the CSC shall be deemed to exist in the event of the death, resignation or removal of any CSC member or liaison. Vacancies shall be filled by the organization(s) that appointed such CSC member or liaison. The appointing organization(s) shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the Chair of the CSC. The organization(s) responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 17.3.CSC CHARTER; PERIODIC REVIEW

(a) The CSC shall act in accordance with its charter (the "**CSC Charter**").

(b) The effectiveness of the CSC shall be reviewed two years after the first meeting of the CSC; and then every three years thereafter. The method of review

will be determined by the ccNSO and GNSO and the findings of the review will be published on the Website.

(c) The CSC Charter shall be reviewed by a committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations. This review shall commence one year after the first meeting of the CSC. Thereafter, the CSC Charter shall be reviewed by such committee of representatives from the ccNSO and the Registries Stakeholder Group selected by such organizations at the request of the CSC, ccNSO, GNSO, the Board and/or the PTI Board and/or by an IFRT in connection with an IFR.

(d) Amendments to the CSC Charter shall not be effective unless ratified by the vote of a simple majority of each of the ccNSO and GNSO Councils pursuant to each such organizations' procedures. Prior to any action by the ccNSO and GNSO, any recommended changes to the CSC Charter shall be subject to a public comment period that complies with the designated practice for public comment periods within ICANN. Notwithstanding the foregoing, to the extent any provision of an amendment to the CSC Charter conflicts with the terms of the Bylaws, the terms of the Bylaws shall control.

Section 17.4. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for the CSC to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the CSC.

ARTICLE 18 IANA NAMING FUNCTION REVIEWS

Section 18.1. IANA NAMING FUNCTION REVIEW

The Board, or an appropriate committee thereof, shall cause periodic and/or special reviews (each such review, an "**IFR**") of PTI's performance of the IANA naming function against the contractual requirements set forth in the IANA Naming Function Contract and the IANA Naming Function SOW to be carried out by an IANA Function Review Team ("**IFRT**") established in accordance with Article 18, as follows:

(a) Regularly scheduled periodic IFRs, to be conducted pursuant to Section 18.2 below ("**Periodic IFRs**"); and

(b) IFRs that are not Periodic IFRs, to be conducted pursuant to Section 18.12 below ("**Special IFRs**").

Section 18.2. FREQUENCY OF PERIODIC IFRS

- (a) The first Periodic IFR shall be convened no later than [1 October 2018].
- (b) Periodic IFRs after the first Periodic IFR shall be convened no less frequently than every five years, measured from the date the previous IFRT for a Periodic IFR was convened.
- (c) In the event a Special IFR is ongoing at the time a Periodic IFR is required to be convened under this Section 18.2, the Board shall cause the convening of the Periodic IFR to be delayed if such delay is approved by the vote of (i) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (ii) a GNSO Supermajority. Any decision by the ccNSO and GNSO to delay a Periodic IFR must identify the period of delay, which should generally not exceed 12 months after the completion of the Special IFR.

Section 18.3. IFR RESPONSIBILITIES

For each Periodic IFR, the IFRT shall:

- (a) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract in relation to the needs of its direct customers and the expectations of the broader ICANN community, and determine whether to make any recommendations with respect to PTI's performance;
- (b) Review and evaluate the performance of PTI against the requirements set forth in the IANA Naming Function Contract and IANA Naming Function SOW;
- (c) Review the IANA Naming Function SOW and determine whether to recommend any amendments to the IANA Naming Function Contract and IANA Naming Function SOW to account for the needs of the direct customers of the naming services and/or the community at large;
- (d) Review and evaluate the openness and transparency procedures of PTI and any oversight structures for PTI's performance, including reporting requirements and budget transparency;
- (e) Review and evaluate the performance and effectiveness of the EC with respect to actions taken by the EC, if any, pursuant to Section 16.2, Section 18.6, Section 18.12, Section 19.1, Section 19.4, Section 22.4(b) and Annex D;
- (f) Review and evaluate the performance of the IANA naming function according to established service level expectations during the IFR period being reviewed and

compared to the immediately preceding Periodic IFR period;

(g) Review and evaluate whether there are any systemic issues that are impacting PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(h) Initiate public comment periods and other processes for community input on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (such public comment periods shall comply with the designated practice for public comment periods within ICANN);

(i) Consider input from the CSC and the community on PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW;

(j) Identify process or other areas for improvement in the performance of the IANA naming function under the IANA Naming Function Contract and IANA Naming Function SOW and the performance of the CSC and the EC as it relates to oversight of PTI; and

(k) Consider and assess any changes implemented since the immediately preceding IFR and their implications for the performance of PTI under the IANA Naming Function Contract and IANA Naming Function SOW.

Section 18.4. IFR REQUIRED INPUTS

In conducting an IFR, the IFRT shall review and analyze the following information:

(a) Reports provided by PTI pursuant to the IANA Naming Function Contract and/or IANA Naming Function SOW during the IFR period being reviewed, any portion of which may be redacted pursuant to the Confidential Disclosure Framework set forth in the Operating Standards in accordance with Section 4.6(a)(vi);

(b) Reports provided by the CSC in accordance with the CSC Charter during the IFR period being reviewed;

(c) Community inputs through public consultation procedures as reasonably determined by the IFRT, including, among other things, public comment periods, input provided at in-person sessions during ICANN meetings, responses to public surveys related to PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW, and public inputs during meetings of the IFRT;

(d) Recommendations for technical, process and/or other improvements relating to the mandate of the IFR provided by the CSC or the community; and

(e) Results of any site visit conducted by the IFRT, which shall be conducted in consultation with ICANN (i) upon reasonable notice, (ii) in a manner so as to not affect PTI's performance under the IANA Naming Function Contract or the IANA Naming Function SOW and (iii) pursuant to procedures and requirements reasonably developed by ICANN and reasonably acceptable to the IFRT. Any such site visit shall be limited to matters reasonably related to the IFRT's responsibilities pursuant to Section 18.3.

Section 18.5. IFR RESULTS AND RECOMMENDATIONS

(a) The results of the IFR are not limited and could include a variety of recommendations or no recommendation; provided, however, that any recommendations must directly relate to the matters discussed in Section 18.3 and comply with this Section 18.5.

(b) Any IFRT recommendations should identify improvements that are supported by data and associated analysis about existing deficiencies and how they could be addressed. Each recommendation of the IFRT shall include proposed remedial procedures and describe how those procedures are expected to address such issues. The IFRT's report shall also propose timelines for implementing the IFRT's recommendations. The IFRT shall attempt to prioritize each of its recommendations and provide a rationale for such prioritization.

(c) In any case where a recommendation of an IFRT focuses on a service specific to gTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the Registries Stakeholder Group. In any case where a recommendation of an IFRT focuses on a service specific to ccTLD registry operators, no such recommendation shall be made by the IFRT in any report to the community (including any report to the Board) if opposition to such recommendation is expressed by any IFRT member appointed by the ccNSO.

(d) Notwithstanding anything herein to the contrary, the IFRT shall not have the authority to review or make recommendations relating to policy or contracting issues that are not included in the IANA Naming Function Contract or the IANA Naming Function SOW, including, without limitation, policy development, adoption processes or contract enforcement measures between contracted registries and ICANN.

Section 18.6. Recommendations to Amend the IANA Naming Function contract, iana naming function SOW or CSC charter

(a) The IFRT may recommend, among other things to the extent reasonably related to the IFR responsibilities set forth in Section 18.3, amendments to the IANA Naming Function Contract, IANA Naming Function SOW and/or the CSC Charter. The IFRT shall, at a minimum, take the following steps before an amendment to either the IANA Naming Function Contract, IANA Naming Function SOW or CSC Charter is proposed:

(i) Consult with the Board (such consultation to be conducted in parallel with other processes set forth in this Section 18.6(a)) and PTI;

(ii) Consult with the CSC;

(iii) Conduct a public input session for ccTLD and gTLD registry operators; and

(iv) Seek public comment on the amendments that are under consideration by the IFRT through a public comment period that complies with the designated practice for public comment periods within ICANN.

(b) A recommendation of an IFRT for a Periodic IFR that would amend the IANA Naming Function Contract or IANA Naming Function SOW shall only become effective if, with respect to each such recommendation (each, an "**IFR Recommendation**"), each of the following occurs:

(i) The IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the IFR Recommendation pursuant to and in compliance with Section 18.6(d).

(c) If the Board (x) rejects an IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.6(b)(i) or (y) does not resolve to either accept or reject an IFR Recommendation within 45 days of the

later of (1) the date that the condition in [Section 18.6\(b\)\(i\)](#) is satisfied or (2) the expiration of the public comment period contemplated by [Section 18.6\(b\)\(ii\)](#), the Secretary shall provide a Board Notice to the [EC Administration](#) and the Decisional Participants, which Board Notice shall enclose a copy of the applicable IFR Recommendation. [ICANN](#) shall post the Board Notice, along with a copy of the notification(s) sent to the [EC Administration](#) and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the [EC Administration](#) and the Decisional Participants.

(i) [ICANN](#) shall, at the direction of the [EC Administration](#), convene a Rejection Action Community Forum (as defined in [Section 2.3\(a\)](#) of Annex D), which Rejection Action Community Forum shall be conducted in accordance with [Section 2.3](#) of Annex D, to discuss the Board Notice; provided, that, for purposes of [Section 2.3](#) of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the [EC Administration](#) shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants (as defined in [Section 2.2\(d\)\(i\)](#) of Annex D) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the [EC Administration](#) and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the IFR Recommendation or approve the IFR Recommendation (either, a "**Post-Forum IFR Recommendation Decision**").

(A) If the Board resolves to approve the IFR Recommendation, such IFR Recommendation will be subject to [Section 18.6\(d\)](#).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in [Article 3](#).

(d) Promptly after the Board approves an IFR Recommendation (an "**IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the [EC Administration](#) and the Decisional Participants, which Board Notice shall

enclose a copy of the IFR Recommendation that is the subject of the IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IFR Recommendation Decision.

(ii) An IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) For the avoidance of doubt, Section 18.6(d) shall not apply when the Board acts in a manner that is consistent with an IFR Recommendation unless such IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

(f) Timelines for implementing any amendments to the IANA Naming Function Contract or IANA Naming Function SOW shall be reasonably agreed between the IFRT, ICANN and PTI.

(g) A recommendation of an IFRT that would amend the CSC Charter shall only become effective if approved pursuant to Section 17.3(d).

Section 18.7. COMPOSITION OF IFR TEAMS

Each IFRT shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(a) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(b) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD, and CENTR) in making its appointment;

(c) Two representatives appointed by the Registries Stakeholder Group;

(d) One representative appointed by the Registrars Stakeholder Group;

(e) One representative appointed by the Commercial Stakeholder Group;

(f) One representative appointed by the Non-Commercial Stakeholder Group;

(g) One representative appointed by the GAC;

(h) One representative appointed by the SSAC;

(i) One representative appointed by the RSSAC;

(j) One representative appointed by the ALAC;

(k) One liaison appointed by the CSC;

(l) One liaison who may be appointed by the ASO; and

(m) One liaison who may be appointed by the IAB.

(n) The IFRT shall also include an unlimited number of non-member, non-liaison participants.

(o) The IFRT shall not be a standing body. A new IFRT shall be constituted for each IFR and the IFRT shall automatically dissolve following the end of the process for approving such IFRT's IFR Recommendations pursuant to Section 18.6.

Section 18.8. MEMBERSHIP; ELECTION OF CO-CHAIRS, AND LIAISONS

(a) All candidates for appointment to the IFRT as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison to the IFRT, which shall state: (i) why the candidate is interested in becoming involved in the IFRT, (ii) what particular skills the candidate would bring to the IFRT, (iii) the candidate's knowledge of the IANA functions, (iv) the candidate's understanding of the purpose of the IFRT, and (v) that the candidate understands the time necessary to participate in the IFR process and can commit to the role.

(b) Members, liaisons and participants of the IFRT shall disclose to ICANN and the IFRT any conflicts of interest with a specific complaint or issue under review. The IFRT may exclude from the discussion of a specific complaint or issue any member deemed by the majority of IFRT members to have a conflict of interest. The co-chairs of the IFRT shall record any such conflict of interest in the minutes of the IFRT.

(c) To the extent reasonably possible, the appointing organizations for the IFRT members and liaisons shall work together to achieve an IFRT that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the IFRT should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region.

(d) The IFRT shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (c)-(f) of Section 18.7 and one appointed by the ccNSO from one of the members appointed pursuant to clauses (a)-(b) of Section 18.7.

(e) The PTI Board shall select a PTI staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and PTI. The Board shall select an ICANN staff member to serve as a point of contact to facilitate formal lines of communication between the IFRT and ICANN.

(f) Liaisons to the IFRT are not members of or entitled to vote on any matters before the IFRT, but otherwise are entitled to participate on equal footing with members of the IFRT.

(g) Other participants are entitled to participate in the IFRT, but are not entitled to vote.

(h) Removal and Replacement of IFRT Members and Liaisons

(i) The IFRT members and liaisons may be removed from the IFRT by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the IFRT.

(ii) A vacancy on the IFRT shall be deemed to exist in the event of the death, resignation or removal of any IFRT member or liaison. Vacancies shall be filled by the organization that appointed such IFRT member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the IFRT co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 18.9. MEETINGS

(a) All actions of the IFRT shall be taken by consensus of the IFRT, which is where a small minority may disagree, but most agree. If consensus cannot be reached with respect to a particular issue, actions by the majority of all of the members of the IFRT shall be the action of the IFRT.

(b) Any members of the IFRT not in favor of an action (whether as a result of voting against a matter or objecting to the consensus position) may record a minority dissent to such action, which shall be included in the IFRT minutes and/or report, as applicable.

(c) IFRT meetings, deliberations and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The IFRT shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each IFRT meeting. Recordings and transcripts of meetings, as well as mailing lists, shall also be posted to the Website.

Section 18.10. COMMUNITY REVIEWS AND REPORTS

(a) The IFRT shall seek community input as to the issues relevant to the IFR through one or more public comment periods that shall comply with the designated practice for public comment periods within ICANN and through discussions during ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The IFRT shall provide a draft report of its findings and recommendations to the community for public comment. The public comment period is required to comply with the designated practice for public comment periods within ICANN.

(c) After completion of the IFR, the IFRT shall submit its final report containing its findings and recommendations to the Board. ICANN shall thereafter promptly post the IFRT's final report on the Website.

Section 18.11. ADMINISTRATIVE AND OPERATIONAL SUPPORT

ICANN shall provide administrative and operational support necessary for each IFRT to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the IFRT.

Section 18.12. SPECIAL IFRS

(a) A Special IFR may be initiated outside of the cycle for the Periodic IFRs to address any deficiency, problem or other issue that has adversely affected PTI's performance under the IANA Naming Function Contract and IANA Naming Function SOW (a "**PTI Performance Issue**"), following the satisfaction of each of the following conditions:

(i) The Remedial Action Procedures of the CSC set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such procedures shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(ii) The IANA Problem Resolution Process set forth in the IANA Naming Function Contract shall have been followed and failed to correct the PTI Performance Issue and the outcome of such process shall have been reviewed by the ccNSO and GNSO according to each organization's respective operating procedures;

(iii) The ccNSO and GNSO shall have considered the outcomes of the processes set forth in the preceding clauses (i) and (ii) and shall have conducted meaningful consultation with the other Supporting Organizations and Advisory Committees with respect to the PTI Performance Issue and whether or not to initiate a Special IFR; and

(iv) After a public comment period that complies with the designated practice for public comment periods within ICANN, if a public comment period is requested by the ccNSO and the GNSO, a Special IFR shall have been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or if such procedures do not define a supermajority, two-thirds (2/3) of the Council members) and (B) a GNSO Supermajority.

(b) Each Special IFR shall be conducted by an IFRT and shall follow the same procedures and requirements applicable to Periodic IFRs as set forth in this Section 18, except that:

(i) The scope of the Special IFR and the related inputs that are required to be reviewed by the IFRT shall be focused primarily on the PTI Performance Issue, its implications for overall IANA naming function performance by PTI and how to resolve the PTI Performance Issue;

(ii) The IFRT shall review and analyze the information that is relevant to the scope of the Special IFR; and

(iii) Each recommendation of the IFRT relating to the Special IFR, including but not limited to any recommendation to initiate an IANA Naming Function Separation Process, must be related to remediating the PTI Performance Issue or other issue with PTI's performance that is related to the IFRT responsibilities set forth in Section 18.3, shall include proposed remedial procedures and describe how those procedures are expected to address the PTI Performance Issue or other relevant issue with PTI's performance.

(c) A recommendation of an IFRT for a Special IFR shall only become effective if, with respect to each such recommendation (each, a "**Special IFR Recommendation**"), each of the following occurs:

(i) The Special IFR Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the Special IFR Recommendation; and

(iii) The EC has not rejected the Board's approval of the Special IFR Recommendation pursuant to and in compliance with Section 18.12(e).

(d) If the Board (x) rejects a Special IFR Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 18.12(c)(i) or (y) does not resolve to either accept or reject a Special IFR Recommendation within 45 days of the later of (1) the date that the condition in Section 18.12(c)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 18.12(c)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable Special IFR Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the Special IFR Recommendation or approve the Special IFR Recommendation (either, a "**Post-Forum Special IFR Recommendation Decision**").

(A) If the Board resolves to approve the Special IFR Recommendation, such Special IFR Recommendation will be subject to Section 18.6(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the Special IFR Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum Special IFR Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(e) Promptly after the Board approves a Special IFR Recommendation (a "**Special IFR Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Special IFR Recommendation that is the subject of the Special IFR Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) A Special IFR Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such Special IFR Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the

Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Special IFR Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Special IFR Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Special IFR Recommendation Decision.

(ii) A Special IFR Recommendation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(f) For the avoidance of doubt, Section 18.12(e) shall not apply when the Board acts in a manner that is consistent with a Special IFR Recommendation unless such Special IFR Recommendation relates to an IANA Naming Function Separation Process as described in Article 19.

Section 18.13. PROPOSED SEPARATION PROCESS

The IFRT conducting either a Special IFR or Periodic IFR may, upon conclusion of a Special IFR or Periodic IFR, as applicable, determine that an IANA Naming Function Separation Process is necessary and, if so, it shall recommend the creation of an SCWG pursuant to Article 19.

ARTICLE 19 IANA NAMING FUNCTION SEPARATION PROCESS

Section 19.1. ESTABLISHING AN SCWG

(a) An "**IANA Naming Function Separation Process**" is the process initiated in accordance with this Article 19 pursuant to which PTI may cease to perform the IANA naming function including, without limitation, the initiation of a request for proposal to select an operator to perform the IANA naming function instead of PTI

("IANA Naming Function RFP"), the selection of an IANA naming function operator other than PTI, termination or non-renewal of the IANA Naming Function Contract, and/or divestiture, or other reorganization of PTI by ICANN.

(b) The Board shall establish an SCWG if each of the following occurs:

(i) The IFRT conducting either a Special IFR or Periodic IFR, upon conclusion of a Special IFR or Periodic IFR, as applicable, has recommended that an IANA Naming Function Separation Process is necessary and has recommended the creation of an SCWG (an "**SCWG Creation Recommendation**");

(ii) The SCWG Creation Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(iii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Creation Recommendation. A determination by the Board to not approve an SCWG Creation Recommendation, where such creation has been approved by the ccNSO and GNSO Councils pursuant to Section 19.1(b)(ii), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in Section 9 of Annex A of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iv) The EC has not rejected the Board's approval of the SCWG Creation Recommendation pursuant to and in compliance with Section 19.1(d).

(c) If the Board (x) rejects an SCWG Creation Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.1(b)(ii) or (y) does not resolve to either accept or reject an SCWG Creation Recommendation within 45 days of the later of (1) the date that the condition in Section 19.1(b)(ii) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.1(b)(iii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Creation Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional

Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Creation Recommendation or approve the SCWG Creation Recommendation (either, a "**Post-Forum SCWG Creation Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Creation Recommendation, such SCWG Creation Recommendation will be subject to Section 19.1(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Creation Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Creation Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Creation Recommendation (an "**SCWG Creation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Creation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Creation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Creation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Creation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Creation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Creation Decision.

(ii) An SCWG Creation Decision that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

Section 19.2. SCWG RESPONSIBILITIES

The responsibilities of the SCWG shall be as follows:

(a) The SCWG shall determine how to resolve the PTI Performance Issue(s) which the IFRT that conducted the Special IFR or Periodic IFR, as applicable, identified as triggering formation of this SCWG.

(b) If the SCWG recommends the issuance of an IANA Naming Function RFP, the

SCWG shall:

(i) Develop IANA Naming Function RFP guidelines and requirements for the performance of the IANA naming function, in a manner consistent with ICANN's publicly available procurement guidelines (as in effect immediately prior to the formation of the SCWG); and

(ii) Solicit input from ICANN as well as the global Internet community (through community consultation, including public comment opportunities as necessary that comply with the designated practice for public comment periods within ICANN) on requirements to plan and participate in the IANA Naming Function RFP process.

(c) If an SCWG Recommendation (as defined in Section 19.4(b)) to issue the IANA Naming Function RFP is approved pursuant to Section 19.4(b) and the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), the SCWG, in consultation with ICANN, shall:

(i) Issue the IANA Naming Function RFP;

(ii) Review responses from interested candidates to the IANA Naming Function RFP, which may be received from PTI and/or any other entity or person; and

(iii) Recommend the entity that ICANN should contract with to perform the IANA naming function.

(d) If the SCWG recommends an IANA Naming Function Separation Process other than the issuance of an IANA Naming Function RFP, the SCWG shall develop recommendations to be followed with respect to that process and its implementation consistent with the terms of this Article 19. The SCWG shall monitor and manage the implementation of such IANA Naming Function Separation Process.

Section 19.3. COMMUNITY REVIEWS AND REPORTS

(a) The SCWG shall seek community input through one or more public comment periods (such public comment period shall comply with the designated practice for public comment periods within ICANN) and may recommend discussions during

ICANN's public meetings in developing and finalizing its recommendations and any report.

(b) The SCWG shall provide a draft report of its findings and recommendations to the community after convening of the SCWG, which such draft report will be posted for public comment on the Website. The SCWG may post additional drafts of its report for public comment until it has reached its final report.

(c) After completion of its review, the SCWG shall submit its final report containing its findings and recommendations to the Board. ICANN shall promptly post the SCWG's final report on the Website.

Section 19.4. SCWG RECOMMENDATIONS

(a) The recommendations of the SCWG are not limited and could include a variety of recommendations or a recommendation that no action is required; provided, however, that any recommendations must directly relate to the matters discussed in [Section 19.2](#) and comply with this [Section 19.4](#).

(b) ICANN shall not implement an SCWG recommendation (including an SCWG recommendation to issue an IANA Naming Function RFP) unless, with respect to each such recommendation (each, an "**SCWG Recommendation**"), each of the following occurs:

(i) The SCWG Recommendation has been approved by the vote of (A) a supermajority of the ccNSO Council (pursuant to the ccNSO's procedures or, if such procedures do not define a supermajority, two-thirds (2/3) of the ccNSO Council's members) and (B) a GNSO Supermajority;

(ii) After a public comment period that complies with the designated practice for public comment periods within ICANN, the Board has approved the SCWG Recommendation. A determination by the Board to not approve an SCWG Recommendation, where such SCWG Recommendation has been approved by the ccNSO and GNSO Councils pursuant to [Section 19.4\(b\)\(i\)](#), shall require a vote of at least two-thirds (2/3) of the Board and the Board shall follow the same consultation procedures set forth in [Section 9](#) of [Annex A](#) of these Bylaws that relate to Board rejection of a PDP recommendation that is supported by a GNSO Supermajority; and

(iii) The EC has not rejected the Board's approval of the SCWG Recommendation pursuant to and in compliance with [Section 19.4\(d\)](#).

(c) If the Board (x) rejects an SCWG Recommendation that was approved by the ccNSO Council and GNSO Council pursuant to Section 19.4(b)(i) or (y) does not resolve to either accept or reject an SCWG Recommendation within 45 days of the later of (1) the date that the condition in Section 19.4(b)(i) is satisfied or (2) the expiration of the public comment period contemplated by Section 19.4(b)(ii), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the applicable SCWG Recommendation. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants.

(i) ICANN shall, at the direction of the EC Administration, convene a Rejection Action Community Forum, which Rejection Action Community Forum shall be conducted in accordance with Section 2.3 of Annex D, to discuss the Board Notice; provided, that, for purposes of Section 2.3 of Annex D, (A) the Board Notice shall be treated as the Rejection Action Supported Petition, (B) the EC Administration shall be treated as the Rejection Action Petitioning Decisional Participant (and there shall be no Rejection Action Supporting Decisional Participants) and (C) the Rejection Action Community Forum Period shall expire on the 21st day after the date the Secretary provides the Board Notice to the EC Administration and the Decisional Participants.

(ii) No later than 45 days after the conclusion of such Rejection Action Community Forum Period, the Board shall resolve to either uphold its rejection of the SCWG Recommendation or approve the SCWG Recommendation (either, a "**Post-Forum SCWG Recommendation Decision**").

(A) If the Board resolves to approve the SCWG Recommendation, such SCWG Recommendation will be subject to Section 19.4(d).

(B) For the avoidance of doubt, the Board shall not be obligated to change its decision on the SCWG Recommendation as a result of the Rejection Action Community Forum.

(C) The Board's Post-Forum SCWG Recommendation Decision shall be posted on the Website in accordance with the Board's posting obligations as set forth in Article 3.

(d) Promptly after the Board approves an SCWG Recommendation (an "**SCWG Recommendation Decision**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the SCWG Recommendation that is the subject of the SCWG Recommendation Decision. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(i) An SCWG Recommendation Decision shall become final upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Period relating to such SCWG Recommendation Decision;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such SCWG Recommendation Decision; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the SCWG Recommendation Decision shall be final as of the date immediately following the expiration of the Rejection Action Decision Period relating to such SCWG Recommendation Decision.

(ii) An SCWG Recommendation Decision that has been rejected by the EC

pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(e) ICANN shall absorb the costs relating to recommendations made by the SCWG, including, without limitation, costs related to the process of selecting or potentially selecting a new operator for the IANA naming function and the operating costs of the successor operator that are necessary for the successor operator's performance of the IANA naming function as ICANN's independent contractor. ICANN shall not be authorized to raise fees from any TLD registry operators to cover the costs associated with implementation of any SCWG Recommendations that specifically relate to the transition to a successor operator. For avoidance of doubt, this restriction shall not apply to collecting appropriate fees necessary to maintain the ongoing performance of the IANA naming function, including those relating to the operating costs of the successor operator.

(f) In the event that (i) an SCWG Recommendation that selects an entity (other than PTI) as a new operator of the IANA naming function is approved pursuant to Section 19.4(b) and (ii) the EC does not reject the relevant SCWG Recommendation Decision pursuant to Section 19.4(d), ICANN shall enter into a contract with the new operator on substantially the same terms recommended by the SCWG and approved as part of such SCWG Recommendation.

(g) As promptly as practical following an SCWG Recommendation Decision becoming final in accordance with this Section 19.4, ICANN shall take all steps reasonably necessary to effect such SCWG Recommendation Decision as soon as practicable.

Section 19.5. SCWG COMPOSITION

(a) Each SCWG shall consist of the following members and liaisons to be appointed in accordance with the rules and procedures of the appointing organization:

(i) Two representatives appointed by the ccNSO from its ccTLD registry operator representatives;

(ii) One non-ccNSO ccTLD representative who is associated with a ccTLD registry operator that is not a representative of the ccNSO, appointed by the ccNSO; it is strongly recommended that the ccNSO consult with the

regional ccTLD organizations (i.e., AfTLD, APTLD, LACTLD and CENTR) in making its appointment;

(iii) Three representatives appointed by the Registries Stakeholder Group;

(iv) One representative appointed by the Registrars Stakeholder Group;

(v) One representative appointed by the Commercial Stakeholder Group;

(vi) One representative appointed by the Non-Commercial Stakeholder Group;

(vii) One representative appointed by the GAC;

(viii) One representative appointed by the SSAC;

(ix) One representative appointed by the RSSAC;

(x) One representative appointed by the ALAC;

(xi) One liaison appointed by the CSC;

(xii) One liaison appointed by the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, who shall be named in the IFRT's recommendation to convene the Special IFR;

(xiii) One liaison who may be appointed by the ASO;

(xiv) One liaison who may be appointed by the IAB; and

(xv) One liaison who may be appointed by the Board.

(xvi) The SCWG may also include an unlimited number of non-member, non-liaison participants.

(b) All candidates for appointment to the SCWG as a member or liaison shall submit an expression of interest to the organization that would appoint such candidate as a member or liaison, which shall state (i) why the candidate is interested in becoming involved in the SCWG, (ii) what particular skills the candidate would bring to the SCWG, (iii) the candidate's knowledge of the IANA naming function, (iv) the candidate's understanding of the purpose of the SCWG, and (v) that the candidate understands the time necessary to participate in the

SCWG process and can commit to the role.

(c) Members and liaisons of the SCWG shall disclose to ICANN and the SCWG any conflicts of interest with a specific complaint or issue under review. The SCWG may exclude from the discussion of a specific complaint or issue any member, liaison or participant deemed by the majority of SCWG members to have a conflict of interest. The co-chairs of the SCWG shall record any such conflict of interest in the minutes of the SCWG.

(d) To the extent reasonably possible, the appointing organizations for SCWG members and liaisons shall work together to:

(i) achieve an SCWG that is balanced for diversity (including functional, geographic and cultural) and skill, and should seek to broaden the number of individuals participating across the various reviews; provided, that the SCWG should include members from each ICANN Geographic Region, and the ccNSO and Registries Stakeholder Group shall not appoint multiple members who are citizens of countries from the same ICANN Geographic Region;

(ii) ensure that the SCWG is comprised of individuals who are different from those individuals who comprised the IFRT that conducted the Special IFR or Periodic IFR, as applicable, that recommended the creation of the SCWG, other than the liaison to the IFRT appointed by the CSC; and

(iii) seek to appoint as representatives of the SCWG as many individuals as practicable with experience managing or participating in RFP processes.

(e) ICANN shall select an ICANN staff member and a PTI staff member to serve as points of contact to facilitate formal lines of communication between the SCWG and ICANN and the SCWG and PTI. Communications between the SCWG and the ICANN and PTI points of contact shall be communicated by the SCWG co-chairs.

(f) The SCWG shall not be a standing body. Each SCWG shall be constituted when and as required under these Bylaws and shall dissolve following the end of the process for approving such SCWG's SCWG Recommendations pursuant to Section 19.4(d).

Section 19.6. ELECTION OF CO-CHAIRS AND LIAISONS

(a) The SCWG shall be led by two co-chairs: one appointed by the GNSO from one of the members appointed pursuant to clauses (iii)-(vi) of Section 19.5(a) and one appointed by the ccNSO from one of the members appointed pursuant to clauses (i)-(ii) of Section 19.5(a).

(b) Liaisons to the SCWG shall not be members of or entitled to vote on any matters before the SCWG, but otherwise shall be entitled to participate on equal footing with SCWG members.

(c) Removal and Replacement of SCWG Members and Liaisons

(i) The SCWG members and liaisons may be removed from the SCWG by their respective appointing organization at any time upon such organization providing written notice to the Secretary and the co-chairs of the SCWG.

(ii) A vacancy on the SCWG shall be deemed to exist in the event of the death, resignation or removal of any SCWG member or liaison. Vacancies shall be filled by the organization that appointed such SCWG member or liaison. The appointing organization shall provide written notice to the Secretary of its appointment to fill a vacancy, with a notification copy to the SCWG co-chairs. The organization responsible for filling such vacancy shall use its reasonable efforts to fill such vacancy within one month after the occurrence of such vacancy.

Section 19.7. MEETINGS

(a) The SCWG shall act by consensus, which is where a small minority may disagree, but most agree.

(b) Any members of the SCWG not in favor of an action may record a minority dissent to such action, which shall be included in the SCWG minutes and/or report, as applicable.

(c) SCWG meetings and other working procedures shall be open to the public and conducted in a transparent manner to the fullest extent possible.

(d) The SCWG shall transmit minutes of its meetings to the Secretary, who shall cause those minutes to be posted to the Website as soon as practicable following each SCWG meeting, and no later than five business days following the meeting.

(e) Except as otherwise provided in these Bylaws, the SCWG shall follow the

guidelines and procedures applicable to ICANN Cross Community Working Groups that will be publicly available and may be amended from time to time.

Section 19.8. ADMINISTRATIVE SUPPORT

ICANN shall provide administrative and operational support necessary for the SCWG to carry out its responsibilities, including providing and facilitating remote participation in all meetings of the SCWG.

Section 19.9. CONFLICTING PROVISIONS

In the event any SCWG Recommendation that is approved in accordance with this Article 19 requires ICANN to take any action that is inconsistent with a provision of the Bylaws (including any action taken in implementing such SCWG Recommendation), the requirements of such provision of these Bylaws shall not apply to the extent of that inconsistency.

ARTICLE 20 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

Section 20.1. INDEMNIFICATION GENERALLY

ICANN shall, to the maximum extent permitted by the CCC, indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of ICANN, provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in ICANN's best interests and not criminal. For purposes of this Article 20, an "agent" of ICANN includes any person who is or was a Director, Officer, employee, or any other agent of ICANN (including a member of the EC, the EC Administration, any Supporting Organization, any Advisory Committee, the Nominating Committee, any other ICANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility; or is or was serving at the request of ICANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of ICANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not ICANN would have the power to indemnify the agent against that liability under the provisions of this Article 20.

Section 20.2. INDEMNIFICATION WITH RESPECT TO DIRECTOR REMOVAL

If a Director initiates any proceeding in connection with his or her removal or recall pursuant to the Bylaws, to which a person who is a member of the leadership council (or equivalent body) of a Decisional Participant or representative of a Decisional Participant in the EC Administration is a party or is threatened to be made a party (as a party or witness) (a "**Director Removal Proceeding**"), ICANN shall, to the maximum extent permitted by the CCC, indemnify any such person, against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by such person in connection with such Director Removal Proceeding, for actions taken by such person in his or her representative capacity within his or her Decisional Participant pursuant to the processes and procedures set forth in these Bylaws, provided that all such actions were taken by such person in good faith and in a manner that such person reasonably believed to be in ICANN's best interests and not criminal. The actual and reasonable legal fees of a single firm of counsel and other expenses actually and reasonably incurred by such person in defending against a Director Removal Proceeding shall be paid by ICANN in advance of the final disposition of such Director Removal Proceeding, provided, however, that such expenses shall be advanced only upon delivery to the Secretary of an undertaking (which shall be in writing and in a form provided by the Secretary) by such person to repay the amount of such expenses if it shall ultimately be determined that such person is not entitled to be indemnified by ICANN. ICANN shall not be obligated to indemnify such person against any settlement of a Director Removal Proceeding, unless such settlement is approved in advance by the Board in its reasonable discretion. Notwithstanding Section 20.1, the indemnification provided in this Section 20.2 shall be ICANN's sole indemnification obligation with respect to the subject matter set forth in this Section 20.2.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1. CONTRACTS

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

Section 21.2. DEPOSITS

All funds of ICANN not otherwise employed shall be deposited from time to time to

the credit of ICANN in such banks, trust companies, or other depositories as the Board, or the President under its delegation, may select.

Section 21.3. CHECKS

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

Section 21.4. LOANS

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

Section 21.5. NOTICES

All notices to be given to the EC Administration, the Decisional Participants, or the Secretary pursuant to any provision of these Bylaws shall be given either (a) in writing at the address of the appropriate party as set forth below or (b) via electronic mail as provided below, unless that party has given a notice of change of postal or email address, as provided in this Section 21.5. Any change in the contact information for notice below will be given by the party within 30 days of such change. Any notice required by these Bylaws will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via electronic mail, upon confirmation of receipt by the recipient's email server, provided that such notice via electronic mail shall be followed by a copy sent by regular postal mail service within three days. In the event other means of notice become practically achievable, such as notice via a secure website, the EC Administration, the Decisional Participants, and ICANN will work together to implement such notice means.

If to ICANN, addressed to:

Internet Corporation for Assigned Names and Numbers

12025 Waterfront Drive, Suite 300

Los Angeles, CA 90094-2536

USA

Email: []

Attention: Secretary

If to a Decisional Participant or the EC Administration, addressed to the contact information available at [insert Website reference].

ARTICLE 22 FISCAL AND STRATEGIC MATTERS, INSPECTION AND INDEPENDENT INVESTIGATION

Section 22.1. ACCOUNTING

The fiscal year end of ICANN shall be determined by the Board.

Section 22.2. AUDIT

At the end of the fiscal year, the books of ICANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 22.3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish, at least annually, a report describing its activities, including an audited financial statement, a description of any payments made by ICANN to Directors (including reimbursements of expenses) and a description of ICANN's progress towards the obligations imposed under the Bylaws as revised on 1 October 2016 and the Operating Plan and Strategic Plan. ICANN shall cause the annual report and the annual statement of certain transactions as required by the CCC to be prepared and sent to each member of the Board and to such other persons as the Board may designate, no later than one hundred twenty (120) days after the close of ICANN's fiscal year.

Section 22.4. BUDGETS

(a) ICANN Budget

(i) In furtherance of its Commitment to transparent and accountable budgeting processes, at least forty-five (45) days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed annual operating plan and budget of ICANN for the next fiscal year (the "ICANN Budget"), which shall be posted on the

Website. The ICANN Budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item.

(ii) Prior to approval of the ICANN Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the ICANN Budget development process, and comply with the requirements of this Section 22.4(a).

(iii) Prior to approval of the ICANN Budget by the Board, a draft of the ICANN Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the ICANN Budget and may direct ICANN Staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an ICANN Budget (an "**ICANN Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the ICANN Budget that is the subject of the ICANN Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An ICANN Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date (as defined in Section 2.2(a) of Annex D) relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the ICANN Budget that is the subject of the ICANN Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such ICANN Budget Approval and the effectiveness of such ICANN Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An ICANN Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an ICANN Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the ICANN Budget in determining the substance of such new ICANN Budget, which shall be subject to the procedures of this Section 22.4(a).

(ix) If an ICANN Budget has not come into full force and effect pursuant to this Section 22.4(a) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex E hereto ("**Caretaker ICANN Budget**"), which Caretaker ICANN Budget shall be effective until such time as an ICANN Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(a).

(b) IANA Budget

(i) At least 45 days prior to the commencement of each fiscal year, ICANN shall prepare and submit to the Board a proposed annual operating plan and budget of PTI and the IANA department, which budget shall include itemization of the direct costs for ICANN's IANA department, all costs for PTI, direct costs for shared resources between ICANN and PTI and support functions provided by ICANN to PTI and ICANN's IANA department for the next fiscal year (the "**IANA Budget**"), which shall be posted on the Website. Separately and in addition to the general ICANN planning process, ICANN shall require PTI to prepare and submit to the PTI Board a proposed annual operating plan and budget for PTI's performance of the IANA functions for the next fiscal year ("**PTI Budget**"). ICANN shall require PTI to consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, the IAB and RIRs, during the PTI Budget development process, and shall seek public comment on the draft PTI Budget prior to approval of the PTI Budget by PTI. ICANN shall require PTI to submit the PTI Budget to ICANN as an input prior to and for the purpose of being included in the proposed Operating Plan (as defined in Section 22.5(a)) and ICANN Budget.

(ii) Prior to approval of the IANA Budget by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees, as well as the Registries Stakeholder Group, IAB and RIRs, during the IANA Budget development process, and comply with the requirements of this Section 22.4(b).

(iii) Prior to approval of the IANA Budget by the Board, a draft of the IANA Budget shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the IANA Budget and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an IANA Budget (an "**IANA Budget Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the IANA Budget that is the subject of the IANA Budget Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants,

on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An IANA Budget shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the IANA Budget that is the subject of the IANA Budget Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such IANA Budget Approval and the effectiveness of such IANA Budget shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An IANA Budget that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an IANA Budget, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the IANA Budget in determining the substance of such new IANA Budget, which shall be subject to the procedures of this Section 22.4(b).

(ix) If an IANA Budget has not come into full force and effect pursuant to this Section 22.4(b) on or prior to the first date of any fiscal year of ICANN, the Board shall adopt a temporary budget in accordance with Annex F hereto ("**Caretaker IANA Budget**"), which Caretaker IANA Budget shall be effective until such time as an IANA Budget has been effectively approved by the Board and not rejected by the EC pursuant to this Section 22.4(b).

(c) If an IANA Budget does not receive an EC Rejection Notice but an ICANN Budget receives an EC Rejection Notice, any subsequent revised ICANN Budget shall not alter the expenditures allocated for the IANA Budget.

(d) If an ICANN Budget does not receive an EC Rejection Notice but an IANA Budget receives an EC Rejection Notice, any subsequent revised IANA Budget shall, once approved, be deemed to automatically modify the ICANN Budget in a manner determined by the Board without any further right of the EC to reject the ICANN Budget.

(e) Under all circumstances, the Board will have the ability to make out-of-budget funding decisions for unforeseen expenses necessary to maintaining ICANN's Mission or to fulfilling ICANN's pre-existing legal obligations and protecting ICANN from harm or waste.

(f) To maintain ongoing operational excellence and financial stability of the IANA functions (so long as they are performed by ICANN or pursuant to contract with ICANN) and PTI, ICANN shall be required to plan for and allocate funds to ICANN's performance of the IANA functions and to PTI, as applicable, that are sufficient to cover future expenses and contingencies to ensure that the performance of those IANA functions and PTI in the future are not interrupted due to lack of funding.

(g) The ICANN Budget and the IANA Budget shall be published on the Website.

Section 22.5. PLANS

(a) Operating Plan

(i) At least 45 days prior to the commencement of each fiscal year, ICANN staff shall prepare and submit to the Board a proposed operating plan of ICANN for the next five fiscal years (the "**Operating Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Operating Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Operating Plan development process, and comply with the requirements of this Section 22.5(a).

(iii) Prior to approval of the Operating Plan by the Board, a draft of the Operating Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Operating Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves an Operating Plan (an "**Operating Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Operating Plan that is the subject of the Operating Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) An Operating Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in

which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the 28th day following the Rejection Action Board Notification Date relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Operating Plan that is the subject of the Operating Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Operating Plan Approval and the effectiveness of such Operating Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) An Operating Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to an Operating Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Operating Plan in determining the substance of such new Operating Plan, which shall be subject to the procedures of this Section 22.5(a).

(b) Strategic Plan

(i) At least 45 days prior to the commencement of each five fiscal year period, with the first such period covering fiscal years 2021 through 2025, ICANN staff shall prepare and submit to the Board a proposed strategic plan of ICANN for the next five fiscal years (the "**Strategic Plan**"), which shall be posted on the Website.

(ii) Prior to approval of the Strategic Plan by the Board, ICANN staff shall consult with the Supporting Organizations and Advisory Committees during the Strategic Plan development process, and comply with the requirements of this Section 22.5(b).

(iii) Prior to approval of the Strategic Plan by the Board, a draft of the Strategic Plan shall be posted on the Website and shall be subject to public comment.

(iv) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Strategic Plan and may direct ICANN staff to conduct one or more additional public comment periods of lengths determined by the Board, in accordance with ICANN's public comment processes.

(v) Promptly after the Board approves a Strategic Plan (a "**Strategic Plan Approval**"), the Secretary shall provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall enclose a copy of the Strategic Plan that is the subject of the Strategic Plan Approval. ICANN shall post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website promptly following the delivery of the Board Notice to the EC Administration and the Decisional Participants. The EC Administration shall promptly commence and comply with the procedures and requirements specified in Article 2 of Annex D.

(vi) A Strategic Plan shall become effective upon the earliest to occur of the following:

(A)(1) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the 28th day following the

Rejection Action Board Notification Date relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(B)(1) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; and

(C)(1) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (2) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Strategic Plan that is the subject of the Strategic Plan Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Strategic Plan Approval and the effectiveness of such Strategic Plan shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(vii) A Strategic Plan that has been rejected by the EC pursuant to and in compliance with Article 2 of Annex D shall have no force and effect, and shall be void ab initio.

(viii) Following receipt of an EC Rejection Notice relating to a Strategic Plan, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Strategic Plan in determining the substance of such new Strategic Plan, which shall be subject to the procedures of this Section 22.5(b).

Section 22.6. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by

ICANN, with the goal of fully recovering the reasonable costs of the operation of ICANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of ICANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

Section 22.7. INSPECTION

(a) A Decisional Participant (the "**Inspecting Decisional Participant**") may request to inspect the accounting books and records of ICANN, as interpreted pursuant to the provisions of Section 6333 of the CCC, and the minutes of the Board or any Board Committee for a purpose reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. The Inspecting Decisional Participant shall make such a request by providing written notice from the chair of the Inspecting Decisional Participant to the Secretary stating the nature of the documents the Inspecting Decisional Participant seeks to inspect ("**Inspection Request**"). Any Inspection Request must be limited to the accounting books and records of ICANN relevant to the operation of ICANN as a whole, and shall not extend to the underlying sources of such accounting books or records or to documents only relevant to a small or isolated aspect of ICANN's operations or that relate to the minutiae of ICANN's financial records or details of its management and administration (the "**Permitted Scope**"). Unless ICANN declines such request (as provided below), ICANN shall make the records requested under an Inspection Request available for inspection by such Inspecting Decisional Participant within 30 days of the date the Inspection Request is received by the Secretary or as soon as reasonably practicable thereafter. All materials and information made available by ICANN for inspection pursuant to an Inspection Request may only be used by the Inspecting Decisional Participant for purposes reasonably related to such Inspecting Decisional Participant's interest as a Decisional Participant in the EC. ICANN shall post all Inspection Requests to the Website.

(b) ICANN may decline an Inspection Request on the basis that such Inspection Request (i) is motivated by a Decisional Participant's financial, commercial or political interests, or those of one or more of its constituents, (ii) relates to documents that are not reasonably related to the purpose specified in the Inspection Request or the Inspecting Decisional Participant's interest as a Decisional Participant in the EC, (iii) requests identical records provided in a prior request of such Decisional Participant, (iv) is not within the Permitted Scope, (v) relates to personnel records, (vi) relates to documents or communications covered by attorney-client privilege, work product doctrine or other legal privilege or (vii) relates to documents or communications that ICANN may not make available

under applicable law because such documents or communications contain confidential information that ICANN is required to protect. If an Inspection Request is overly broad, ICANN may request a revised Inspection Request from the Inspecting Decisional Participant.

(c) Any such inspections shall be conducted at the times and locations reasonably determined by ICANN and shall not be conducted in a manner that unreasonably interferes with ICANN's operations. All such inspections shall be subject to reasonable procedures established by ICANN, including, without limitation, the number of individuals authorized to conduct any such inspection on behalf of the Inspecting Decisional Participant. ICANN may require the inspectors to sign a non-disclosure agreement. The Inspecting Decisional Participant may, at its own cost, copy or otherwise reproduce or make a record of materials inspected. ICANN may redact or determine not to provide requested materials on the same basis that such information is of a category or type described in Section 22.7(b), in which case ICANN will provide the Inspecting Decisional Participant a written rationale for such redactions or determination.

(d) The inspection rights provided to the Decisional Participants pursuant to this Section 22.7 are granted to the Decisional Participants and are not granted or available to any other person or entity. Notwithstanding the foregoing, nothing in this Section 22.7 shall be construed as limiting the accessibility of ICANN's document information disclosure policy ("**DIDP**").

(e) If the Inspecting Decisional Participant believes that ICANN has violated the provisions of this Section 22.7, the Inspecting Decisional Participant may seek one or more of the following remedies: (i) appeal such matter to the Ombudsman and/or the Board for a ruling on the matter, (ii) initiate the Reconsideration Request process in accordance with Section 4.2, (iii) initiate the Independent Review Process in accordance with Section 4.3, or (iv) petition the EC to initiate (A) a Community IRP pursuant to Section 4.2 of Annex D or (B) a Board Recall Process pursuant to Section 3.3 of Annex D. Any determination by the Ombudsman is not binding on ICANN staff, but may be submitted by the Inspecting Decisional Participant when appealing to the Board for a determination, if necessary.

Section 22.8. INDEPENDENT INVESTIGATION

If three or more Decisional Participants deliver to the Secretary a joint written certification from the respective chairs of each such Decisional Participant that the constituents of such Decisional Participants have, pursuant to the internal procedures of such Decisional Participants, determined that there is a credible allegation that ICANN has committed fraud or that there has been a gross mismanagement of ICANN's resources, ICANN shall retain a third-party,

independent firm to investigate such alleged fraudulent activity or gross mismanagement. ICANN shall post all such certifications to the Website. The independent firm shall issue a report to the Board. The Board shall consider the recommendations and findings set forth in such report. Such report shall be posted on the Website, which may be in a redacted form as determined by the Board, in order to preserve attorney-client privilege, work product doctrine or other legal privilege or where such information is confidential, in which case ICANN will provide the Decisional Participants that submitted the certification a written rationale for such redactions.

ARTICLE 23 MEMBERS

ICANN shall not have members, as contemplated by Section 5310 of the CCC, notwithstanding the use of the term "member" in these Bylaws, in any ICANN document, or in any action of the Board or staff. For the avoidance of doubt, the EC is not a member of ICANN.

ARTICLE 24 OFFICES AND SEAL

Section 24.1. OFFICES

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

Section 24.2. SEAL

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

ARTICLE 25 AMENDMENTS

Section 25.1. AMENDMENTS TO THE STANDARD BYLAWS

(a) Except as otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may be altered, amended, or repealed and new Bylaws adopted only upon approval by a two-thirds vote of all Directors and in compliance with the terms of this Section 25.1 (a "**Standard Bylaw Amendment**").

(b) Prior to approval of a Standard Bylaw Amendment by the Board, a draft of the Standard Bylaw Amendment shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to post a revised draft of the Standard Bylaw Amendment and may conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of a Standard Bylaw Amendment ("**Standard Bylaw Amendment Approval**"), the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and the Board's rationale for adopting such amendment, and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 2 of Annex D shall then be followed.

(e) A Standard Bylaw Amendment shall become effective upon the earliest to occur of the following:

(i) (A) A Rejection Action Petition Notice is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the 30th day following the Rejection Action Board Notification Date relating to such Standard Bylaw Amendment Approval and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D;

(ii) (A) A Rejection Action Supported Petition is not timely delivered by the Rejection Action Petitioning Decisional Participant to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.2(d) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Petition Support Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D; or

(iii) (A) An EC Rejection Notice is not timely delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4 of Annex D or (B) a Rejection Process Termination Notice is delivered by the EC Administration to the Secretary pursuant to and in compliance with Section 2.4(c) of Annex D, in which case the Standard Bylaw Amendment that is the subject of the Standard Bylaw Amendment Approval shall be in full force and effect as of the date immediately following the expiration of the Rejection Action Decision Period relating to such Standard Bylaw Amendment and the effectiveness of such Standard Bylaw Amendment shall not be subject to further challenge by the EC pursuant to the EC's rejection right as described in Article 2 of Annex D.

(f) If an EC Rejection Notice is timely delivered by the EC Administration to the Secretary pursuant to and compliance with Section 2.4 of Annex D, the Standard Bylaw Amendment contained in the Board Notice shall be deemed to have been rejected by the EC. A Standard Bylaw Amendment that has been rejected by the EC shall be null and void and shall not become part of these Bylaws, notwithstanding its approval by the Board.

(g) The Secretary shall promptly inform the Board of the receipt and substance of any Rejection Action Petition, Rejection Action Supported Petition or EC Rejection Notice delivered by the Rejection Action Petitioning Decisional Participant or the EC Administration, as applicable, to the Secretary hereunder.

(h) Following receipt of an EC Rejection Notice pertaining to a Standard Bylaw Amendment, ICANN staff and the Board shall consider the explanation provided by the EC Administration as to why the EC has chosen to reject the Standard Bylaw Amendment in determining whether or not to develop a new Standard Bylaw Amendment and the substance of such new Standard Bylaw Amendment, which shall be subject to the procedures of this Section 25.1.

Section 25.2. AMENDMENTS TO THE FUNDAMENTAL BYLAWS AND ARTICLES OF INCORPORATION

(a) Article 1; Sections 4.2, 4.3 and 4.7; Article 6; Sections 7.1 through 7.5, inclusive, and Sections 7.8, 7.11, 7.12, 7.17, 7.24 and 7.25; those portions of Sections 8.1, 9.2(b), 10.3(i), 11.3(f) and 12.2(d)(x)(A) relating to the provision to the EC of nominations of Directors by the nominating body, Articles 16, 17, 18 and 19, Sections 22.4, 22.5, 22.7 and 22.8, Article 26, Section 27.1; Annexes D, E and F; and this Article 25 are each a "**Fundamental Bylaw**" and, collectively, are the "**Fundamental Bylaws**".

(b) Notwithstanding any other provision of these Bylaws, a Fundamental Bylaw or the Articles of Incorporation may be altered, amended, or repealed (a "**Fundamental Bylaw Amendment**" or an "**Articles Amendment**"), only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Section 25.2.

(c) Prior to approval of a Fundamental Bylaw Amendment, or an Articles Amendment by the Board, a draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(d) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Fundamental Bylaw Amendment or Articles Amendment, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(e) Within seven days after the Board's approval of a Fundamental Bylaw Amendment or Articles Amendment, as applicable, the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the approved amendment and (ii) post the Board Notice, along with a copy of the notification(s) sent to the EC Administration and the Decisional Participants, on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(f) If the EC Administration timely delivers an EC Approval Notice (as defined in Section 1.4(b) of Annex D), the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed approved by the EC, and, as applicable, (i) such Fundamental Bylaw Amendment shall be in full force and effect as part of these Bylaws as of the date immediately following the Secretary's receipt of the EC Approval Notice; or (ii) the Secretary shall cause such Articles Amendment promptly to be certified by the appropriate officers of ICANN and filed with the California Secretary of State. In the event of such approval, neither the Fundamental Bylaw Amendment nor the Articles Amendment shall be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(g) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Fundamental Bylaw Amendment or Articles Amendment, as applicable, set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, the Fundamental Bylaw Amendment shall not be part of these Bylaws and the Articles Amendment shall not be filed with the Secretary of State.

(h) If a Fundamental Bylaw Amendment or Articles Amendment, as applicable, is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to develop a new Fundamental Bylaws Amendment or Articles Amendment, as applicable, and the substance thereof, which shall be subject to the procedures of this Section 25.2.

Section 25.3. AMENDMENTS RESULTING FROM A POLICY DEVELOPMENT PROCESS

The Board shall not combine an amendment of these Bylaws that was the result of a policy development process of a Supporting Organization (a "**PDP Amendment**") with any other amendment. The Board shall indicate in the applicable Board Notice whether such amendment is a PDP Amendment.

Section 25.4. OTHER AMENDMENTS

For the avoidance of doubt, these Bylaws can only be amended as set forth in this Article 25. Neither the EC, the Decisional Participants, the Supporting Organizations, the Advisory Committees nor any other entity or person shall have the power to directly propose amendments to these Bylaws.

ARTICLE 26 SALE OR OTHER DISPOSITION OF ALL OR SUBSTANTIALLY ALL OF ICANN'S ASSETS

(a) ICANN may consummate a transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets (an "**Asset Sale**") only upon approval by a three-fourths vote of all Directors and the approval of the EC as set forth in this Article 26.

(b) Prior to approval of an Asset Sale by the Board, a draft of the definitive Asset Sale agreement (an "**Asset Sale Agreement**"), shall be posted on the Website and shall be subject to public comment in accordance with ICANN's public comment processes.

(c) After reviewing the comments submitted during the public comment period, the Board may direct ICANN staff to submit a revised draft of the Asset Sale Agreement, as applicable, and may direct ICANN staff to conduct one or more additional public comment periods in accordance with ICANN's public comment processes.

(d) Within seven days after the Board's approval of an Asset Sale the Secretary shall (i) provide a Board Notice to the EC Administration and the Decisional Participants, which Board Notice shall contain the form of the Asset Sale

Agreement and (ii) post the Board Notice on the Website. The steps contemplated in Article 1 of Annex D shall then be followed.

(e) If the EC Administration timely delivers an EC Approval Notice for the Asset Sale pursuant to and in compliance with the procedures and requirements of Section 1.4(b) of Annex D, the Asset Sale set forth in the Board Notice shall be deemed approved by the EC, and the Asset Sale may be consummated by ICANN, but only under the terms set forth in the Asset Sale Agreement. In the event of such approval, the Asset Sale shall not be subject to any further review or approval of the EC. The Secretary shall promptly inform the Board of the receipt of an EC Approval Notice.

(f) If an EC Approval Notice is not timely delivered by the EC Administration to the Secretary, the Asset Sale set forth in the Board Notice shall be deemed not approved by the EC, shall be null and void, and, notwithstanding its approval by the Board, ICANN shall not consummate the Asset Sale.

(g) If an Asset Sale is not approved by the EC, ICANN staff and the Board shall consider the concerns raised by the EC in determining whether or not to consider a new Asset Sale, and the substance thereof, which shall be subject to the procedures of this Article 26.

ARTICLE 27 TRANSITION ARTICLE

Section 27.1. WORK STREAM 2

(a) The Cross-Community Working Group on Enhancing ICANN Accountability ("**CCWG-Accountability**") was established pursuant to a charter dated 3 November 2014 ("**CCWG-Accountability Charter**"). The CCWG-Accountability Charter was subsequently adopted by the GNSO, ALAC, ccNSO, GAC, ASO and SSAC ("**CCWG Chartering Organizations**"). The CCWG-Accountability Charter as in effect on 3 November 2014 shall remain in effect throughout Work Stream 2 (as defined therein).

(b) The CCWG-Accountability recommended in its Supplemental Final Proposal on Work Stream 1 Recommendations to the Board, dated 23 February 2016 ("**CCWG-Accountability Final Report**") that the below matters be reviewed and developed following the adoption date of these Bylaws ("**Work Stream 2 Matters**"), in each case, to the extent set forth in the CCWG-Accountability Final Report:

(i) Improvements to ICANN's standards for diversity at all levels;

(ii) ICANN staff accountability;

(iii) Supporting Organization and Advisory Committee accountability, including but not limited to improved processes for accountability, transparency, and participation that are helpful to prevent capture;

(iv) Improvements to ICANN's transparency, focusing on enhancements to ICANN's existing DIDP, transparency of ICANN's interactions with governments, improvements to ICANN's whistleblower policy and transparency of Board deliberations;

(v) Developing and clarifying the FOI-HR (as defined in Section 27.2);

(vi) Addressing jurisdiction-related questions, including how choice of jurisdiction and applicable laws for dispute settlement impact ICANN's accountability;

(vii) Considering enhancements to the Ombudsman's role and function;

(viii) Guidelines for standards of conduct presumed to be in good faith associated with exercising removal of individual Directors; and

(ix) Reviewing the CEP (as set forth in Section 4.3).

(c) As provided in the CCWG-Accountability Charter and the Board's 2014.10.16.16 resolution, the Board shall consider consensus-based recommendations from the CCWG-Accountability on Work Stream 2 Matters ("**Work Stream 2 Recommendations**") with the same process and criteria it committed to using to consider the CCWG-Accountability recommendations in the CCWG-Accountability Final Report ("**Work Stream 1 Recommendations**"). For the avoidance of doubt, that process and criteria includes:

(i) All Work Stream 2 Recommendations must further the following principles:

(A) Support and enhance the multistakeholder model;

(B) Maintain the security, stability and resiliency of the DNS;

(C) Meet the needs and expectations of the global customers and partners of the IANA services;

(D) Maintain the openness of the Internet; and

(E) Not result in ICANN becoming a government-led or an inter-governmental organization.

(ii) If the Board determines, by a vote of a two-thirds majority of the Board, that it is not in the global public interest to implement a Work Stream 2 Recommendation, it must initiate a dialogue with the CCWG-Accountability.

(iii) The Board shall provide detailed rationale to accompany the initiation of dialogue. The Board and the CCWG-Accountability shall mutually agree upon the method (e.g., by teleconference, email or otherwise) by which the dialogue will occur. Discussions shall be held in good faith and in a timely and efficient manner in an effort to find a mutually acceptable solution.

(iv) The CCWG-Accountability shall have an opportunity to address the Board's concerns and report back to the Board on further deliberations regarding the Board's concerns. The CCWG-Accountability shall discuss the Board's concerns within 30 days of the Board's initiation of the dialogue.

If a Work Stream 2 Recommendation is modified by the CCWG-Accountability, the CCWG-Accountability shall submit the modified Work Stream 2 Recommendation to the Board for further consideration along with detailed rationale on how the modification addresses the concerns raised by the Board.

(v) If, after the CCWG-Accountability modifies a Work Stream 2 Recommendation, the Board still believes it is not in the global public interest to implement the Work Stream 2 Recommendation, the Board may, by a vote of a two-thirds majority of the Board, send the matter back to the CCWG-Accountability for further consideration. The Board shall provide detailed rationale to accompany its action. If the Board determines not to accept a modified version of a Work Stream 2 Recommendation, unless required by its fiduciary obligations, the Board shall not establish an alternative solution on the issue addressed by the Work Stream 2 Recommendation until such time as the CCWG-Accountability and the Board reach agreement.

(d) ICANN shall provide adequate support for work on Work Stream 2 Matters, within budgeting processes and limitations reasonably acceptable to the CCWG-Accountability.

(e) The Work Stream 2 Matters specifically referenced in Section 27.1(b) shall be

the only matters subject to this Section 27.1 and any other accountability enhancements should be developed through ICANN's other procedures.

(f) The outcomes of each Work Stream 2 Matter are not limited and could include a variety of recommendations or no recommendation; provided, however, that any resulting recommendations must directly relate to the matters discussed in Section 27.1(b).

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

Section 27.3. EXISTING GROUPS AND TASK FORCES

Notwithstanding the adoption or effectiveness of these Bylaws, task forces and other groups in existence prior to the date of these Bylaws shall continue unchanged in membership, scope, and operation unless and until changes are made by ICANN in compliance with the Bylaws.

Section 27.4. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of these Bylaws, all agreements, including employment and consulting agreements, entered into by ICANN shall continue in effect according to their terms.

Annex A: GNSO Policy Development Process

The following process shall govern the GNSO policy development process ("**PDP**") until such time as modifications are recommended to and approved by the Board. The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are not intended to result in a Consensus Policy, the

Council may act through other processes.

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

The following elements are required at a minimum to form Consensus Policies as defined within ICANN contracts, and any other policies for which the GNSO Council requests application of this Annex A:

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

Section 2. **Policy Development Process Manual**

The GNSO shall maintain a Policy Development Process Manual ("**PDP Manual**") within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. **Requesting an Issue Report**

Board Request. The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a

mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

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

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

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

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

The following elements should be considered in the Issue Report:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the request for the Issue Report;
- c. How that party is affected by the issue, if known;
- d. Support for the issue to initiate the PDP, if known;
- e. The opinion of the ICANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the Mission, policy process and more specifically the role of the GNSO as set forth in the Bylaws.
- f. The opinion of ICANN Staff as to whether the Council should initiate the PDP on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the Website for a public comment period that complies with the designated practice for public comment periods within ICANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the

Final Issue Report, along with any summary and analysis of the public comments received, to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5. **Initiation of the PDP**

The Council may initiate the PDP as follows:

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

GNSO Council or Advisory Committee Requests: The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in Section 11.3(i)(ii) and Section 11.3(i)(iii) in favor of initiating the PDP.

Section 6. **Reports**

An Initial Report should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within ICANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7. **Council Deliberation**

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

The Council approval process is set forth in Section 11.3(i)(iv) through Section 11.3(vii), as supplemented by the PDP Manual.

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

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 9. **Board Approval Processes**

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably not later than the second meeting after receipt of the

Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

Section 10. Implementation of Approved Policies

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to ICANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report, and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation

review team to assist in implementation of the policy.

Section 11. **Maintenance of Records**

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

Section 12. **Additional Definitions**

"**Comment Site**", "**Comment Forum**", "**Comments For a**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the PDP will be posted.

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

"**Staff Manager**" means an ICANN staff person(s) who manages the PDP.

"**GNSO Supermajority Vote**" shall have the meaning set forth in the Bylaws.

Section 13. **Applicability**

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

Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("**EPDP**"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially

scoped previously such that extensive, pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP that was not initiated; (b) as part of a previous PDP that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended to and approved by the Board. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article 11 of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities that do not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO Expedited Policy Development Process

The following elements are required at a minimum to develop expedited GNSO policy recommendations, including recommendations that could result in amendments to an existing Consensus Policy, as part of a GNSO Expedited Policy Development Process:

- a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council, including an EPDP scoping document;
- b. Formation of an EPDP Team or other designated work method;
- c. Initial Report produced by an EPDP Team or other designated work method;
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team, or other designated work method, and forwarded to the Council for deliberation;
- e. GNSO Council approval of EPDP Policy Recommendations contained in the Final EPDP Policy Recommendation(s) Report, by the required thresholds;
- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendations Report approved by the Council; and
- g. Board approval of EPDP Recommendation(s).

Section 2. Expedited Policy Development Process Manual

The GNSO shall include a specific section(s) on the EPDP process as part of its maintenance of the GNSO Policy Development Process Manual (PDP Manual), described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The E PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d) .

Section 3. Initiation of the EPDP

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in Section 11.3(i)(xii) of these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C;
2. Origin of issue (e.g. previously completed PDP);
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address);
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either: (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the Board or the implementation of such an adopted recommendation, or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information in either case;
5. If not provided as part of item 4, the opinion of the ICANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the Mission, policy process and more specifically the role of the GNSO;
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers);

7. Method of operation, if different from GNSO Working Group Guidelines;
8. Decision-making methodology for EPDP mechanism, if different from GNSO Working Group Guidelines;
9. Target completion date.

Section 4. **Council Deliberation**

Upon receipt of an EPDP Final Recommendation(s) Report, whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Section 11.3(i)(xiv) and (xv), as supplemented by the PDP Manual.

Section 5. **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Recommendations Report from the Staff Manager. Board deliberation on the EPDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed EPDP Recommendations are not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council

(the "Board Statement"); and (ii) submit the Board Statement to the Council.

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

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

Section 7. Implementation of Approved Policies

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the EPDP Recommendations. If deemed necessary, the Board shall direct ICANN staff to work with the GNSO Council to create a guidance implementation plan, based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report.

Section 8. Maintenance of Records

Throughout the EPDP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each EPDP issue. Such status page will outline the completed and upcoming steps in the EPDP process, and contain links to key resources (e.g. Reports, Comments Fora, EPDP Discussions, etc.).

Section 9. Applicability

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards.

Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("**GGP**") until such time as modifications are recommended to and approved by the Board . The role of the GNSO is outlined in Article 11 of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A).

Section 1. Required Elements of a GNSO Guidance Process

The following elements are required at a minimum to develop GNSO guidance:

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document;
2. Identification of the types of expertise needed on the GGP Team;
3. Recruiting and formation of a GGP Team or other designated work method;
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method;
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team, or other designated work method, and forwarded to the Council for deliberation;
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report, by the required thresholds;
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendations Report approved by the Council; and
8. Board approval of GGP Recommendation(s).

Section 2. GNSO Guidance Process Manual

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP, including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period at minimum, as well as Board oversight and review, as specified at Section 11.3(d).

Section 3. Initiation of the GGP

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the ICANN Board. Initiation of a GGP requires a vote as set forth in Section 11.3(i)(xvi) in favor of initiating the GGP. In the case of a GGP requested by the Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Section 11.3(i)(xvii).

The request to initiate a GGP must be accompanied by a GGP scoping document, which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g., board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation, if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism, if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4. **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members; and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Section 11.3(xviii) as supplemented by the GGP Manual.

Section 5. **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the Board.

Section 6. **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably not later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the ICANN community or ICANN.
- b. In the event that the Board determines, in accordance with paragraph a above, that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the interests of the ICANN community or ICANN.

Section 7. **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to ICANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct ICANN Staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8. Maintenance of Records

Throughout the GGP, from initiation to a final decision by the Board, ICANN will maintain on the Website, a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process, and contain links to key resources (e.g. Reports, Comments Fora, GGP Discussions, etc.).

Section 9. Additional Definitions

"**Comment Site**", "**Comment Forum**", "**Comments Fora**" and "**Website**" refer to one or more websites designated by ICANN on which notifications and comments regarding the GGP will be posted.

"**GGP Staff Manager**" means an ICANN staff person(s) who manages the GGP.

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP").

1. Request for an Issue Report

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

- a. *Council.* The ccNSO Council (in this Annex B, the "**Council**") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail.
- b. *Board.* The Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process.
- c. *Regional Organization.* One or more of the Regional Organizations representing ccTLDs in the ICANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- d. *ICANN Supporting Organization or Advisory Committee.* An ICANN Supporting Organization or an ICANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process.
- e. *Members of the ccNSO.* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail.

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

2. Creation of the Issue Report and Initiation Threshold

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

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

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "**Manager Recommendation**"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
 - 1) The issue is within the scope of the Mission;
 - 2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSO;

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

3) Implicates or affects an existing ICANN policy;

4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

In all events, consideration of revisions to the ccPDP (this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Section 10.6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and Council in the Issues Report.

- f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein ("**PDP Time Line**").
- g. g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be

taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

- b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the Mission and the ccNSO Scope.

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

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

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

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see Section 10.5) to appoint two individuals to participate in the task force (the "**Representatives**"). Additionally, the Council may appoint up to three advisors (the "**Advisors**") from outside the ccNSO and, following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee to sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest, and ideally knowledge and expertise, in the subject matter, coupled with the ability to devote a substantial amount of time to the task force's activities.

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

6. Public Notification of Initiation of the PDP and Comment Period

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

7. Task Forces

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

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

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

1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council that initiated the PDP;
2. The specific time line that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline; and

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

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of Section 10.3(n) shall apply to Council actions under this Item 7(b).

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

d. Collection of Information.

1. *Regional Organization Statements.* The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region, at a minimum, and may solicit other comments, as each Representative deems appropriate, including the comments of the ccNSO members in that region that are not members of the Regional Organization, regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each, a "**Regional Statement**") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- (i) If a Supermajority Vote (as defined by the Regional Organization) was reached, a clear statement of the Regional Organization's position on the issue;
- (ii) If a Supermajority Vote was not reached, a clear statement of all positions espoused by the members of the Regional Organization;
- (iii) A clear statement of how the Regional Organization arrived at its position(s). Specifically, the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views;
- (iv) A statement of the position on the issue of any ccNSO members that are not

members of the Regional Organization;

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

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

2. *Outside Advisors.* The task force may, in its discretion, solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors, and (i) clearly labeled as coming from outside advisors; (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

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

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

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall, within the time designated in the PDP Time Line, appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may, in its discretion, take other steps to assist in the PDP, including, for example, appointing a particular individual or organization, to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an Initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall, in accordance with Item 9 below, create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line, and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or Initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All comments shall include the author's name, relevant experience, and interest in the issue.
- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or Initial Report, to prepare the "**Final Report**". The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members; (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board; and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means the Council may choose.
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor; and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

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

12. Council Report to the Members

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

- a. A clear statement of the Council's recommendation;

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

13. Members Vote

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

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

14. Board Report

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

- a. A clear statement of the ccNSO recommendation;
- b. The Final Report submitted to the Council; and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more

than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "**Supplemental Recommendation**"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13 . In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.
4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("**Supplemental Board Statement**").
5. In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO

Supplemental Recommendation, the Board shall, as appropriate, direct or authorize ICANN staff to implement the policy.

17. Maintenance of Records

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

- a. Issue Report;
- b. PDP Time Line;
- c. Comment Report;
- d. Regional Statement(s);
- e. Preliminary Task Force Report;
- f. Task Force Report;
- g. Initial Report;
- h. Final Report;
- i. Members' Report;
- j. Board Report;
- k. Board Statement;
- l. Supplemental Members' Report; and
- m. Supplemental Board Statement.

In addition, ICANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in Section 10.6(b) of the Bylaws, that scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the

complex relation between ICANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/maintained to generate a zone file,
2. A zone file is in turn used in TLD name servers.

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

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

These two core functions must be performed at the ccTLD registry level as well as at a higher level (IANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive:

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

The Core Functions

1. Data Entry Function (DEF):

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

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

2. The Name-Server Function (NSF)

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

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

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

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

It is in the interest of ICANN and ccTLD managers to ensure the stable and proper functioning of the domain name system. ICANN and the ccTLD registries each have a distinctive role to play in this regard that can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between ICANN and ccTLD registries.

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

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

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

Level 2: ccTLD Registry Name Servers in respect to interoperability

Policy role: ccNSO Policy Development Process (ICANN), for best practices a ccNSO process can be organized

Executive role: ccTLD Manager

Accountability role: part ICANN (IANA), part Local Internet Community, including local government

Level 3: User's Name Servers

Policy role: ccTLD Manager, IETF (RFC)

Executive role: Registrant

Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1: Root Level Registry

Policy role: ccNSO Policy Development Process (ICANN)

Executive role: ICANN (IANA)

Accountability role: ICANN community, ccTLD Managers, (national authorities in some cases)

Level 2: ccTLD Registry

Policy role: Local Internet Community, including local government, and/or ccTLD Manager according to local structure

Executive role: ccTLD Manager

Accountability role: Local Internet Community, including national authorities in some cases

Level 3: Second and Lower Levels

Policy role: Registrant

Executive role: Registrant

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

ANNEX D: EC MECHANISM

ARTICLE 1 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO APPROVE APPROVAL ACTIONS

Section 1.1. APPROVAL ACTIONS

The processes set forth in this Article 1 shall govern the escalation procedures for the EC's exercise of its right to approve the following (each, an "**Approval Action**") under the Bylaws:

- a. Fundamental Bylaw Amendments, as contemplated by Section 25.2 of the Bylaws;
- b. Articles Amendments, as contemplated by Section 25.2 of the Bylaws; and
- c. Asset Sales, as contemplated by Article 26 of the Bylaws.

Section 1.2. APPROVAL PROCESS

Following the delivery of a Board Notice for an Approval Action ("**Approval Action Board Notice**") by the Secretary to the EC Administration and the Decisional Participants (which delivery date shall be referred to herein as the "**Approval Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Approval Action Board Notice. Any Approval Action Board Notice relating to a Fundamental Bylaw Amendment or Articles Amendment shall include a statement, if applicable, that the Fundamental Bylaw Amendment or Articles Amendment, as applicable, is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Fundamental Bylaw Amendment or Articles Amendment subject to the Approval Action Board Notice that implements such PDP (as applicable, a "**PDP Fundamental Bylaw Statement**" or "**PDP Articles Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Fundamental Bylaw Amendment or Articles Amendment, as applicable (as applicable, the "**Fundamental Bylaw Amendment PDP Decisional Participant**" or "**Articles Amendment PDP Decisional Participant**"). The process set forth in this Section 1.2 of this Annex D as it relates to a particular Approval Action is referred to herein as the "**Approval Process**."

Section 1.3. APPROVAL ACTION COMMUNITY FORUM

- a. ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Approval Action (an "**Approval Action Community Forum**").
- b. If the EC Administration requests a publicly-available conference call by providing a notice to the Secretary, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Approval Action Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.
- c. The Approval Action Community Forum shall be convened and concluded during the period beginning upon the Approval Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date ("**Approval Action Community Forum Period**"). If the EC Administration requests that the Approval Action Community Forum be held during the next scheduled ICANN public meeting, the Approval Action Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the EC Administration. If the Approval Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the Approval Action Board Notification Date, the Approval Action Community Forum Period for the Approval Action shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.
- d. The Approval Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Approval Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Approval Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Approval Action Community Forum, which ICANN shall promptly post on the Website.
- e. The EC Administration shall manage and moderate the Approval Action Community Forum in a fair and neutral manner.
- f. ICANN and any Supporting Organization or Advisory Committee (including

Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Approval Action prior to the convening of and during the Approval Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

- g. ICANN staff and Directors representing the Board are expected to attend the Approval Action Community Forum in order to address any questions or concerns regarding the Approval Action.
- h. For the avoidance of doubt, the Approval Action Community Forum is not a decisional body.
- i. During the Approval Action Community Forum Period, an additional one or two Community Forums may be held at the discretion of the Board or the EC Administration. If the Board decides to hold an additional one or two Approval Action Community Forums, it shall provide a rationale for such decision, which rationale ICANN shall promptly post on the Website.
- j. ICANN will provide support services for the Approval Action Community Forum and shall promptly post on the Website a public record of the Approval Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Approval Action Community Forum.

Section 1.4. DECISION WHETHER TO APPROVE AN APPROVAL ACTION

(a) Following the expiration of the Approval Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Approval Action Community Forum Period (such period, the "**Approval Action Decision Period**"), with respect to each Approval Action, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Approval Action, (ii) objects to such Approval Action or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Approval Action), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Approval Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Approval Action Decision Period).

(b) The EC Administration shall, within twenty-four (24) hours of the expiration of

the Approval Action Decision Period, deliver a written notice ("**EC Approval Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 1 of this Annex D, the EC has approved the Approval Action if:

(i) The Approval Action does not relate to a Fundamental Bylaw Amendment or Articles Amendment and is (A) supported by three or more Decisional Participants and (B) not objected to by more than one Decisional Participant;

(ii) The Approval Action relates to a Fundamental Bylaw Amendment and is (A) supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant if the Board Notice included a PDP Fundamental Bylaw Statement) and (B) not objected to by more than one Decisional Participant; or

(iii) The Approval Action relates to an Articles Amendment and is (A) supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant if the Board Notice included a PDP Articles Statement) and (B) not objected to by more than one Decisional Participant.

(c) If the Approval Action does not obtain the support required by Section 1.4(b)(i), (ii) or (iii) of this Annex D, as applicable, the Approval Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Approval Action Decision Period, deliver to the Secretary a notice certifying that the Approval Process has been terminated with respect to the Approval Action ("**Approval Process Termination Notice**").

(d) ICANN shall promptly post to the Website any (i) Approval Action Board Notice, (ii) EC Approval Notice, (iii) Approval Process Termination Notice, (iv) written explanation provided by the EC Administration related to any of the foregoing, and (v) other notices the Secretary receives under this Article 1.

ARTICLE 2 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REJECT SPECIFIED ACTIONS

Section 2.1. Rejection Actions

The processes set forth in this Article 2 shall govern the escalation procedures for the EC's exercise of its right to reject the following (each, a "**Rejection Action**")

under the Bylaws:

- a. PTI Governance Actions, as contemplated by Section 16.2(d) of the Bylaws;
- b. IFR Recommendation Decisions, as contemplated by Section 18.6(d) of the Bylaws;
- c. Special IFR Recommendation Decisions, as contemplated by Section 18.12(e) of the Bylaws;
- d. SCWG Creation Decisions, as contemplated by Section 19.1(d) of the Bylaws;
- e. SCWG Recommendation Decisions, as contemplated by Section 19.4(d) of the Bylaws;
- f. ICANN Budgets, as contemplated by Section 22.4(a)(v) of the Bylaws;
- g. IANA Budgets, as contemplated by Section 22.4(b)(v) of the Bylaws;
- h. Operating Plans, as contemplated by Section 22.5(a)(v) of the Bylaws;
- i. Strategic Plans, as contemplated by Section 22.5(b)(v) of the Bylaws; and
- j. Standard Bylaw Amendments, as contemplated by Section 25.1(e) of the Bylaws.

Section 2.2. PETITION PROCESS FOR SPECIFIED ACTIONS

(a) Following the delivery of a Board Notice for a Rejection Action ("**Rejection Action Board Notice**") by the Secretary to the EC Administration and Decisional Participants (which delivery date shall be referred to herein as the "**Rejection Action Board Notification Date**"), the Decisional Participants shall thereafter promptly inform their constituents of the delivery of the Rejection Action Board Notice. The process set forth in this Section 2.2 of this Annex D as it relates to a particular Rejection Action is referred to herein as the "**Rejection Process**."

(b) During the period beginning on the Rejection Action Board Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Rejection Action Board Notification Date (as it relates to a particular Rejection Action, the "**Rejection Action Petition Period**"), subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant, seeking to reject the Rejection Action and initiate the Rejection Process (a "**Rejection Action Petition**").

(c) A Decisional Participant that has received a Rejection Action Petition shall either accept or reject such Rejection Action Petition; provided that a Decisional Participant may only accept such Rejection Action Petition if it was received by such Decisional Participant during the Rejection Action Petition Period.

(i) If, in accordance with the requirements of Section 2.2(c) of this Annex D, a Decisional Participant accepts a Rejection Action Petition during the Rejection Action Petition Period, the Decisional Participant shall promptly provide to the EC Administration, the other Decisional Participants and the Secretary written notice ("**Rejection Action Petition Notice**") of such acceptance (such Decisional Participant, the "**Rejection Action Petitioning Decisional Participant**"), and ICANN shall promptly post such Rejection Action Petition Notice on the Website. The Rejection Action Petition Notice shall also include:

(A) the rationale upon which rejection of the Rejection Action is sought. Where the Rejection Action Petition Notice relates to an ICANN Budget, an IANA Budget, an Operating Plan or a Strategic Plan, the Rejection Action Petition Notice shall not be valid and shall not be accepted by the EC Administration unless the rationale set forth in the Rejection Action Petition Notice is based on one or more significant issues that were specifically raised in the applicable public comment period(s) relating to perceived inconsistencies with the Mission, purpose and role set forth in ICANN's Articles of Incorporation and Bylaws, the global public interest, the needs of ICANN's stakeholders, financial stability, or other matter of concern to the community; and

(B) where the Rejection Action Petition Notice relates to a Standard Bylaw Amendment, a statement, if applicable, that the Standard Bylaw Amendment is based solely on the outcome of a PDP, citing the specific PDP and the provision in the Standard Bylaw Amendment subject to the Board Notice that implements such PDP ("**PDP Standard Bylaw Statement**") and the name of the Supporting Organization that is a Decisional Participant that undertook the PDP relating to the Standard Bylaw Amendment ("**Standard Bylaw Amendment PDP Decisional Participant**").

The Rejection Process shall thereafter continue pursuant to Section 2.2(d) of this Annex D.

(ii) If the EC Administration has not received a Rejection Action Petition Notice pursuant to Section 2.2(c)(i) of this Annex D during the Rejection

Action Petition Period, the Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Period, deliver to the Secretary a notice certifying that the Rejection Process has been terminated with respect to the Rejection Action contained in the Approval Notice ("**Rejection Process Termination Notice**"). ICANN shall promptly post such Rejection Process Termination Notice on the Website.

(d) Following the delivery of a Rejection Action Petition Notice to the EC Administration pursuant to Section 2.2(c)(i) of this Annex D, the Rejection Action Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Rejection Action Petition. The Rejection Action Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Rejection Action Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Rejection Action Supporting Decisional Participant**") during the period beginning upon the expiration of the Rejection Action Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Rejection Action Petition Period (the "**Rejection Action Petition Support Period**"), the Rejection Action Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Rejection Action Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Rejection Action Supporting Decisional Participant, and ICANN shall promptly post such Rejection Action Supported Petition on the Website. Each Rejection Action Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Rejection Action Petition, and ICANN shall promptly post each such notice on the Website. Such Rejection Action Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Rejection Action Petitioning Decisional Participant who shall act as a liaison with respect to the Rejection Action Supported Petition;

(C) a statement as to whether or not the Rejection Action Petitioning Decisional Participant and/or the Rejection Action Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Rejection Action Community Forum (as defined in Section 2.3 of this Annex D) for the community to discuss the Rejection Action Supported Petition;

(D) a statement as to whether the Rejection Action Petitioning Decisional Participant and the Rejection Action Supporting Decisional Participant have determined to hold the Rejection Action Community Forum during the next scheduled ICANN public meeting, taking into account the limitation on holding such a Rejection Action Community Forum when the Rejection Action Supported Petition relates to an ICANN Budget or IANA Budget as described in Section 2.3(c) of this Annex D; and

(E) a PDP Standard Bylaw Statement, if applicable.

The Rejection Process shall thereafter continue for such Rejection Action Supported Petition pursuant to Section 2.3 of this Annex D. The foregoing process may result in more than one Rejection Action Supported Petition relating to the same Rejection Action.

(ii) The Rejection Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Petition Support Period, deliver to the Secretary a Rejection Process Termination Notice, which ICANN shall promptly post on the Website, if:

(A) no Rejection Action Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Rejection Action Petition during the Rejection Action Petition Support Period; or

(B) where the Rejection Action Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Rejection Action Petitioning Decisional Participant or (y) one of the Rejection Action Supporting Decisional Participants.

Section 2.3. REJECTION ACTION COMMUNITY FORUM

- a. If the EC Administration receives a Rejection Action Supported Petition under Section 2.2(d) of this Annex D during the Rejection Action Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties

may discuss the Rejection Action Supported Petition ("**Rejection Action Community Forum**"). If the EC Administration receives more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed at the same Rejection Action Community Forum.

- b. If a publicly-available conference call has been requested in a Rejection Action Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Rejection Action Community Forum relating to that Rejection Action Supported Petition, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. If a conference call has been requested in relation to more than one Rejection Action Supported Petition relating to the same Rejection Action, all such Rejection Action Supported Petitions shall be discussed during the same conference call.
- c. The Rejection Action Community Forum shall be convened and concluded during the period beginning upon the expiration of the Rejection Action Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period ("**Rejection Action Community Forum Period**") unless all Rejection Action Supported Petitions relating to the same Rejection Action requested that the Rejection Action Community Forum be held during the next scheduled ICANN public meeting, in which case the Rejection Action Community Forum shall be held during the next scheduled ICANN public meeting (except as otherwise provided below with respect to a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget) on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Rejection Action Petitioning Decisional Participant(s) and the Rejection Action Supporting Decisional Participant(s). If the Rejection Action Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Petition Support Period, the Rejection Action Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting. Notwithstanding the foregoing and notwithstanding any statement in the Rejection Action Supported Petition, a Rejection Action Community Forum to discuss a Rejection Action Supported Petition relating to an ICANN Budget or IANA Budget may only be held at a scheduled ICANN public meeting if such Rejection Action Community Forum occurs during the Rejection Action Community Forum Period,

without any extension of such Rejection Action Community Forum Period.

- d. The Rejection Action Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Rejection Action Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Rejection Action Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Rejection Action Community Forum, which ICANN shall promptly post on the Website.
- e. The EC Administration shall manage and moderate the Rejection Action Community Forum in a fair and neutral manner.
- f. ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Rejection Action Supported Petition prior to the convening of and during the Rejection Action Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.
- g. ICANN staff (including the CFO when the Rejection Action Supported Petition relates to an ICANN Budget, IANA Budget or Operating Plan) and Directors representing the Board are expected to attend the Rejection Action Community Forum in order to address the concerns raised in the Rejection Action Supported Petition.
- h. If the Rejection Action Petitioning Decisional Participant and each of the Rejection Action Supporting Decisional Participants for an applicable Rejection Action Supported Petition agree before, during or after the Rejection Action Community Forum that the issue raised in such Rejection Action Supported Petition has been resolved, such Rejection Action Supported Petition shall be deemed withdrawn and the Rejection Process with respect to such Rejection Action Supported Petition will be terminated. If all Rejection Action Supported Petitions relating to a Rejection Action are withdrawn, the Rejection Process will automatically be terminated. If a Rejection Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Rejection Action Supported Petition, deliver to the Secretary a Rejection Process Termination Notice. For the avoidance of doubt, the Rejection Action Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Rejection Action Petitioning Decisional Participant and the Rejection Action

Supporting Decisional Participant(s).

- i. During the Rejection Action Community Forum Period, an additional one or two Rejection Action Community Forums may be held at the discretion of a Rejection Action Petitioning Decisional Participant and a related Rejection Action Supporting Decisional Participant, or the EC Administration.
- j. ICANN will provide support services for the Rejection Action Community Forum and shall promptly post on the Website a public record of the Rejection Action Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Rejection Action Community Forum.

Section 2.4. DECISION WHETHER TO REJECT A REJECTION ACTION

(a) Following the expiration of the Rejection Action Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Rejection Action Community Forum Period (such period, the "**Rejection Action Decision Period**"), with respect to each Rejection Action Supported Petition, each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Rejection Action Supported Petition and has determined to reject the Rejection Action, (ii) objects to such Rejection Action Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Rejection Action Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Rejection Action Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Rejection Action Decision Period).

(b) The EC Administration, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, shall promptly deliver a written notice ("**EC Rejection Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Article 2 of Annex D, the EC has resolved to reject the Rejection Action if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if the Rejection Action Supported Petition included a GAC Consensus Statement):

- (i) A Rejection Action Supported Petition relating to a Rejection Action other

than a Standard Bylaw Amendment is (A) supported by four or more Decisional Participants and (B) not objected to by more than one Decisional Participant; or

(ii) A Rejection Action Supported Petition relating to a Standard Bylaw Amendment that is (A) supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant if the Rejection Action Supported Petition included a PDP Standard Bylaw Statement) and (B) not objected to by more than one Decisional Participant.

(c) If no Rejection Action Supported Petition obtains the support required by Section 2.4(b)(i) or (ii) of this Annex D, as applicable, the Rejection Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Rejection Action Decision Period, deliver to the Secretary a Rejection Process Termination Notice.

(d) ICANN shall promptly post to the Website any (i) Rejection Action Board Notice, (ii) Rejection Action Petition, (iii) Rejection Action Petition Notice, (iv) Rejection Action Supported Petition, (v) EC Rejection Notice and the written explanation provided by the EC Administration as to why the EC has chosen to reject the Rejection Action, (vi) Rejection Process Termination Notice, and (vii) other notices the Secretary receives under this Article 2.

ARTICLE 3 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO REMOVE DIRECTORS AND RECALL THE BOARD

Section 3.1. NOMINATING COMMITTEE DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove a Director holding Seats 1 through 8 and initiate the Nominating Committee Director Removal Process ("**Nominating Committee Director Removal Petition**"). Each Nominating Committee Director Removal Petition shall set forth the rationale upon which such individual seeks to remove such Director. The process set forth in this Section 3.1 of Annex D is referred to herein as the "**Nominating Committee Director Removal Process.**"

(b) During the period beginning on the date that the Decisional Participant received the Nominating Committee Director Removal Petition (such date of receipt, the "**Nominating Committee Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Nominating Committee

Director Removal Petition Date (as it relates to a particular Director, the "**Nominating Committee Director Removal Petition Period**"), the Decisional Participant that has received a Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Petitioned Decisional Participant**") shall either accept or reject such Nominating Committee Director Removal Petition; provided that a Nominating Committee Director Removal Petitioned Decisional Participant shall not accept a Nominating Committee Director Removal Petition if, during the same term, the Director who is the subject of such Nominating Committee Director Removal Petition had previously been subject to a Nominating Committee Director Removal Petition that led to a Nominating Committee Director Removal Community Forum (as discussed in Section 3.1(e) of this Annex D).

(c) During the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Petitioned Decisional Participant shall invite the Director subject to the Nominating Committee Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the Nominating Committee Director Removal Petition and the Nominating Committee Director Removal Petitioned Decisional Participant's representative on the EC Administration. The Nominating Committee Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the Nominating Committee Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Nominating Committee Director Removal Petitioned Decisional Participant shall not accept the Nominating Committee Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.1(b) of this Annex D, a Nominating Committee Director Removal Petitioned Decisional Participant accepts a Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Period (such Decisional Participant, the "**Nominating Committee Director Removal Petitioning Decisional Participant**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall, within twenty-four (24) hours of its acceptance of the Nominating Committee Director Removal Petition, provide written notice ("**Nominating Committee Director Removal Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Nominating Committee Director Removal Petition Notice shall include the rationale upon which removal of the affected

Director is sought. The Nominating Committee Director Removal Process shall thereafter continue pursuant to Section 3.1(d) of this Annex D.

(ii) If the EC Administration has not received a Nominating Committee Director Removal Petition Notice pursuant to Section 3.1(c)(i) of this Annex D during the Nominating Committee Director Removal Petition Period, the Nominating Committee Director Removal Process shall automatically be terminated with respect to the applicable Nominating Committee Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Period, deliver to the Secretary a notice certifying that the Nominating Committee Director Removal Process has been terminated with respect to the applicable Nominating Committee Director Removal Petition ("**Nominating Committee Director Removal Process Termination Notice**").

(d) Following the delivery of a Nominating Committee Director Removal Petition Notice to the EC Administration by a Nominating Committee Director Removal Petitioning Decisional Participant pursuant to Section 3.1(c)(i) of this Annex D, the Nominating Committee Director Removal Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Nominating Committee Director Removal Petition. The Nominating Committee Director Removal Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Nominating Committee Director Removal Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Nominating Committee Director Removal Supporting Decisional Participant**") during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Nominating Committee Director Removal Petition Period (the "**Nominating Committee Director Removal Petition Support Period**"), the Nominating Committee Director Removal Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Nominating Committee Director Removal Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Nominating Committee Director Removal Supporting Decisional Participant. Each Nominating Committee Director Removal Supporting Decisional Participant

shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Nominating Committee Director Removal Petition. Such Nominating Committee Director Removal Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Nominating Committee Director Removal Petitioning Decisional Participant who shall act as a liaison with respect to the Nominating Committee Director Removal Supported Petition;

(C) a statement as to whether or not the Nominating Committee Director Removal Petitioning Decisional Participant and/or the Nominating Committee Director Removal Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Nominating Committee Director Removal Community Forum (as defined in Section 3.1(e) of this Annex D) for the community to discuss the Nominating Committee Director Removal Supported Petition; and

(D) a statement as to whether the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant have determined to hold the Nominating Committee Director Removal Community Forum during the next scheduled ICANN public meeting.

The Nominating Committee Director Removal Process shall thereafter continue for such Nominating Committee Director Removal Petition pursuant to Section 3.1(e) of this Annex D.

(ii) The Nominating Committee Director Removal Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Petition Support Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice if the Nominating Committee Director Removal Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Nominating Committee Director Removal Petition during the Nominating Committee Director Removal Petition Support Period.

(e) If the EC Administration receives a Nominating Committee Director Removal Supported Petition under Section 3.1(d) of this Annex D during the Nominating Committee Director Removal Petition Support Period, ICANN shall, at the

direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Nominating Committee Director Removal Supported Petition ("**Nominating Committee Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in a Nominating Committee Director Removal Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Nominating Committee Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability.

(ii) The Nominating Committee Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the Nominating Committee Director Removal Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period ("**Nominating Committee Director Removal Community Forum Period**") unless the Nominating Committee Director Removal Supported Petition requested that the Nominating Committee Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the Nominating Committee Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s); provided, that, the date and time of any Nominating Committee Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the Nominating Committee Director Removal Supported Petition regarding his or her availability. If the Nominating Committee Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Petition Support Period, the Nominating Committee Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Nominating Committee Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the Nominating Committee Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Nominating Committee Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Nominating Committee Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Nominating Committee Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Nominating Committee Director Removal Petitioning Decisional Participant or the Nominating Committee Director Removal Supporting Decisional Participant, nor the individual who initiated the Nominating Committee Director Removal Petition, shall be permitted to participate in the management or moderation of the Nominating Committee Director Removal Community Forum.

(v) The Director subject to the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Nominating Committee Director Removal Supported Petition prior to the convening of and during the Nominating Committee Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the Nominating Committee Director Removal Supported Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the Nominating Committee Director Removal Community Forum in order to address the issues raised in the Nominating Committee Director Removal Supported Petition.

(vii) If the Nominating Committee Director Removal Petitioning Decisional Participant and each of the Nominating Committee Director Removal Supporting Decisional Participants for an applicable Nominating Committee Director Removal Supported Petition agree before, during or after the Nominating Committee Director Removal Community Forum that the issue

raised in such Nominating Committee Director Removal Supported Petition has been resolved, such Nominating Committee Director Removal Supported Petition shall be deemed withdrawn and the Nominating Committee Director Removal Process with respect to such Nominating Committee Director Removal Supported Petition will be terminated. If a Nominating Committee Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Nominating Committee Director Removal Supported Petition, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. For the avoidance of doubt, the Nominating Committee Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Nominating Committee Director Removal Petitioning Decisional Participant and the Nominating Committee Director Removal Supporting Decisional Participant(s).

(viii) During the Nominating Committee Director Removal Community Forum Period, an additional one or two Nominating Committee Director Removal Community Forums may be held at the discretion of a Nominating Committee Director Removal Petitioning Decisional Participant and a related Nominating Committee Director Removal Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Nominating Committee Director Removal Community Forum and shall promptly post on the Website a public record of the Nominating Committee Director Removal Community Forum as well as all written submissions of the Director who is the subject of the Nominating Committee Director Removal Supported Petition, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Nominating Committee Director Removal Community Forum.

(f) Following the expiration of the Nominating Committee Director Removal Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period (such period, the "**Nominating Committee Director Removal Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Nominating Committee Director Removal Supported Petition, (ii) objects to such Nominating Committee Director Removal Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Nominating

Committee Director Removal Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Nominating Committee Director Removal Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Nominating Committee Director Removal Decision Period).

(g) The EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver a written notice ("**Nominating Committee Director Removal Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of Section 3.1 of this Annex D, the EC has approved of the removal of the Director who is subject to the Nominating Committee Director Removal Process if the Nominating Committee Director Removal Supported Petition is (i) supported by three or more Decisional Participants and (ii) not objected to by more than one Decisional Participant.

(h) Upon the Secretary's receipt of a Nominating Committee Director Removal Notice, the Director subject to such Nominating Committee Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(i) If the Nominating Committee Director Removal Supported Petition does not obtain the support required by Section 3.1(g) of this Annex D, the Nominating Committee Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Nominating Committee Director Removal Decision Period, deliver to the Secretary a Nominating Committee Director Removal Process Termination Notice. The Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(j) If neither a Nominating Committee Director Removal Notice nor a Nominating Committee Director Removal Process Termination Notice are received by the Secretary prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Nominating Committee Director Removal Community Forum Period, the Nominating Committee Director Removal Process shall automatically terminate and the Director who was subject to the Nominating Committee Director Removal Process shall remain on the Board and shall not be subject to the Nominating Committee Director Removal Process for the remainder of the Director's current term.

(k) Notwithstanding anything in this Section 3.1 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of a Nominating Committee Director Removal Process ceases to be a Director, the Nominating Committee Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(l) ICANN shall promptly post to the Website any (i) Nominating Committee Director Removal Petition, (ii) Nominating Committee Director Removal Petition Notice, (iii) Nominating Committee Director Removal Supported Petition, (iv) Nominating Committee Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (v) Nominating Committee Director Removal Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.1.

Section 3.2. SO/AC DIRECTOR REMOVAL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to the ASO, ccNSO, GNSO or At-Large Community (as applicable, the "**Applicable Decisional Participant**") seeking to remove a Director who was nominated by that Supporting Organization or the At-Large Community in accordance with Section 7.2(a) of the Bylaws, and initiate the SO/AC Director Removal Process ("**SO/AC Director Removal Petition**"). The process set forth in this Section 3.2 of this Annex D is referred to herein as the "**SO/AC Director Removal Process**."

(b) During the period beginning on the date that the Applicable Decisional Participant received the SO/AC Director Removal Petition (such date of receipt, the "**SO/AC Director Removal Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the SO/AC Director Removal Petition Date (as it relates to a particular Director, the "**SO/AC Director Removal Petition Period**"), the Applicable Decisional Participant shall either accept or reject such SO/AC Director Removal Petition pursuant to the internal procedures of the Applicable Decisional Participant for the SO/AC Director Removal Petition; provided that the Applicable Decisional Participant shall not accept an SO/AC Director Removal Petition if, during the same term, the Director who is the subject of such SO/AC Director Removal Petition had previously been subject to an SO/AC Director Removal Petition that led to an SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D).

(c) During the SO/AC Director Removal Petition Period, the Applicable Decisional

Participant shall invite the Director subject to the SO/AC Director Removal Petition and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) to a dialogue with the individual(s) bringing the SO/AC Director Removal Petition and the Applicable Decisional Participant's representative on the EC Administration. The SO/AC Director Removal Petition may not be accepted unless this invitation has been extended upon reasonable notice and accommodation to the affected Director's availability. If the invitation is accepted by either the Director who is the subject of the SO/AC Director Removal Petition or the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director), the Applicable Decisional Participant shall not accept the SO/AC Director Removal Petition until the dialogue has occurred or there have been reasonable efforts to have the dialogue.

(i) If, in accordance with Section 3.2(b), the Applicable Decisional Participant accepts an SO/AC Director Removal Petition during the SO/AC Director Removal Petition Period, the Applicable Decisional Participant shall, within twenty-four (24) hours of the Applicable Decisional Participant's acceptance of the SO/AC Director Removal Petition, provide written notice ("**SO/AC Director Removal Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. Such SO/AC Director Removal Petition Notice shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Applicable Decisional Participant who shall act as a liaison with respect to the SO/AC Director Removal Petition Notice;

(C) a statement as to whether or not the Applicable Decisional Participant requests that ICANN organize a publicly-available conference call prior to the SO/AC Director Removal Community Forum (as defined in Section 3.2(d) of this Annex D) for the community to discuss the SO/AC Director Removal Petition; and

(D) a statement as to whether the Applicable Decisional Participant has determined to hold the SO/AC Director Removal Community Forum during the next scheduled ICANN public meeting.

The SO/AC Director Removal Process shall thereafter continue for such SO/AC Director Removal Petition pursuant to Section 3.2(d) of this Annex D.

(ii) If the EC Administration has not received an SO/AC Director Removal

Petition Notice pursuant to Section 3.2(c)(i) during the SO/AC Director Removal Petition Period, the SO/AC Director Removal Process shall automatically be terminated with respect to the applicable SO/AC Director Removal Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the SO/AC Director Removal Petition Period, deliver to the Secretary a notice certifying that the SO/AC Director Removal Process has been terminated with respect to the applicable SO/AC Director Removal Petition ("**SO/AC Director Removal Process Termination Notice**").

(d) If the EC Administration receives an SO/AC Director Removal Petition Notice under Section 3.2(c) of this Annex D during the SO/AC Director Removal Petition Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the SO/AC Director Removal Petition Notice ("**SO/AC Director Removal Community Forum**").

(i) If a publicly-available conference call has been requested in an SO/AC Director Removal Petition Notice, ICANN shall, at the direction of the EC Administration, schedule such call prior to any SO/AC Director Removal Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Director who is the subject of the SO/AC Director Removal Petition Notice regarding his or her availability.

(ii) The SO/AC Director Removal Community Forum shall be convened and concluded during the period beginning upon the expiration of the SO/AC Director Removal Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period ("**SO/AC Director Removal Community Forum Period**") unless the SO/AC Director Removal Petition Notice requested that the SO/AC Director Removal Community Forum be held during the next scheduled ICANN public meeting, in which case the SO/AC Director Removal Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Applicable Decisional Participant; provided, that the date and time of any SO/AC Director Removal Community Forum shall be determined after consultation with the Director who is the subject of the

SO/AC Director Removal Petition Notice regarding his or her availability. If the SO/AC Director Removal Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Petition Period, the SO/AC Director Removal Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The SO/AC Director Removal Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects, and/or, only if the SO/AC Director Removal Community Forum is held during an ICANN public meeting, face-to-face meetings. If the SO/AC Director Removal Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the SO/AC Director Removal Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the SO/AC Director Removal Community Forum in a fair and neutral manner; provided that no individual from the Applicable Decisional Participant, nor the individual who initiated the SO/AC Director Removal Petition, shall be permitted to participate in the management or moderation of the SO/AC Director Removal Community Forum.

(v) The Director subject to the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the SO/AC Director Removal Petition Notice prior to the convening of and during the SO/AC Director Removal Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) The Director who is the subject of the SO/AC Director Removal Petition Notice and the Chair of the Board (or the Vice Chair of the Board if the Chair is the affected Director) are expected to attend the SO/AC Director Removal Community Forum in order to address the issues raised in the SO/AC Director Removal Petition Notice.

(vii) If the Applicable Decisional Participant agrees before, during or after the SO/AC Director Removal Community Forum that the issue raised in

such SO/AC Director Removal Petition Notice has been resolved, such SO/AC Director Removal Petition Notice shall be deemed withdrawn and the SO/AC Director Removal Process with respect to such SO/AC Director Removal Petition Notice will be terminated. If an SO/AC Director Removal Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the SO/AC Director Removal Petition Notice, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. For the avoidance of doubt, the SO/AC Director Removal Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Applicable Decisional Participant.

(viii) During the SO/AC Director Removal Community Forum Period, an additional one or two SO/AC Director Removal Community Forums may be held at the discretion of the Applicable Decisional Participant or the EC Administration.

(ix) ICANN will provide support services for the SO/AC Director Removal Community Forum and shall promptly post on the Website a public record of the SO/AC Director Removal Community Forum as well as all written submissions of the Director who is the subject of the SO/AC Director Removal Petition Notice, ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the SO/AC Director Removal Community Forum.

(e) Following the expiration of the SO/AC Director Removal Community Forum Period, ICANN shall, at the request of the EC Administration, issue a request for comments and recommendations from the community, which shall be delivered to the Secretary for prompt posting on the Website along with a means for comments and recommendations to be submitted to ICANN on behalf of the EC Administration. This comment period shall remain open until 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the request for comments and recommendations was posted on the Website (the "**SO/AC Director Removal Comment Period**"). ICANN shall promptly post on the Website all comments and recommendations received by ICANN during the SO/AC Director Removal Comment Period.

(f) Following the expiration of the SO/AC Director Removal Comment Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the SO/AC Director Removal Comment Period (such period, the "**SO/AC Director Removal Decision Period**"), the Applicable Decisional Participant shall inform the EC Administration

in writing as to whether the Applicable Decisional Participant has support for the SO/AC Director Removal Petition Notice within the Applicable Decisional Participant of a three-quarters majority as determined pursuant to the internal procedures of the Applicable Decisional Participant ("**SO/AC Director Removal Notice**"). The Applicable Decisional Participant shall, within twenty-four (24) hours of obtaining such support, deliver the SO/AC Director Removal Notice to the EC Administration, the other Decisional Participants and Secretary, and ICANN shall, at the direction of the Applicable Decisional Participant, concurrently post on the Website an explanation provided by the Applicable Decisional Participant as to why the Applicable Decisional Participant has chosen to remove the affected Director. Upon the Secretary's receipt of the SO/AC Director Removal Notice from the EC Administration, the Director subject to such SO/AC Director Removal Notice shall be effectively removed from office and shall no longer be a Director and such Director's vacancy shall be filled in accordance with Section 7.12 of the Bylaws.

(g) If the SO/AC Director Removal Petition Notice does not obtain the support required by Section 3.2(f) of this Annex D, the SO/AC Director Removal Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the failure to obtain such support, deliver to the Secretary an SO/AC Director Removal Process Termination Notice. The Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(h) If neither an SO/AC Director Removal Notice nor an SO/AC Director Removal Process Termination Notice are received by the Secretary prior to the expiration of the SO/AC Director Removal Decision Period, the SO/AC Director Removal Process shall automatically terminate and the Director who was subject to the SO/AC Director Removal Process shall remain on the Board and shall not be subject to the SO/AC Director Removal Process for the remainder of the Director's current term.

(i) Notwithstanding anything in this Section 3.2 to the contrary, if, for any reason, including due to resignation, death or disability, a Director who is the subject of an SO/AC Director Removal Process ceases to be a Director, the SO/AC Director Removal Process for such Director shall automatically terminate without any further action of ICANN or the EC Administration.

(j) ICANN shall promptly post to the Website any (i) SO/AC Director Removal Petition, (ii) SO/AC Director Removal Petition Notice, (iii) SO/AC Director Removal Notice and the written explanation provided by the EC Administration as to why the EC has chosen to remove the relevant Director, (iv) SO/AC Director Removal Process Termination Notice, and (v) other notices the Secretary receives under

this Section 3.2.

Section 3.3. BOARD RECALL PROCESS

(a) Subject to the procedures and requirements developed by the applicable Decisional Participant, an individual may submit a petition to a Decisional Participant seeking to remove all Directors (other than the President) at the same time and initiate the Board Recall Process ("**Board Recall Petition**"), provided that a Board Recall Petition cannot be submitted solely on the basis of a matter decided by a Community IRP if (i) such Community IRP was initiated in connection with the Board's implementation of GAC Consensus Advice and (ii) the EC did not prevail in such Community IRP. Each Board Recall Petition shall include a rationale setting forth the reasons why such individual seeks to recall the Board. The process set forth in this Section 3.3 of this Annex D is referred to herein as the "**Board Recall Process**."

(b) A Decisional Participant that has received a Board Recall Petition shall either accept or reject such Board Recall Petition during the period beginning on the date the Decisional Participant received the Board Recall Petition ("**Board Recall Petition Date**") and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the date that is the 21st day after the Board Recall Petition Date (the "**Board Recall Petition Period**").

(i) If, in accordance with Section 3.3(b) of this Annex D, a Decisional Participant accepts a Board Recall Petition during the Board Recall Petition Period (such Decisional Participant, the "**Board Recall Petitioning Decisional Participant**"), the Board Recall Petitioning Decisional Participant shall, within twenty-four (24) hours of the expiration of its acceptance of the Board Recall Petition, provide written notice ("**Board Recall Petition Notice**") of such acceptance to the EC Administration, the other Decisional Participants and the Secretary. The Board Recall Petition Notice shall include the rationale upon which removal of the Board is sought. The Board Recall Process shall thereafter continue pursuant to Section 3.3(c) of this Annex D.

(ii) If the EC Administration has not received a Board Recall Petition Notice pursuant to Section 3.3(b)(i) of this Annex D during the Board Recall Petition Period, the Board Recall Process shall automatically be terminated with respect to the Board Recall Petition and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Period, deliver to the Secretary a notice certifying that the Board Recall Process has been terminated with respect to the Board Recall Petition

("Board Recall Process Termination Notice").

(c) Following the delivery of a Board Recall Petition Notice to the EC Administration by a Board Recall Petitioning Decisional Participant pursuant to Section 3.3(b)(i) of this Annex D, the Board Recall Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Board Recall Petition. The Board Recall Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Board Recall Petitioning Decisional Participant obtains the support of at least two other Decisional Participants (each, a "**Board Recall Supporting Decisional Participant**") during the period beginning upon the expiration of the Board Recall Petition Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 7th day after the expiration of the Board Recall Petition Period (the "**Board Recall Petition Support Period**"), the Board Recall Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Board Recall Supported Petition**") within twenty-four hours of receiving the support of at least two Board Recall Supporting Decisional Participants. Each Board Recall Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Board Recall Petition. Such Board Recall Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Board Recall Petitioning Decisional Participant who shall act as a liaison with respect to the Board Recall Supported Petition;

(C) a statement as to whether or not the Board Recall Petitioning Decisional Participant and/or the Board Recall Supporting Decisional Participants requests that ICANN organize a publicly-available conference call prior to the Board Recall Community Forum (as defined in Section 3.3(d) of this Annex D) for the community to discuss the Board Recall Supported Petition; and

(D) a statement as to whether the Board Recall Petitioning Decisional

Participant and the Board Recall Supporting Decisional Participants have determined to hold the Board Recall Community Forum during the next scheduled ICANN public meeting.

The Board Recall Process shall thereafter continue for such Board Recall Supported Petition pursuant to Section 3.3(d) of this Annex D.

(ii) The Board Recall Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Petition Support Period, deliver to the Secretary a Board Recall Process Termination Notice if the Board Recall Petitioning Decisional Participant is unable to obtain the support of at least two other Decisional Participants for its Board Recall Petition during the Board Recall Petition Support Period.

(d) If the EC Administration receives a Board Recall Supported Petition under Section 3.3(c) of this Annex D during the Board Recall Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested parties may discuss the Board Recall Supported Petition ("**Board Recall Community Forum**").

(i) If a publicly-available conference call has been requested in a Board Recall Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Board Recall Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website. The date and time of any such conference call shall be determined after consultation with the Board regarding the availability of the Directors.

(ii) The Board Recall Community Forum shall be convened and concluded during the period beginning upon the expiration of the Board Recall Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period ("**Board Recall Community Forum Period**") unless the Board Recall Supported Petition requested that the Board Recall Community Forum be held during the next scheduled ICANN public meeting, in which case the Board Recall Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Board Recall Petitioning Decisional Participant and

the Board Recall Supporting Decisional Participants; provided, that, the date and time of any Board Recall Community Forum shall be determined after consultation with the Board regarding the availability of the Directors. If the Board Recall Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Petition Support Period, the Board Recall Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Board Recall Community Forum shall have at least one face-to-face meeting and may also be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects. If the Board Recall Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of the Board Recall Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Board Recall Community Forum in a fair and neutral manner; provided that no individual from the Board Recall Petitioning Decisional Participant or a Board Recall Supporting Decisional Participant, nor the individual who initiated the Board Recall Petition, shall be permitted to participate in the management or moderation of the Board Recall Community Forum.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Board Recall Supported Petition prior to the convening of and during the Board Recall Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and the full Board are expected to attend the Board Recall Community Forum in order to address the issues raised in the Board Recall Supported Petition.

(vii) If the Board Recall Petitioning Decisional Participant and each of the Board Recall Supporting Decisional Participants for the Board Recall Supported Petition agree before, during or after the Board Recall Community Forum that the issue raised in such Board Recall Supported Petition has been resolved, such Board Recall Supported Petition shall be

deemed withdrawn and the Board Recall Process with respect to such Board Recall Supported Petition will be terminated. If a Board Recall Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Board Recall Supported Petition, deliver to the Secretary a Board Recall Process Termination Notice. For the avoidance of doubt, the Board Recall Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants.

(viii) During the Board Recall Community Forum Period, an additional one or two Board Recall Community Forums may be held at the discretion of the Board Recall Petitioning Decisional Participant and the Board Recall Supporting Decisional Participants, or the EC Administration.

(ix) ICANN will provide support services for the Board Recall Community Forum and shall promptly post on the Website a public record of the Board Recall Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Board Recall Community Forum.

(e) Following the expiration of the Board Recall Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Board Recall Community Forum Period (such period, the "**Board Recall Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Board Recall Supported Petition, (ii) objects to such Board Recall Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to such Board Recall Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to expiration of the Board Recall Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Board Recall Decision Period).

(f) The EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver a written notice ("**EC Board Recall Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 3.3 of this Annex D, the EC has

resolved to remove all Directors (other than the President) if (after accounting for any adjustments to the below as required by the GAC Carve-out pursuant to Section 3.6(e) of the Bylaws if an IRP Panel found that, in implementing GAC Consensus Advice, the Board acted inconsistently with the Articles or Bylaws) a Board Recall Supported Petition (i) is supported by four or more Decisional Participants, and (ii) is not objected to by more than one Decisional Participant.

(g) Upon the Secretary's receipt of an EC Board Recall Notice, all Directors (other than the President) shall be effectively removed from office and shall no longer be Directors and such vacancies shall be filled in accordance with Section 7.12 of the Bylaws.

(h) If the Board Recall Supported Petition does not obtain the support required by Section 3.3(f) of this Annex D, the Board Recall Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Board Recall Decision Period, deliver to the Secretary a Board Recall Process Termination Notice. All Directors shall remain on the Board.

(i) If neither an EC Board Recall Notice nor a Board Recall Process Termination Notice are received by the Secretary prior to the expiration of the Board Recall Decision Period, the Board Recall Process shall automatically terminate and all Directors shall remain on the Board.

(j) ICANN shall promptly post to the Website any (i) Board Recall Petition, (ii) Board Recall Petition Notice, (iii) Board Recall Supported Petition, (iv) EC Board Recall Notice and the written explanation provided by the EC Administration as to why the EC has chosen to recall the Board, (v) Board Recall Process Termination Notice, and (vi) other notices the Secretary receives under this Section 3.3.

Article 4 PROCEDURE FOR EXERCISE OF EC'S RIGHTS TO INITIATE MEDIATION, A COMMUNITY IRP OR RECONSIDERATION REQUEST

Section 4.1. MEDIATION INITIATION

(a) If the Board refuses or fails to comply with a decision by the EC delivered to the Secretary pursuant to an EC Approval Notice, EC Rejection Notice, Nominating Committee Director Removal Notice, SO/AC Director Removal Notice or EC Board Recall Notice pursuant to and in compliance with Article 1, Article 2 or Article 3 of this Annex D, or rejects or otherwise does not take action that is consistent with a final IFR Recommendation, Special IFR Recommendation, SCWG Creation Recommendation or SCWG Recommendation, as applicable (each, an "**EC Decision**"), the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC

Decision during the applicable decision period may request that the EC initiate mediation with the Board in relation to that EC Decision as contemplated by Section 4.7 of the Bylaws, by delivering a notice to the EC Administration, the Decisional Participants and the Secretary requesting the initiation of a mediation ("**Mediation Initiation Notice**"). ICANN shall promptly post to the Website any Mediation Initiation Notice.

(b) As soon as practicable after receiving a Mediation Initiation Notice, the EC Administration and the Secretary shall initiate mediation, which shall proceed in accordance with Section 4.7 of the Bylaws.

Section 4.2. COMMUNITY IRP

(a) After completion of a mediation under Section 4.7 of the Bylaws, the EC Administration representative of any Decisional Participant who supported the exercise by the EC of its rights in the applicable EC Decision during the applicable decision period may request that the EC initiate a Community IRP (a "**Community IRP Petitioning Decisional Participant**"), as contemplated by Section 4.3 of the Bylaws, by delivering a notice to the EC Administration and the Decisional Participants requesting the initiation of a Community IRP ("**Community IRP Petition**"). The Community IRP Petitioning Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. The process set forth in this Section 4.2 of this Annex D as it relates to a particular Community IRP Petition is referred to herein as the "**Community IRP Initiation Process**."

(b) Following the delivery of a Community IRP Petition to the EC Administration by a Community IRP Petitioning Decisional Participant pursuant to Section 4.2(a) of this Annex D (which delivery date shall be referred to herein as the "**Community IRP Notification Date**"), the Community IRP Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community IRP Petition. The Community IRP Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community IRP Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community IRP Supporting Decisional Participant**") during the period beginning on the Community IRP Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community IRP Notification Date (the "**Community IRP Petition Support Period**"), the Community IRP Petitioning Decisional Participant

shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community IRP Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community IRP Supporting Decisional Participant. Each Community IRP Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community IRP Petition. Such Community IRP Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community IRP Petitioning Decisional Participant who shall act as a liaison with respect to the Community IRP Supported Petition;

(C) a statement as to whether or not the Community IRP Petitioning Decisional Participant and/or the Community IRP Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community IRP Community Forum (as defined in Section 4.2(c) of this Annex D) for the community to discuss the Community IRP Supported Petition;

(D) a statement as to whether the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant have determined to hold the Community IRP Community Forum during the next scheduled ICANN public meeting;

(E) where the Community IRP Supported Petition relates to a Fundamental Bylaw Amendment, a PDP Fundamental Bylaw Statement if applicable and, if so, the name of the Fundamental Bylaw Amendment PDP Decisional Participant;

(F) where the Community IRP Supported Petition relates to an Articles Amendment, a PDP Articles Statement if applicable and, if so, the name of the Articles Amendment PDP Decisional Participant;

(G) where the Community IRP Supported Petition relates to a Standard Bylaw Amendment, a PDP Standard Bylaw Statement if applicable and, if so, the name of the Standard Bylaw Amendment PDP Decisional Participant; and

(H) where the Community IRP Supported Petition relates to a policy recommendation of a cross community working group chartered by more than one Supporting Organization ("**CCWG Policy Recommendation**"), a

statement citing the specific CCWG Policy Recommendation and related provision in the Community IRP Supported Petition ("**CCWG Policy Recommendation Statement**"), and, if so, the name of any Supporting Organization that is a Decisional Participant that approved the CCWG Policy Recommendation ("**CCWG Policy Recommendation Decisional Participant**").

The Community IRP Initiation Process shall thereafter continue for such Community IRP Supported Petition pursuant to Section 4.2(c) of this Annex D.

(ii) The Community IRP Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Petition Support Period, deliver to the Secretary a notice certifying that the Community IRP Initiation Process has been terminated with respect to the Community IRP included in the Community IRP Petition ("**Community IRP Termination Notice**") if:

(A) no Community IRP Petitioning Decisional Participant is able to obtain the support of at least one other Decisional Participant for its Community IRP Petition during the Community IRP Petition Support Period;

(B) where the Community IRP Supported Petition includes a PDP Fundamental Bylaw Statement, the Fundamental Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(C) where the Community IRP Supported Petition includes a PDP Articles Statement, the Articles Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants;

(D) where the Community IRP Supported Petition includes a PDP Standard Bylaw Statement, the Standard Bylaw Amendment PDP Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants; or

(E) where the Community IRP Supported Petition includes a CCWG Policy Recommendation Statement, the CCWG Policy Recommendation Decisional Participant is not (x) the Community IRP Petitioning Decisional Participant or (y) one of the Community IRP Supporting Decisional Participants.

(c) If the EC Administration receives a Community IRP Supported Petition under Section 4.2(b) of this Annex D during the Community IRP Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community IRP Supported Petition ("**Community IRP Community Forum**").

(i) If a publicly-available conference call has been requested in a Community IRP Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community IRP Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community IRP Community Forum shall be convened and concluded during the period beginning on the expiration of the Community IRP Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period ("**Community IRP Community Forum Period**") unless the Community IRP Supported Petition requested that the Community IRP Community Forum be held during the next scheduled ICANN public meeting, in which case the Community IRP Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s). If the Community IRP Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community IRP Petition Support Period, the Community IRP Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community IRP Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community IRP Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community IRP Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community IRP Community Forum, which

ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community IRP Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community IRP Supported Petition prior to the convening of and during the Community IRP Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community IRP Community Forum in order to discuss the Community IRP Supported Petition.

(vii) If the Community IRP Petitioning Decisional Participant and each of the Community IRP Supporting Decisional Participants for the Community IRP Supported Petition agree before, during or after a Community IRP Community Forum that the issue raised in such Community IRP Supported Petition has been resolved, such Community IRP Supported Petition shall be deemed withdrawn and the Community IRP Initiation Process with respect to such Community IRP Supported Petition will be terminated. If a Community IRP Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community IRP Supported Petition, deliver to the Secretary a Community IRP Termination Notice. For the avoidance of doubt, the Community IRP Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community IRP Petitioning Decisional Participant and the Community IRP Supporting Decisional Participant(s).

(viii) During the Community IRP Community Forum Period, an additional one or two Community IRP Community Forums may be held at the discretion of a Community IRP Petitioning Decisional Participant and a related Community IRP Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Community IRP Community Forum and shall promptly post on the Website a public record of the Community IRP Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community IRP Community Forum.

(d) Following the expiration of the Community IRP Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community IRP Community Forum Period (such period, the "**Community IRP Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community IRP Supported Petition, (ii) objects to such Community IRP Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community IRP Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community IRP Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community IRP Decision Period).

(e) The EC Administration, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, shall promptly deliver a written notice ("**EC Community IRP Initiation Notice**") to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.2 of this Annex D, the EC has resolved to accept the Community IRP Supported Petition if:

(i) A Community IRP Supported Petition that does not include a PDP Fundamental Bylaw Statement, a PDP Articles Statement, a PDP Standard Bylaw Statement or a CCWG Policy Recommendation Statement (A) is supported by three or more Decisional Participants, and (B) is not objected to by more than one Decisional Participant;

(ii) A Community IRP Supported Petition that (A) includes a PDP Fundamental Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Fundamental Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iii) A Community IRP Supported Petition that (A) includes a PDP Articles Statement, (B) is supported by three or more Decisional Participants (including the Articles Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant;

(iv) A Community IRP Supported Petition that (A) includes a PDP Standard Bylaw Statement, (B) is supported by three or more Decisional Participants (including the Standard Bylaw Amendment PDP Decisional Participant), and (C) is not objected to by more than one Decisional Participant; or

(v) A Community IRP Supported Petition that (A) includes a CCWG Policy Recommendation Statement, (B) is supported by three or more Decisional Participants (including the CCWG Policy Recommendation Decisional Participant), and (C) is not objected to by more than one Decisional Participant.

(f) If the Community IRP Supported Petition does not obtain the support required by Section 4.2(e) of this Annex D, the Community IRP Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community IRP Decision Period, deliver to the Secretary a Community IRP Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community IRP Petition, (ii) Community IRP Supported Petition, (iii) EC Community IRP Initiation Notice, (iv) Community IRP Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.2.

Section 4.3. COMMUNITY RECONSIDERATION REQUEST

(a) Any Decisional Participant may request that the EC initiate a Reconsideration Request (a "**Community Reconsideration Petitioning Decisional Participant**"), as contemplated by Section 4.2(b) of the Bylaws, by delivering a notice to the EC Administration and the other Decisional Participants, with a copy to the Secretary for ICANN to promptly post on the Website, requesting the review or reconsideration of an action or inaction of the ICANN Board or staff ("**Community Reconsideration Petition**"). A Community Reconsideration Petition must be delivered within 30 days after the occurrence of any of the conditions set forth in Section 4.2(g)(i)(A), (B) or (C) of the Bylaws. In that instance, the Community Reconsideration Petition must be delivered within 30 days from the initial posting of the rationale. The process set forth in this Section 4.3 of this Annex D as it relates to a particular Community Reconsideration Petition is referred to herein as the "**Community Reconsideration Initiation Process**."

(b) Following the delivery of a Community Reconsideration Petition to the EC Administration by a Community Reconsideration Petitioning Decisional Participant pursuant to Section 4.3(a) of this Annex D (which delivery date shall be referred to herein as the "**Community Reconsideration Notification Date**"), the Community

Reconsideration Petitioning Decisional Participant shall contact the EC Administration and the other Decisional Participants to determine whether any other Decisional Participants support the Community Reconsideration Petition. The Community Reconsideration Petitioning Decisional Participant shall forward such communication to the Secretary for ICANN to promptly post on the Website.

(i) If the Community Reconsideration Petitioning Decisional Participant obtains the support of at least one other Decisional Participant (a "**Community Reconsideration Supporting Decisional Participant**") during the period beginning on the Community Reconsideration Notification Date and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the Community Reconsideration Notification Date (the "**Community Reconsideration Petition Support Period**"), the Community Reconsideration Petitioning Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary ("**Community Reconsideration Supported Petition**") within twenty-four (24) hours of receiving the support of at least one Community Reconsideration Supporting Decisional Participant. Each Community Reconsideration Supporting Decisional Participant shall provide a written notice to the EC Administration, the other Decisional Participants and the Secretary within twenty-four (24) hours of providing support to the Community Reconsideration Petition. Such Community Reconsideration Supported Petition shall include:

(A) a supporting rationale in reasonable detail;

(B) contact information for at least one representative who has been designated by the Community Reconsideration Petitioning Decisional Participant who shall act as a liaison with respect to the Community Reconsideration Supported Petition;

(C) a statement as to whether or not the Community Reconsideration Petitioning Decisional Participant and/or the Community Reconsideration Supporting Decisional Participant requests that ICANN organize a publicly-available conference call prior to the Community Reconsideration Community Forum (as defined in Section 4.3(c) of this Annex D) for the community to discuss the Community Reconsideration Supported Petition; and

(D) a statement as to whether the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting

Decisional Participant have determined to hold the Community Reconsideration Community Forum during the next scheduled ICANN public meeting.

The Community Reconsideration Initiation Process shall thereafter continue for such Community Reconsideration Supported Petition pursuant to Section 4.3(c) of this Annex D.

(ii) The Community Reconsideration Initiation Process shall automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Petition Support Period, deliver to the Secretary a notice certifying that the Community Reconsideration Initiation Process has been terminated with respect to the Reconsideration Request included in the Community Reconsideration Petition ("**Community Reconsideration Termination Notice**") if the Community Reconsideration Petitioning Decisional Participant is unable to obtain the support of at least one other Decisional Participant for its Community Reconsideration Petition during the Community Reconsideration Petition Support Period.

(c) If the EC Administration receives a Community Reconsideration Supported Petition under Section 4.3(b) of this Annex D during the Community Reconsideration Petition Support Period, ICANN shall, at the direction of the EC Administration, convene a forum at which the Decisional Participants and interested third parties may discuss the Community Reconsideration Supported Petition ("**Community Reconsideration Community Forum**").

(i) If a publicly-available conference call has been requested in a Community Reconsideration Supported Petition, ICANN shall, at the direction of the EC Administration, schedule such call prior to any Community Reconsideration Community Forum, and inform the Decisional Participants of the date, time and participation methods of such conference call, which ICANN shall promptly post on the Website.

(ii) The Community Reconsideration Community Forum shall be convened and concluded during the period beginning on the expiration of the Community Reconsideration Petition Support Period and ending at 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period ("**Community Reconsideration Forum Period**") unless the Community Reconsideration Supported Petition requested that

the Community Reconsideration Community Forum be held during the next scheduled ICANN public meeting, in which case the Community Reconsideration Community Forum shall be held during the next scheduled ICANN public meeting on the date and at the time determined by ICANN, taking into account any date and/or time requested by the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s). If the Community Reconsideration Community Forum is held during the next scheduled ICANN public meeting and that public meeting is held after 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 30th day after the expiration of the Community Reconsideration Petition Support Period, the Community Reconsideration Community Forum Period shall expire at 11:59 p.m., local time of the city hosting such ICANN public meeting on the official last day of such ICANN public meeting.

(iii) The Community Reconsideration Community Forum shall be conducted via remote participation methods such as teleconference, web-based meeting room and/or such other form of remote participation as the EC Administration selects and/or, only if the Community Reconsideration Community Forum is held during an ICANN public meeting, face-to-face meetings. If the Community Reconsideration Community Forum will not be held during an ICANN public meeting, the EC Administration shall promptly inform ICANN of the date, time and participation methods of such Community Reconsideration Community Forum, which ICANN shall promptly post on the Website.

(iv) The EC Administration shall manage and moderate the Community Reconsideration Community Forum in a fair and neutral manner.

(v) ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) may deliver to the EC Administration in writing its views and questions on the Community Reconsideration Supported Petition prior to the convening of and during the Community Reconsideration Community Forum. Any written materials delivered to the EC Administration shall also be delivered to the Secretary for prompt posting on the Website in a manner deemed appropriate by ICANN.

(vi) ICANN staff and Directors representing the Board are expected to attend the Community Reconsideration Community Forum in order to discuss the Community Reconsideration Supported Petition.

(vii) If the Community Reconsideration Petitioning Decisional Participant and each of the Community Reconsideration Supporting Decisional Participants for a Community Reconsideration Supported Petition agree

before, during or after the Community Reconsideration Community Forum that the issue raised in such Community Reconsideration Supported Petition has been resolved, such Community Reconsideration Supported Petition shall be deemed withdrawn and the Community Reconsideration Initiation Process with respect to such Community Reconsideration Supported Petition will be terminated. If a Community Reconsideration Initiation Process is terminated, the EC Administration shall, within twenty-four (24) hours of the resolution of the issue raised in the Community Reconsideration Supported Petition, deliver to the Secretary a Community Reconsideration Termination Notice. For the avoidance of doubt, the Community Reconsideration Community Forum is not a decisional body and the foregoing resolution process shall be handled pursuant to the internal procedures of the Community Reconsideration Petitioning Decisional Participant and the Community Reconsideration Supporting Decisional Participant(s).

(viii) During the Community Reconsideration Community Forum Period, an additional one or two Community Reconsideration Community Forums may be held at the discretion of a Community Reconsideration Petitioning Decisional Participant and a related Community Reconsideration Supporting Decisional Participant, or the EC Administration.

(ix) ICANN will provide support services for the Community Reconsideration Community Forum and shall promptly post on the Website a public record of the Community Reconsideration Community Forum as well as all written submissions of ICANN and any Supporting Organization or Advisory Committee (including Decisional Participants) related to the Community Reconsideration Community Forum.

(d) Following the expiration of the Community Reconsideration Community Forum Period, at any time or date prior to 11:59 p.m. (as calculated by local time at the location of ICANN's principal office) on the 21st day after the expiration of the Community Reconsideration Community Forum Period (such period, the "**Community Reconsideration Decision Period**"), each Decisional Participant shall inform the EC Administration in writing as to whether such Decisional Participant (i) supports such Community Reconsideration Supported Petition, (ii) objects to such Community Reconsideration Supported Petition or (iii) has determined to abstain from the matter (which shall not count as supporting or objecting to the Community Reconsideration Supported Petition), and each Decisional Participant shall forward such notice to the Secretary for ICANN to promptly post on the Website. If a Decisional Participant does not inform the EC Administration of any of the foregoing prior to the expiration of the Community

Reconsideration Decision Period, the Decisional Participant shall be deemed to have abstained from the matter (even if such Decisional Participant informs the EC Administration of its support or objection following the expiration of the Community Reconsideration Decision Period).

(e) If (i) three or more Decisional Participants support the Community Reconsideration Supported Petition and (ii) no more than one Decisional Participant objects to the Community Reconsideration Supported Petition, then the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver a notice to the Secretary certifying that, pursuant to and in compliance with the procedures and requirements of this Section 4.3 of this Annex D, the EC has resolved to accept the Community Reconsideration Supported Petition ("**EC Reconsideration Initiation Notice**"). The Reconsideration Request shall then proceed in accordance with Section 4.2 of the Bylaws.

(f) If the Community Reconsideration Supported Petition does not obtain the support required by Section 4.3(e) of this Annex D, the Community Reconsideration Initiation Process will automatically be terminated and the EC Administration shall, within twenty-four (24) hours of the expiration of the Community Reconsideration Decision Period, deliver to the Secretary a Community Reconsideration Termination Notice.

(g) ICANN shall promptly post to the Website any (i) Community Reconsideration Petition, (ii) Community Reconsideration Supported Petition, (iii) EC Reconsideration Initiation Notice, (iv) Community Reconsideration Termination Notice, (v) written explanation provided by the EC Administration related to any of the foregoing, and (vi) other notices the Secretary receives under this Section 4.3.

Annex E: Caretaker ICANN Budget Principles

1. Principles

The caretaker ICANN budget (the "**Caretaker ICANN Budget**") is defined as an annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker ICANN Budget Principles**"):

- a. It is based on then-current ICANN operations;
- b. It allows ICANN to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an ICANN Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN to react to emergency situations in a fashion that

preserves the continuation of its operations;

- d. It allows ICANN to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It enables ICANN to avoid waste of its resources during the rejection period (i.e., the period between when an ICANN Budget is rejected by the EC pursuant to the Bylaws and when an ICANN Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would otherwise need to be restarted at a materially incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN from initiating activities that remains subject to community consideration (or for which that community consideration has not concluded) with respect to the applicable ICANN Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the ICANN Budget that was rejected by the EC that triggered the need for the Caretaker ICANN Budget.

1. Examples

Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically include:

- i. the functioning of the EC, the Decisional Participants, and any Supporting Organizations or Advisory Committees that are not Decisional Participants;
- ii. the functioning of all redress mechanisms, including without limitation the office of the Ombudsman, the IRP, and mediation;
- iii. employment of staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) across all locations, including all related compensation, benefits, social security, pension, and other employment costs;
- iv. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) in the normal course of business;
- v. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the

mechanisms to employ such contractors) or vendors as needed in the normal course of business;

vi. operating all existing ICANN offices, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

vii. contracting with vendors as needed in the normal course of business;

viii. conducting ICANN meetings and ICANN intercessional meetings previously contemplated; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker ICANN Budget Principles, of what a Caretaker ICANN Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the ICANN Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker ICANN Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker ICANN Budget Principles;

iii. entering into new agreements in relation to opening or operating new ICANN locations/offices, unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles;

iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker ICANN Budget Principles; and

v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker ICANN Budget.

Annex F: Caretaker IANA Budget Principles

1. Principles

The caretaker IANA Budget (the "**Caretaker IANA Budget**") is defined as an

annual operating plan and budget that is established by the CFO in accordance with the following principles (the "**Caretaker IANA Budget Principles**"):

- a. It is based on then-current operations of the IANA functions;
- b. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to "take good care" and not expose itself to additional enterprise risk(s) as a result of the rejection of an IANA Budget by the EC pursuant to the Bylaws;
- c. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to react to emergency situations in a fashion that preserves the continuation of its operations;
- d. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to abide by its existing obligations (including Articles of Incorporation, Bylaws, and contracts, as well as those imposed under law);
- e. It allows ICANN, in its responsibility to fund the operations of the IANA functions, to avoid waste of its resources during the rejection period (i.e., the period between when an IANA Budget is rejected by the EC pursuant to the Bylaws and when an IANA Budget becomes effective in accordance with the Bylaws) or immediately thereafter, by being able to continue activities during the rejection period that would have otherwise need to be restarted at an incremental cost; and
- f. Notwithstanding any other principle listed above, it prevents ICANN, in its responsibility to fund the operations of the IANA functions, from initiating activities that remain subject to community consideration (or for which that community consultation has not concluded) with respect to the applicable IANA Budget, including without limitation, preventing implementation of any expenditure or undertaking any action that was the subject of the IANA Budget that was rejected by the EC that triggered the need for the Caretaker IANA Budget.

1. Examples

- a. Below is a non-exhaustive list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically include:
 - i. employment of staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) across all locations,

including all related compensation, benefits, social security, pension, and other employment costs;

ii. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) in the normal course of business;

iii. necessary or time-sensitive travel costs for staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or vendors as needed in the normal course of business;

iv. operating all existing offices used in the performance of the IANA functions, and continuing to assume obligations relative to rent, utilities, maintenance, and similar matters;

v. contracting with vendors as needed in the normal course of business;

vi. participating in meetings and conferences previously contemplated;

vii. participating in engagement activities with ICANN's Customer Standing Committee or the customers of the IANA functions;

viii. fulfilling obligations (including financial obligations under agreements and memoranda of understanding to which ICANN or its affiliates is a party that relate to the IANA functions; and

ix. participating in engagement activities in furtherance of the approved Strategic Plan.

b. Below is a non-limitative list of examples, to assist with the interpretation of the Caretaker IANA Budget Principles, of what a Caretaker IANA Budget would logically exclude:

i. hiring staff (i.e., employees and individual long term paid contractors serving in locations where the entity or entities performing the IANA functions does not have the mechanisms to employ such contractors) or entering into new agreements in relation to activities that are the subject of the rejection of the IANA Budget by the EC pursuant to the Bylaws, unless excluding these actions would violate any of the Caretaker IANA Budget Principles;

ii. in the normal course of business, travel not deemed indispensable during the rejection period, unless the lack of travel would violate any of the Caretaker IANA Budget Principles;

- iii. entering into new agreements in relation to opening or operating new locations/offices where the IANA functions shall be performed, unless the lack of commitment would violate any of the Caretaker IANA Budget Principles;
- iv. entering into new agreements with governments (or their affiliates), unless the lack of commitment would violate any of the Caretaker IANA Budget Principles; and
- v. the proposed expenditure that was the basis for the rejection by the EC that triggered the need for the Caretaker IANA Budget.

ANNEX G-1

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registrars are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services, or the DNS;
- functional and performance specifications for the provision of registrar services;
- registrar policies reasonably necessary to implement Consensus Policies relating to a gTLD registry;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names, but including where such policies take into account use of the domain names); or
- restrictions on cross-ownership of registry operators and registrars or resellers and regulations and restrictions with respect to registrar and registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;
- reservation of registered names in a TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual

property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);

- maintenance of and access to accurate and up-to-date information concerning registered names and name servers;
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility among continuing registrars of the registered names sponsored in a TLD by a registrar losing accreditation; and
- the transfer of registration data upon a change in registrar sponsoring one or more registered names.

ANNEX G-2

The topics, issues, policies, procedures and principles referenced in Section 1.1(a)(i) with respect to gTLD registries are:

- issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or DNS;
- functional and performance specifications for the provision of registry services;
- security and stability of the registry database for a TLD;
- registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
- resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
- restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.

Examples of the above include, without limitation:

- principles for allocation of registered names in a TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
- prohibitions on warehousing of or speculation in domain names by registries or registrars;

- reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration);
- maintenance of and access to accurate and up-to-date information concerning domain name registrations; and
- procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.

[1] When "1 October 2016" is used, that signals that the date that will be used is the effective date of the Bylaws.



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EXHIBIT RM-3

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Generic Names Supporting Organization

Acronym Helper  

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Final Report - Introduction of New Generic Top-Level Domains

Date:
08 August 2007

Last Updated: 01 May 2018

ICANN Generic Names Supporting Organisation

Final Report

Introduction of New Generic Top-Level Domains

8 August 2007

Part A: Final Report

Introduction of New Generic Top-Level Domains

ABSTRACT

BACKGROUND

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

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

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FINAL REPORT: PART B

ABSTRACT

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

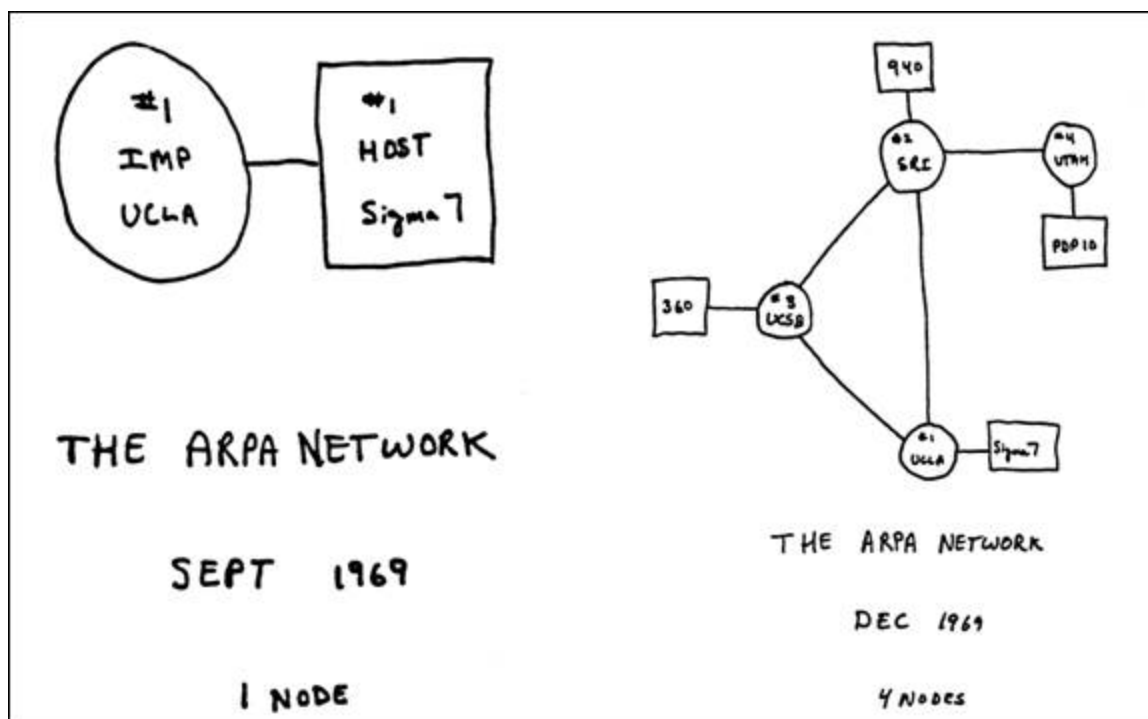
The GNSO Committee on New Top-Level Domains consisted of all GNSO Council members. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

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

BACKGROUND

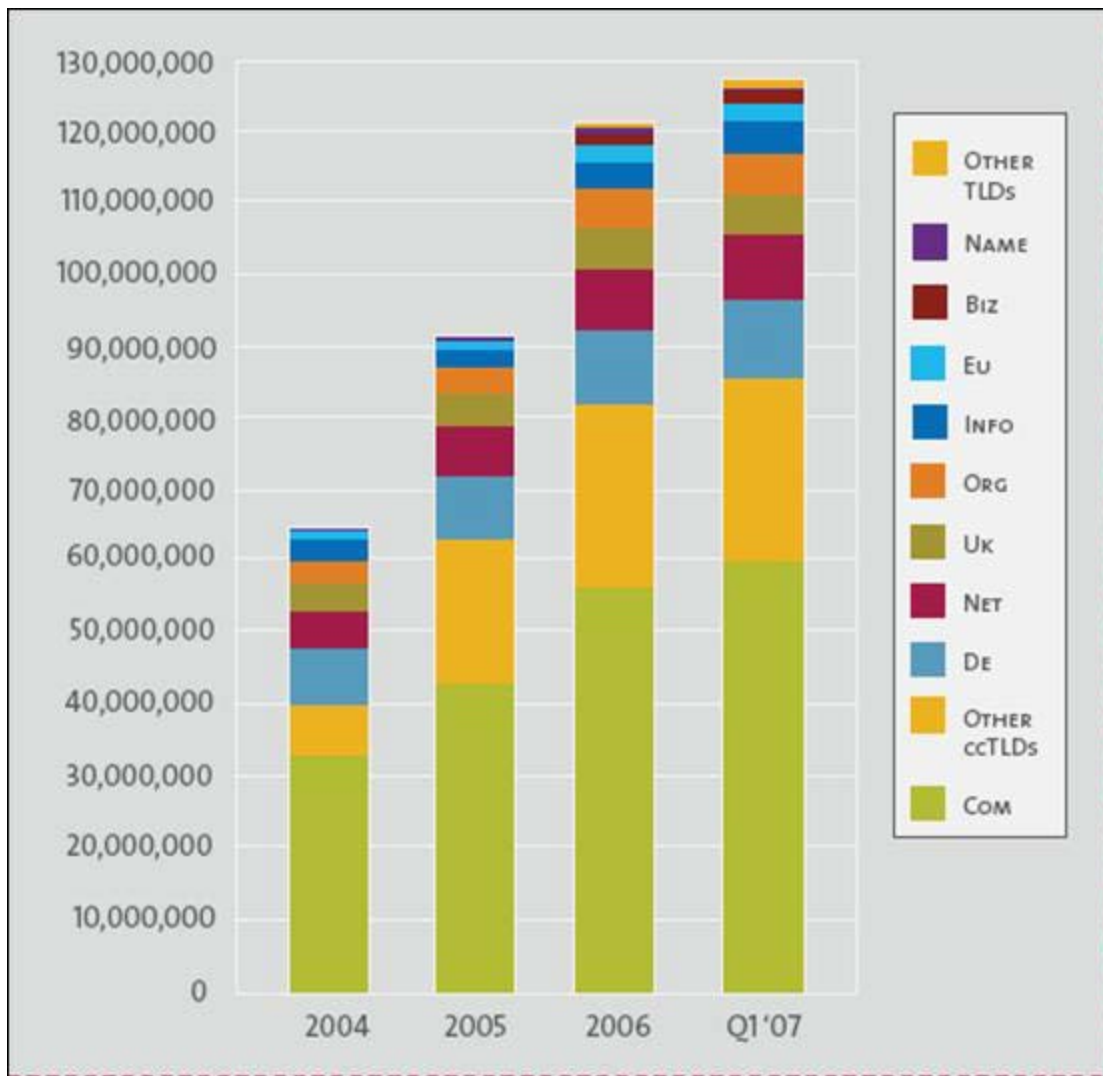
1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the three sets of unique identifiers for the Internet". These are "domain names"(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers". ICANN is also responsible for the "operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions". These elements are all contained in ICANN's Mission and Core Values[1] in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.
2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process (PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community[2].
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process[4].
4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the

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



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

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



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

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

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

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

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

the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.

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

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

- (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
- (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
- (iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
- (iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.
- (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

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

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

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in

accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[24].

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

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

4. The Principles have support from all GNSO Constituencies.

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

	RECOMMENDATIONS[26]	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully</p>	M1-3 & CV1-11

	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	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word[27].	M1-3 & CV 1 & 3
6*	Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially	CV5-9

	reasonable length.	
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

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

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.	CV 5, 6, 8 & 9
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may[29]: i) resolve contention between them within a pre-established timeframe	CV 7-10

	<p>ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;</p> <p>iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.</p>	
IG H*	<p>Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions:</p> <p>(i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and</p> <p>(ii) a formal objection process is initiated.</p> <p>Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim.</p> <p>Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.</p>	CV 7 - 10
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30].	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10

The following process, definitions and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e) **implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.
- f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.

Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.

The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

	<p>g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</p>	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

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

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

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

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

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

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

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

2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations

found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).

3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report[33] that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.
4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.
5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-2004 round of sponsored top-level domains and full range of other historic materials which are posted at <http://gnso.icann.org/issues/new-gtlds/>
6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[34]. These papers augmented a full set of GNSO Constituency Statements[35] and a set of Constituency Impact Statements[36] that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.
7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:
 - (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
 - (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
 - (iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
 - (iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.
 - (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.
8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gTLD-council mailing list[37]. Each of those statements is referred to throughout the next sections[38] and are found in full in Part B of the *Report*. The NCUC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.

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

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

TERM OF REFERENCE -- SELECTION CRITERIA

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

- i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below^[39].
- ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website^[40]. Naturally, as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated." The ISPCP also stated that this recommendation was "especially important in the avoidance of any negative impact on network activities." The RC stated that "...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer

demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers".

- iii) There are two other key concepts within this recommendation. The first is the issue of "confusingly similar" [41] and the second "likelihood of confusion". There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.
- iv) The Committee used a wide variety of existing law[42], international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks[43]. For example, the Committee considered the World Trade Organisation's TRIPS agreement, in particular Article 16 which discusses the rights which are conferred to a trademark owner.[44] In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights[45] and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of the Committee's deliberations.
- v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*[46] to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.
- vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia[47].
- vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*[48]. It describes the notion of confusion and describes creating confusion as "to create confusion by any means whatever" {Article 10bis (3) (1)} and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. "...because of its identity with or similarity to...there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.
- viii) In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.bitlaw.com/source/15usc/1051.html>.)[49]
- ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at http://www.ipaustralia.gov.au/resources/legislation_index.shtml)
- x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. "...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in

detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables." (found at <http://oami.europa.eu/en/mark/marque/direc.htm>).

- xi) An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. *"For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..."*. (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- xii) The Committee also looked in detail at the existing provisions of ICANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9^[50] which says that "...The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."
- xiii) The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*^[51] that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report*.
- xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.
- xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users^[52].
- xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the

flow of the application and evaluation process and includes a detailed dispute resolution and extended evaluation tracks designed to resolve objections to applicants or applications.

- xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

2. Recommendation 3 Discussion -- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

- i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below[53].
- ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."
- iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group[54]. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".
- iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "...there is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

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

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.
- iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The IPC also agreed that "technical and operational stability are imperative to any new gTLD introduction." The RC said "...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support."
- iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about

new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause any technical instability.

v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

4. Recommendation 5 Discussion -- Strings must not be a Reserved Word.[55]

- i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below.[56]
- ii. The RN WG developed a definition of "reserved word" in the context of new TLDs which said "...depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:
 - 1. At the top level regarding gTLD string restrictions
 - 2. At the second-level as contractual conditions
 - 3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.
- iii. The notion of "reserved words" has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.
- iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of reserved words. The Working Group's *Final Report*[57] was reviewed and the recommendations updated by the Committee at ICANN's Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

	Reserved Name Category	Domain Name Level(s)	Recommendation
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
3	ICANN & IANA	2 nd & 3 rd levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered

			for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2 nd Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time.[59] Examples include .AU, .DE, .UK.
11	Any combination of Two Letters, Digits	2 nd Level	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level.[61]

13	N/A	Top Level IDN	<p>For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")^[62] For example:</p> <ul style="list-style-type: none"> • If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lq90i) and the U-label (北京). • If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1lqs71d) and the U-label (東京).
14	Tagged Names	2 nd Level ASCII	<p>The current reservation requirement be reworded to say, "<i>In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2nd) level.</i>^[63] – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
15	Tagged Names	3 rd Level ASCII	<p>All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3rd level) for gTLD registries that register names at the third level."^[64] – added words in <i>italics</i>. (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)</p>
16	NIC, WHOIS, WWW	Top ASCII	<p>The following names must be reserved: nic, whois, www.</p>
17	NIC, WHOIS, WWW	Top IDN	<p>Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.</p>
18	NIC, WHOIS, WWW	Second and Third* ASCII	<p>The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level.)</p>
19	NIC, WHOIS, WWW	Second and Third* IDN	<p>Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level.)</p>
20	Geographic and geopolitical	Top Level ASCII and IDN	<p>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</p>

			<p>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.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.</p> <p><i>Note New gTLD Recommendation 20</i></p>
21	Geographic and geopolitical	All Levels ASCII and IDN	<p>The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.</p> <p><i>Note New gTLD Recommendation 20</i></p>
22	Geographic and geopolitical	Second Level & Third Level if applicable, ASCII & IDN	<p>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.</p> <p>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</p>

			<p>strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.</p> <p><i>Note New gTLD Recommendation 20</i></p>
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	<p>Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.</p>
24	Controversial Names	All Levels, ASCII & IDN	<p>There should not be a new reserved names category for Controversial Names.</p>
25	Controversial Names	Top Level, ASCII & IDN	<p>There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.</p> <p><i>Note New gTLD Recommendation 6</i></p>
26	Controversial Names	Top Level, ASCII & IDN	<p>In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[66]</p> <p><i>Note New gTLD Recommendation 6</i></p>
27	Controversial Names	Top Level, ASCII & IDN	<p>The new GTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.</p> <p><i>Note New gTLD Recommendation 6</i></p>
28	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g. ALAC or GAC) or supporting organizations (e.g. GNSO or ccNSO). As these</p>

			<p>organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:</p> <ul style="list-style-type: none"> o The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation. o Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency. <p><i>Note New gTLD Recommendation 6</i></p>
29	Controversial Names	Top Level, ASCII & IDN	<p>Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:</p> <ul style="list-style-type: none"> ▪ ትቅቅም ለማድረግ ጥሩ ምሳሌዎች ማግኘት ▪ ጥሩ ምሳሌዎች ለማግኘት ለሚያስፈልጉት ሁኔታዎች ምሳሌዎች ማግኘት ▪ ጥሩ ምሳሌዎች ለማግኘት ለሚያስፈልጉት ሁኔታዎች ምሳሌዎች ማግኘት <p><i>Note New gTLD Recommendation 6</i></p>
30	Controversial Names	Top Level, ASCII & IDN	<p>In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.</p> <p><i>Note New gTLD Recommendation 6</i></p>

v. With respect to geographic terms, the NCUC's CIS stated that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all...Moreover, the proposed recommendation does not make allowance for the duplication of geographic names outside the ccTLDs – where the real issues arise and the means of resolving competing use and fair

and nominative use."

- vi. The GAC's Public Policy Principle 2.2 states that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities."
- vii. The Implementation Team has developed some suggestions about how this recommendation may be implemented. Those suggestions and the process flow were incorporated into the Version 2 of the ICANN Staff *Discussion Points* document for consideration by the Committee.

5. Recommendation 6 Discussion -- Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

- i. This Recommendation is supported by all GNSO Constituencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC's earlier Constituency Impact Statement is found, along with all the GNSO Constituency Impact Statements, in Part B of this report. Ms Doria has submitted individual comments^[67]. The Committee has discussed this recommendation in great detail and has attempted to address the experiences of the 2003-2004 sTLD round and the complex issues surrounding the .xxx application. The Committee has also recognised the GAC's Public Policy Principles, most notably Principle 2.1 a) and b) which refer to both freedom of expression and terms with significance in a variety of contexts. In addition, the Committee recognises the tension respecting freedom of expression and being sensitive to the legitimate concerns others have about offensive terms. The NCUC's earlier CIS says "...we oppose any string criteria based on morality and public order".
- ii. Other Constituencies did not address this recommendation in their CISs. The Implementation Team has tried to balance these views by establishing an Implementation Plan that recognises the practical effect of opening a new top-level domain application system that will attract applications that some members of the community do not agree with. Whilst ICANN does have a technical co-ordination remit, it must also put in place a system of handling objections to strings or to applicants, using pre-published criteria, that is fair and predictable for applicants. It is also necessary to develop guidance for independent evaluators tasked with making decisions about objections.
- iii. In its consideration of public policy aspects of new top-level domains the Committee examined the approach taken in a wide variety of jurisdictions to issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential tests for independent evaluators to use should an objection be raised to an application. The use of the phrase "morality and public order" within the recommendation was done to set some guidelines for potential applicants about areas that may raise objections. The phrasing was also intended to set parameters for potential objectors so that any objection to an application could be analysed within the framework of broadly accepted legal norms that independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.
- iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for

example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 *Paris Convention*. The reference to the *Paris Convention* remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.

- v. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhchr.ch/udhr/lang/eng.htm>) says "...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
- vi. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>
- vii. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)
- viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

6. Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more

detailed discussion about technical requirements has been moved to the contractual conditions section.

- iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement[68] provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current registry operators. These standards would form the basis of any new top-level domain operator requirements.
- iv. This recommendation is referred to in two CISs. "The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The NCUC submitted "...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination."
- v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

7. Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.

- i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria[69].
 - ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.
 - iii. This is also consistent with best practice procurement guidelines recommended by the World Bank (www.worldbank.org), the OECD (www.oecd.org) and the Asian Development Bank (www.adb.org) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.
 - iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.
 - v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.
 - vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."
 - vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

8. Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000 and 2003-2004 and with its re-bid of both the .net and .org registry contracts.
- ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.
- iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.
- iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

9. Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.
- ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.
- iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.
- iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

10. Recommendation 11 Discussion -- (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

11. Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee has provided clear direction on its expectations that all the dispute

resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of recommendations being agreed; a public comment period and the final agreement of the ICANN Board.

iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

TERM OF REFERENCE THREE -- ALLOCATION METHODS

12. Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.
- iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.
- iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to this system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.
- v. The ISPCP expressed its support for this recommendation. Its CIS said that "...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs."

13. Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

- i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has concerns about its implementation^[70]. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.
- ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.
- iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in detail in the Implementation Team's *Discussion Points* document.
- iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further

discussion and agreement by the Committee.

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS

14. Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.

i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.

iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community."

15. Recommendation 15 -- There must be renewal expectancy.

i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below.[71]

ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.

iii. See the CIS comments from the RyC in the previous section.

16. Recommendation 16 -- Registries must apply existing Consensus Policies[72] and adopt new Consensus Policies as they are approved.

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

ii. The full set of existing ICANN registry contracts can be found here <http://www.icann.org/registries/agreements.htm> and ICANN's seven current Consensus Policies are found at <http://www.icann.org/general/consensus-policies.htm>.

iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO[73].

17. Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.

i. This recommendation is supported by all GNSO Constituencies and Ms Doria.

- ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006[74].
- iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.
- iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.
- v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at <http://www.icann.org/compliance/> and will be part of the development of base contract materials.
- vi. The Committee found a number of expert reports[75] beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."
- vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent with the World Bank principles.

18. Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing[76] has been completed and a series of live root tests will take place during the remainder of 2007.
- ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President's Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

19. Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.
- iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.
- iv. ICANN's Registrar Accreditation Agreement has been in place since 2001[77]. Detailed information about the accreditation of registrars can be found on the ICANN website[78]. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.
- v. In its CIS, the RyC noted that "...the RyC has no problem with this recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.
2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:
 - a. A clear statement of any Supermajority Vote recommendation of the Council;
 - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
 - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
 - d. An analysis of the period of time that would likely be necessary to implement the policy;

- e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;
 - f. The Final Report submitted to the Council; and
 - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.
3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board."
4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, "...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

Annex A – NCUC Minority Statement: Recommendation 6

STATEMENT OF **DISSENT** ON **RECOMMENDATION #6** OF
GNSO's NEW GTLD REPORT FROM
the Non-Commercial Users Constituency (NCUC)
20 July 2007

NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.[79]

We oppose Recommendation #6 for the following reasons:

- 1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;
- 2) It will have the effect of suppressing free and diverse expression;

3) It exposes ICANN to litigation risks;

4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports those guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as "immoral" or contrary to "public order." When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on "morality and public order" *must* be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single "community standard" of morality that ICANN can apply to all applicants in every corner of the globe. What is considered "immoral" in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to "public order" in China and Russia may not be in Brazil and Qatar.

2) Suppression of expression of controversial views

gTLD applicants will respond to the uncertainty inherent in a vague "morality and public order" standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of "immoral" or otherwise controversial speech on the Internet.

3) Risk of litigation

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "contract away" the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

4) ICANN's mission and core values

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values. ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gTlds.

Annex B – Nominating Committee Appointee Avri Doria[80]: Individual Comments

Comments from Avri Doria

The "Personal level of support" indications fall into 3 categories:

I Support: these are principles, recommendations or guidelines that are compatible with my personal opinions

I Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.

I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

Principles

#	Personal level of	Explanation
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	support	
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDS, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.
E-G	Support	

Recommendations

#	Level of support	Explanation
1	Support	
2	Accept with concern	<p>My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.</p> <p>I In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.</p> <p>I By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.</p> <p>I As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.</p>
3	Support with concerns	<p>My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice.</p> <p>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.</p>

4	Support	
5	Support with concerns	Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.
6	Accept with concern	<p>My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.</p> <p>This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g, a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.</p>
7	Support	
8	Accept with concern	<p>While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.</p> <p>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities then those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.</p>
9,10, 12-14	Support	
15	Support with concerns	In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.

16-19	Support	
20	Support with concerns	In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)

Implementation Guidelines

#	Level of support	Explanation
A-E	Support	
F	Accept with concern	In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.
G-M	Support	
N	Support with concerns	I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the have nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.
O	Support	
	Support	<p>While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be.</p> <p>In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections.</p>

P	with concerns	<p>I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor.</p> <p>I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.</p>
Q	Support	

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

STATEMENT OF DISSENT ON RECOMMENDATION #20 &

IMPLEMENTATION GUIDELINES F, H, & P IN THE

GNSO NEW GTLD COMMITTEE'S FINAL REPORT

FROM THE

NON-COMMERCIAL USERS CONSTITUENCY (NCUC)

RE: Domain Name Objection and Rejection Process

25 July 2007

Text of Recommendation #20:

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

Text of Implementation Guideline F:

If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe

- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Text of Implementation Guideline H:

External dispute providers will give decisions on complaints.

Text of Implementation Guideline P:

The following process, definitions, and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) significant portion:

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is

impacted.

d) explicitly targeting

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to reorganisation, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organisation or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

Recommendation #20

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report^[81] should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement^[82] of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on

subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

The proposal operates under false assumptions of "communities" that can be defined, and that parties can be rightfully appointed representatives of "the community" by ICANN. The proposal gives preference to "established institutions" for domain names, and leaves applicants' without the backing of "established institutions" with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed "established institutions" will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

Implementation Guideline F

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified "communities" to support or oppose applications. Why should all "communities" agree before a domain name can be issued? How to decide who speaks for a "community"?

NCUC also notes that ICANN's Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

"Expert panels" or corporate officers are not obligated to respect an applicant's free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the "expert" panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and "experts" will decide what ideas are too controversial to be permitted in a domain name under this process.

Implementation Guideline H

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable "private law" where "experts" are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be

qualified to adjudicate the legal rights of applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

Implementation Guideline P

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such a way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a "predictable way", and also with Recommendation 1 that states "All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for "community-based" objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face "detriment" have standing to object to a domain name, and the objection weighs in favor of "significant opposition". This standard is even lower than the "reasonable person" standard, which would at least require that the belief be "reasonable" for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal

rights and invite unreasonable and illegitimate objections to domain names.

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

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on "substantial opposition" from a single objector.

Whether the committee selects the unbounded definition for "detriment" that includes a "likelihood of detriment" or the narrower definition of "evidence of detriment" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that "likelihood of detriment" is a very long way from "substantial harm" and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can be rejected.

In conclusion, the committee's recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples' legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this "free-for-all" objection and rejection process will further call into question ICANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

REFERENCE MATERIAL -- GLOSSARY[83]

TERM	ACRONYM & EXPLANATION
A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di".
ASCII Compatible Encoding	ACE ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to http://www.ietf.org/rfc/rfc3467.txt?number=3467
American Standard Code for Information Exchange	ASCII ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an

	<p>ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.</p>
Advanced Research Projects Agency	<p>ARPA</p> <p>http://www.darpa.mil/body/arpa_darpa.html</p>
Commercial & Business Users Constituency	<p>CBUC</p> <p>http://www.bizconst.org/</p>
Consensus Policy	<p>A defined term in all ICANN registry contracts usually found in Article 3 (Covenants).</p> <p>See, for example, http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm</p>
Country Code Names Supporting Organization	<p>ccNSO</p> <p>http://ccnso.icann.org/</p>
Country Code Top Level Domain	<p>ccTLD</p> <p>Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country.</p> <p>Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, .net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services.</p> <p>For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to http://www.iana.org/cctld/cctld.htm.</p>
Domain Names	<p>The term domain name has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a Web site's URL, e.g. www.wikipedia.org. This type of domain name is also called a hostname.</p> <p>The product that Domain name registrars provide to their customers. These names are often called registered domain names.</p> <p>Names used for other purposes in the Domain Name System (DNS), for example the special name which follows the @ sign in an email address, or the Top-level domains like .com, or the names used by the Session Initiation Protocol (VoIP), or DomainKeys.</p> <p>http://en.wikipedia.org/wiki/Domain_names</p>

Domain Name System	<p>The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net. It is a "mnemonic" device that makes addresses easier to remember.</p>
Generic Top Level Domain	<p>gTLD</p> <p>Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs), as described in more detail below.</p> <p>In the 1980s, seven gTLDs (.com, .edu, .gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes.</p> <p>In 2001 & 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were sponsored.</p> <p>Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.</p>
Governmental Advisory Committee	<p>GAC</p> <p>http://gac.icann.org/web/index.shtml</p>
Intellectual Property Constituency	<p>IPC</p> <p>http://www.ipconstituency.org/</p>
Internet Service & Connection Providers Constituency	<p>ISPCP</p>
Internationalized Domain Names	<p>IDNs</p> <p>IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.</p>

Internationalized Domain Names in Application	<p>IDNA</p> <p>IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (http://www.ietf.org)</p>
Internationalized Domain Names – Labels	<p>IDN A Label</p> <p>The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE) form of an IDN A string. For example "xn-1lq90i".</p> <p>IDN U Label</p> <p>The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example "北京" ("Beijing" in Chinese).</p> <p>LDH Label</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org"</p>
Internationalized Domain Names Working Group	<p>IDN-WG</p> <p>http://forum.icann.org/lists/gnso-idn-wg/</p>
Letter Digit Hyphen	<p>LDH</p> <p>The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen "-". The term "LDH code points" refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names.</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org".</p>
Nominating Committee	<p>NomCom</p> <p>http://nomcom.icann.org/</p>
Non-Commercial Users Constituency	<p>NCUC</p> <p>http://www.ncdnhc.org/</p>
Policy Development Process	<p>PDP</p> <p>See http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA</p>

Protecting the Rights of Others Working Group	<p>PRO-WG</p> <p>See the mailing list archive at http://forum.icann.org/lists/gnso-pro-wg/</p>
Punycode	<p>Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.</p>
Registrar	<p>Domain names ending with .aero, .biz, .com, .coop, .info, .museum, .name, .net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.</p> <p>The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."</p>
Registrar Constituency	<p>RC</p> <p>http://www.icann-registrars.org/</p>
Registry	<p>A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.</p>
Registry Constituency	<p>RyC</p> <p>http://www.gtldregistries.org/</p>
<p>Request for Comment</p> <p>A full list of all Requests for Comment http://www.rfc-editor.org/rfcxx00.html</p> <p>Specific references used in this report are shown in the</p>	<p>RFC</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt</p>

<p>next column.</p> <p>This document uses language, for example, "should", "must" and "may", consistent with RFC2119.</p>	
<p>Reserved Names Working Group</p>	<p>RN-WG</p> <p>See the mailing list archive at http://forum.icann.org/lists/gnso-rn-wg/</p>
<p>Root server</p>	<p>A root nameserver is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of the Domain Name System.</p> <p>All domain names on the Internet can be regarded as ending in a full stop character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an IP address. The empty string after the final dot is called the root domain, and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain.</p> <p>http://en.wikipedia.org/wiki/Root_server</p>
<p>Sponsored Top Level Domain</p>	<p>sTLD</p> <p>A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
<p>U-label</p>	<p>The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.</p>
<p>Unicode Consortium</p>	<p>A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See http://www.unicode.org</p>

Unicode

Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.

Continue to Final Report: Part B

- [1] <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#>
- [2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. <http://www.icann.org/structure/>
- [3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.
- [4] Found here <http://gnso.icann.org/issues/new-gtlds/>.
- [5] The ICANN Staff *Discussion Points* documents can be found at <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gnso.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>
- [6] Authored in 1987 by Paul Mockapetris and found at <http://www.ietf.org/rfc/rfc1034>
- [7] Authored in October 1984 by Jon Postel and J Reynolds and found at <http://www.ietf.org/rfc/rfc920>
- [8] Found at <http://www.oecd.org/dataoecd/15/37/38336539.pdf>
- [9] From Verisign's June 2007 *Domain Name Industry Brief*.
- [10] The full list is available here <http://www.icann.org/registrars/accredited-list.html>
- [11] Report found at <http://www.icann.org/dnso/wgc-report-21mar00.htm>
- [12] Found at <http://www.icann.org/announcements/announcement-31aug04.htm>
- [13] <http://www.registrarstats.com/Public/ZoneFileSurvey.aspx>
- [14] Verisign produce a regular report on the domain name industry. http://www.verisign.com/Resources/Naming_Services_Resources/Domain_Name_...
- [15] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [16] Found here <http://gnso.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [17] <http://gnso.icann.org/issues/new-gtlds/>
- [18] For example, see the GA List discussion thread found at <http://gnso.icann.org/mailling-lists/archives/ga/msg03337.html> & earlier discussion on IANA lists <http://www.iana.org/comments/26sep1998-02oct1998/msg00016.html>. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminating <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>
- [19] Found here http://gac.icann.org/web/home/gTLD_principles.pdf
- [20] A list of the working materials of the new TLDs Committee can be found at <http://gnso.icann.org/issues/new-gtlds/>.
- [21] The Outcomes Report for the IDN-WG is found <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>. A full set of resources which the WG is using is found at <http://gnso.icann.org/issues/idn-tlds/>.
- [22] The Final Report of the RN-WG is found at <http://gnso.icann.org/drafts/rn-wg-fr19mar07.pdf>
- [23] The Final Report of the PRO-WG is found at <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
- [24] The root server system is explained here <http://en.wikipedia.org/wiki/Rootserver>
- [25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDs, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability,

security and global interoperability."

[26] Note the updated recommendation text sent to the gTLD-council list after the 7 June meeting.

<http://forum.icann.org/lists/gTld-council/msg00520.html>

[27] Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.

[28] <http://www.icann.org/general/idn-guidelines-22feb06.htm>

[29] The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.

[30] Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.

[31] <http://gnso.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf>

[32] Consistent with ICANN's commitments to accountability and transparency found at

<http://www.icann.org/announcements/announcement-26jan07b.htm>

[33] Found at <http://www.icann.org/dnso/wgc-report-21mar00.htm>

[34] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gnso.icann.org/issues/new-gTlds/new-gTld-pdp-input.htm>

[35] Found here <http://gnso.icann.org/issues/new-gTlds/new-gTld-pdp-input.htm>

[36] Found here <http://forum.icann.org/lists/gTld-council/>

[37] Archived at <http://forum.icann.org/lists/gTld-council/>

[38] Business Constituency <http://forum.icann.org/lists/gTld-council/msg00501.html>, Intellectual Property

Constituency <http://forum.icann.org/lists/gTld-council/msg00514.html>, Internet Service Providers

<http://forum.icann.org/lists/gTld-council/msg00500.html>, NCUC <http://forum.icann.org/lists/gTld-council/msg00530.html>, Registry Constituency <http://forum.icann.org/lists/gTld-council/msg00494.html>

[39] "My concern involves using definitions that rely on legal terminology established for trademarks for

what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

[40] <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

[41] See section 4A -- <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

[42] In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, "...A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of

confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online at http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm

"...Article 16 *Rights Conferred* 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use..."

[45] <http://www.ohchr.org/english/bodies/hrc/comments.htm>

[46] <http://gnso.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

[47] Charles Sha'ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

"The following shall not be considered as trademarks and shall not be registered as such: If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark."

Although the laws In Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

"A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods

or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight."

[48] Found at http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.ht with 171 contracting parties.

[49] Further information can be found at the US Patent and Trademark Office's website <http://www.uspto.gov/>

[50] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>

[51] Found at <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>.

[52] The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm>.

[53] "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

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

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

[56] "Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration."

[57] Found online at <http://gnso.icann.org/issues/new-gTlds/final-report-rn-wg-23may07.htm> and in full in Part B of the *Report*.

[58] The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

[59] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[61] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[62] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

[63] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[64] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[65] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings

for new TLDs may surface during one or more public comment periods.

[66] Note that this recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[67] Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g. a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality."

[68] <http://www.icann.org/tlds/agreements/net/appendix7.html>

[69] "While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

[71] "In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal."

[72] Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

[73] <http://www.icann.org/general/bylaws.htm#AnnexA>

[74] <http://www.icann.org/registries/agreements.htm>

[75] The full list of reports is found in the Reference section at the end of the document.

[76] <http://www.icann.org/announcements/announcement-4-07mar07.htm>

[77] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>

[78] Found at <http://www.icann.org/registrars/accreditation.htm>.

[79] Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

[80] Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria's term runs until 31 January 2008.

[81] Available at: <http://forum.icann.org/lists/gtld-council/pdfOQqgaRNrXf.pdf>

[82] Available at: <http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/>

[83] This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms <http://www.icann.org/general/glossary.htm> for further information.

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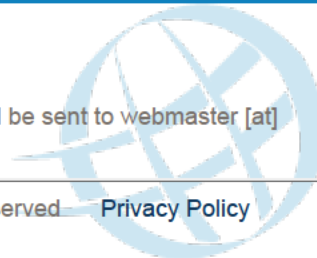


EXHIBIT RM-4



FREQUENTLY ASKED QUESTIONS

1.1 What is the new gTLD Program?

The new gTLD program is an initiative that will enable the introduction of new gTLDs (including both ASCII and IDN) into the domain name space.

1.2 Why are new gTLDs being introduced?

One of ICANN's key commitments is to promote competition in the domain name market while ensuring Internet security and stability. New generic Top-Level Domains (gTLDs) help achieve that commitment by paving the way for increased consumer choice by facilitating competition among registry service providers. Soon entrepreneurs, businesses, governments and communities around the world will be able to apply to operate a Top-Level Domain registry of their own choosing.

1.3 Will the introduction of new gTLDs change how the Internet operates?

The increase in number of gTLDs into the root is not expected to affect the way the Internet operates, but it will, for example, potentially change the way people find information on the Internet or how businesses plan and structure their online presence.

1.4 How many new gTLDs are expected?

There is no way of knowing the exact number of applications ICANN will receive nor how many of these applications will qualify and become gTLD registries. Market speculations have varied widely. The process to evaluate applications is being constructed to economically accommodate a wide range.

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

No. Nowadays, organizations and individuals around the world can register second-level and, in some cases, third-level domain names. (In a URL such as maps.google.com, "google" is a second-level name and "maps" is a third-level domain.) They simply need to find an accredited registrar, comply with the registrant terms and conditions and pay registration and renewal 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 supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

1.6 How and when can I see which gTLD strings are being applied for and who is behind the application?

Approximately 2 weeks after the application submission period closes, ICANN will post the public portions of all applications received, including applied-for strings, applicant names, application type, mission/purpose of proposed gTLD, and other public application data.

1.7 Is ICANN initiating the New gTLD Program to make money?

ICANN is a not-for-profit organization and this is a not-for-profit initiative. The program is designed to be self-funding. It is possible ICANN will over-collect or even under-collect for this first round of applications. If the fee collection exceeds ICANN's expenses, the community will be consulted as to how that excess should be used. For detailed information on the New gTLD Program budget, please refer to the [New gTLD Budget Explanatory Memorandum](#).

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

No, ICANN does not accept reservations or pre-registrations of new gTLDs. ICANN also does not endorse any third parties to do so.

1.9 Can I pre-register a second-level domain name?

Be wary of anyone who claims to be able to reserve your place in line for a second-level registration for one of these new gTLDs. Not only can no one predict which TLDs will be available, but the new TLD operator may choose not to sell second-level registrations.

1.10 Can I reserve my trademark as a gTLD?

No, ICANN does not accept reservations or pre-registrations based on trademarks. But registries will be required to operate sunrise or intellectual property claims services for the protection of trademarks. See section 5.4.1 of the [Applicant Guidebook](#) for details.

1.11 Is the upcoming application process going to be the same as for the previous new gTLD rounds in 2000 and 2003-4?

The application process will not be the same. The GNSO recommendations are intended to create a standing policy to guide the opening of a gTLD application round as well as the continuing procedures. Although this new implementation may share some similarities to the previous rounds, they are not identical.

1.12 If someone applies for a TLD that is a brand name or a trademark that does not belong to them, will the brand or trademark owners be notified by ICANN?

At this time, ICANN is not contemplating a notification system. ICANN is conducting global public outreach to educate the community on what their responsibilities are, as well as what the formal objection mechanism and timeline is, before the program launches. ICANN will publish the list of all applications received after the application submission period closes, and will continue to publicize the objection process and deadlines.

1.13 Does this application process cover new ccTLDs also?

No. Information on procedures for establishing ccTLDs is available at <http://www.iana.org/ctld/ctld-establishment-procedures-19mar03.htm>. However, anyone, including ccTLD operators, may apply to operate a new gTLD.

1.14 Where can I find more information about the Program?

Visit the New gTLD website at <http://icann.org/newgtlds>.

1.15 Will there be a publicly available web site where the new gTLD application information will be made available?

Yes. Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications on its website.

Application & Evaluation Process

2.1 Who can apply for a new gTLD?

Any established public or private organization that meets eligibility requirements anywhere in the world can apply to create and operate a new gTLD Registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements.

2.2 How do I apply for a new gTLD?

Any established public or private organization anywhere in the world can apply to create and operate a new generic Top-Level Domain (gTLD) registry. Applicants will need to demonstrate the operational, technical and financial capability to run a registry and comply with additional specific requirements. Please refer to the *Applicant Guidebook* for detail information on the application process, including the application questions in Module 2, attachment 2.

Please note that applying for a new gTLD is not the same as buying a domain name. An applicant for a new gTLD is, in fact, applying to create and operate a registry business supporting the Internet's domain name system. This involves a number of significant responsibilities, as the operator of a new gTLD is running a piece of visible Internet infrastructure.

The application window is expected to open on 12 January 2012 and close on 12 April 2012.

The evaluation fee is US\$185,000. Applicants will be required to pay a US\$5,000 deposit fee per requested application slot when registering. The deposit will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the *Applicant Guidebook* for details about the methods of payment, additional fees and refund schedules.

When the application round opens, candidates will apply via an online application system called TAS – TLD Application System.

2.3 Can I apply for more than one gTLD?

Yes. Each gTLD applied-for string requires its own application.

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

ICANN has a set of specific technical rules that apply to all proposed gTLD strings. For example, an application for a string composed entirely of numbers will be rejected. If an applicant chooses an IDN gTLD, additional technical requirements apply. There is also a list of reserved gTLD names that are unavailable for general use. Furthermore, applicants for a gTLD that is a geographic name must meet additional requirements. All the specific restrictions are outlined in section 2.2.1 of the *Applicant Guidebook*.

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

ICANN expects all new gTLDs to be operational. 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 operation of the proposed gTLD. gTLDs are expected to be delegated within one year of signing a registry agreement with ICANN.

2.6 What will happen during the application window and how long will it last?

The application window is expected to open on 12 January 2012 and close on 12 April 2012. Applicants will use a dedicated web-based application interface named TLD Application System (TAS) to apply, where they will answer questions and upload supporting documents. TAS will only be available when the application window opens.

2.7 How long will the evaluation process take?

First let's define the "evaluation process" as starting at the point when the application window closes. There are several stages that an application may pass through prior to a final determination being rendered. Those stages are Administrative Check, Initial Evaluation, Extended Evaluation, String Contention, Dispute Resolution and Pre-delegation. The shortest path for a successful application is to pass Administrative Check (lasting 2 months), Initial Evaluation (lasting 5 months) and then move to Pre-delegation (lasting approximately 2 months) without any Objections filed or String Contention concerns. In this case the evaluation process could take as little as 9 months to complete. On the other hand if an application does not pass Initial Evaluation and elects Extended Evaluation and/or is in the Dispute Resolution or String Contention stages then the evaluation process could take up to 20 months to complete (or longer in the event that unforeseen circumstances arise). Please refer to Section 1.1.3 of the [Applicant Guidebook](#) for detailed information on timing estimates.

2.8 How will gTLD applications be assessed?

Independent, third-party, expert panels will evaluate applications against criteria and requirements outlined in the [Applicant Guidebook](#).

2.9 What happens if there are multiple applications for the same string?

It is not feasible for two or more identical top-level strings to exist in the Internet's domain name system. Each domain name must be unique. If there are two or more applications for the same string, the *String Contention* procedures would come into effect. The same would apply in cases where two or more strings are considered to be confusingly similar. The processes proposed by ICANN to deal with the identical and/or similar strings are described in detail in the [Applicant Guidebook](#). Applicants always have the opportunity to resolve contention by a mutually agreeable settlement amongst themselves.

2.10 If I want to apply for two similar or related TLDs, for example, ".thing" and ".thething" would that be two applications or one? And if two, do I have to pay \$185,000 for each?

If an applicant applies for .thing and .thething, those would be considered two separate applications. (Applicants should note carefully that the application process is currently designed to not allow two strings that are "confusingly similar" to each other to both be delegated into the DNS – please refer to the full text of the [Applicant Guidebook](#) for details.) If both applications were approved, they would result in two separate TLDs. Each application will be treated individually and there is no discount on application fees based upon the filing of multiple applications.

2.11 Can a New gTLD name contain numbers or dashes?

The ASCII label for a new gTLD name must consist entirely of letters (alphabetic characters a-z).

2.12 Can a New gTLD name be 2 letters?

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.

2.13 Can I apply for country name under the New gTLD Program?

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program.

2.14 What happens after a new gTLD application is approved?

Once an application is deemed to satisfy the criteria outlined in the *Applicant Guidebook* and passes all evaluation and selection processes, including objection processes and final approval, the applicant is required to execute a registry agreement with ICANN and pass technical pre-delegation tests before the new gTLD can be delegated to the root zone. Refer to Module 5 of the *Applicant Guidebook* for information on the transition to delegation processes.

2.15 What happens if more applications are received than expected?

If the volume of applications exceeds expectations, applications will be processed in batches. 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.

2.16 How long will I have to wait for my TLD to go into the root?

Depending on what batch you are assigned to, it will then follow the timeline outlined in section 1.1.3 of the *Applicant Guidebook*.

2.17 If I apply for .thing, would the translation of the term thing in other languages also be protected in the new gTLD?

Each applied-for gTLD string requires its own application. ".thing" would be one application. A translation of ".thing" in Arabic characters, for example, would be another application.

2.18 Is an excel file of the financial projection templates available?

The excel file of the financial projection template can be downloaded by [clicking here](#).

2.19 Will ICANN consider reducing the ratings of financial institutions for the continued operations instrument given recent financial market conditions?

ICANN will review our credit ratings requirement in light of prevailing market conditions.

2.20 Can economic enterprises qualify as communities in the sense of the community priority evaluation criteria?

There is no provision in the Applicant Guidebook for an application to “qualify” as a community. The designation of an application as community-based is entirely at the discretion of the applicant.

A community priority evaluation may occur as a result of string contention. Where an applicant goes through community priority evaluation, according to the criteria in Module 4 of the [Applicant Guidebook](#), an application meeting the threshold score of 14 will be awarded priority in the contention set.

2.21 Do “.brand” applications have to comply with all requirements in the Applicant Guidebook?

The [Applicant Guidebook](#) specifies only 2 types of applications, standard and community. “.brand” is not an application type provided for in the [Applicant Guidebook](#). All applicants must comply with requirements specified in the [Applicant Guidebook](#).

TLD Applicant System (TAS)

3.1 Will there be a TAS demo prior to the opening of the application window?

Yes. A TAS interactive demonstration is being made available in advance of the application window. Check www.icann.org/newgtlds for updates and to see whether it is available. The demonstration will allow users to click through the various TAS screens but will not allow data entry.

3.2 When will I have access to TAS?

TAS will be available when the application window opens, which is currently expected to be on 12 January 2012, and not before. You can access TAS only after registering.

3.3 How will I access TAS?

A link to TAS will be provided on the ICANN website at www.icann.org/newgtlds when the application window opens, which is expected to be on 12 January 2012.

3.4 What formats will TAS allow for the input of text?

TAS supports Unicode or plain text. Hyperlinks or stylized, formatted text, drawings or diagrams, cannot be included in line with text. Supporting visuals will be allowed as attachments.

3.5 Will there be a fill-able table in TAS for the financial projections?

No. ICANN will make available a downloadable template in TAS for the completion of the financial projections. Applicants will then be able to upload the completed template back into TAS.

3.6 How will I embed or attach graphics to my application?

Graphics, images, tables, diagrams may be uploaded as attachments. ICANN strongly recommends that applicants label all graphics, images, tables, diagrams and attachments appropriately and reference them in their responses.

3.7 Is there a limit in the number of characters/words for each response?

Yes. Every response is limited to a certain number of characters based on guidance provided in the

Applicant Guidebook. One page approximately equates to 4,000 characters (including spaces). Character limitation are by question, not by application. Applicants cannot transfer unused characters from one response to another. Applicants may not use attachments to extend their text response.

3.8 Will I be timed-out or logged-off while completing an application?

For security purposes, TAS is programmed to detect inactivity and will automatically log off users after a defined period of time. Please note that any data that have not been saved when the system logs a user off will be lost. A user who is actively working in the system should not be kicked off.

3.9 Will TAS allow bullets, dashes, numberings?

TAS supports Unicode or plain text only. Applicants may use hyphens and numbers as plain text only.

3.10 Can I provide hyperlinks to online information as references, answers, or appendices?

No. ICANN will not accept hyperlinks to online information as part of the response unless specifically requested or called for in the question. The entire application should be self-contained. Evaluation panels will only consider information provided within the allotted space in TAS for a particular question (plus attachments for those questions where ICANN explicitly asks for them) as the applicant's response.

Objection & Dispute Resolution

4.1 How can I object to an application?

Approximately 2 weeks after the close of the application window, ICANN will post the public portions of all applications that have been received on our website. At this time, the formal objection period will begin and will last for approximately 7 months. Formal objections using pre-established Dispute Resolution Procedures (DRP) may be filed on any of the following grounds:

- String confusion
- Legal rights
- Community
- Limited public interest

In all but exceptional circumstances, objections will be administered by independent Dispute Resolution Service Providers (DRSP), rather than by ICANN. Refer to Module 3 of the *Applicant Guidebook* for more information on objection procedures.

4.2 How much does it cost to file an objection?

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 Dispute Resolution Provider (DRSP). If the filing fee is not paid, the DRSP will dismiss the objection without prejudice. After the hearing has taken place and the panel makes its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

For details, see Sections 1.5.2 of the *Applicant Guidebook*.

There will also be costs involved in preparing an objection, which should be taken into account.

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

You can file an objection with the DRSP selected to administer "legal rights" objections. Details about these procedures, such as who has standing, where and how objections are filed, and how much objections will cost can be found in Module 3 of the Applicant Guidebook and the related New gTLD Dispute Resolution Procedure. You must pay close attention to the objection deadlines that are publically available on ICANN's website.

4.4 What are the estimated costs associated with registering a trademark with the proposed Trademark Clearinghouse?

The costs are not currently known. We expect to request proposals from service providers of which cost will be a key component in determining the appropriate provider.

4.5 Will ICANN prevent the registration of objectionable or racist extensions?

Consistent with the policy advice on new gTLDs, all applied-for strings could be subject to an objection-based process based on Limited Public Interest grounds. This process will be conducted by the qualified DRSP utilizing standards drawing on provisions in a number of international treaties. In addition to Limited Public Interest objection, the GAC may also submit to ICANN a formal GAC advice on any application. 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.

Fees & Timelines

5.1 When can I apply for a new gTLD?

The application window is expected to open on 12 January 2012.

5.2 How much is the evaluation fee?

The evaluation fee is estimated at US\$185,000. Applicants will be required to pay a US\$5,000 deposit fee per requested application slot when registering. The US\$5,000 will be credited against the evaluation fee. Other fees may apply depending on the specific application path. See the section 1.5 of the *Applicant Guidebook* for details about the methods of payment, additional fees and refund schedules.

5.3 Are there any additional costs I should be aware of in applying for a new gTLD?

Yes. Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable, and should expect to account for their own business start-up costs. See Section 1.5.2 of the *Applicant Guidebook*.

5.4 Will ICANN offer refunds?

Yes, refunds will apply in specific circumstances. Details about refund conditions are specified in section 1.5.1 of the *Applicant Guidebook*.

5.5 If I withdraw my application, will I get a refund?

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 refund will depend on the point in the process at which the withdrawal is requested. Please refer to section 1.5.1 of the *Applicant Guidebook* for a schedule of refunds.

5.6 If my application does not get approved, will I be refunded the \$185,000 application fee?

A full refund of the application fee is not available. Any applicant that has not been successful has the option of withdrawing its application at the end of Initial Evaluation or Extended Evaluation for a partial refund. Please refer to section 1.5.1 of the *Applicant Guidebook* for a schedule of refunds.

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

Yes. Once an application has successfully passed all the evaluation steps, the applicant is required to sign a New gTLD Agreement (also called Registry Agreement) with ICANN. Under the agreement, there are two fees: (a) a fixed fee of US\$6,250 per calendar quarter; (b) and a transaction fee of US\$0.25. The latter does 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. Please refer to section 6.1 of the New gTLD Agreement in the *Applicant Guidebook*.

5.8 One of my clients would like me to handle all of the contracts on their behalf. Do any scenarios exist in which a party may execute a Registry Contract on behalf of a Registry Operator?

No. ICANN will only enter into an agreement with the applicant. There's no provision for Party X to enter a registry agreement with ICANN designating Party Y as the registry operator.

Applicant Guidebook

6.1 What is the "Applicant Guidebook"?

The *Applicant Guidebook* provides a step-by-step procedure for new gTLD applicants. It specifies what documents and information are required to apply; the financial and legal commitments; and what to expect during the application and evaluation periods. The *Applicant Guidebook* can be found at <http://icann.org/newgtlds> [PDF, 4.81 MB]

6.2 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.

6.3 I understand that ICANN will only make available the Applicant Guidebook in English (official version), Spanish, French, Chinese, Russian, and Arabic. Will ICANN allow other independent parties to translate the Applicant Guidebook into a language outside of the 6 UN languages mentioned?

Yes, the Applicant Guidebook may be translated from the official English version into multiple languages under the following conditions:

- Provide attribution to the source (ICANN's English version of the Applicant Guidebook)
- Use the materials in context; and
- Do not use the materials in a way that implies ICANN sponsorship or approval of your work. This includes not reproducing the ICANN logo separate from where it may appear within the materials.

In addition, the following disclaimer must appear in a prominent position on the translated version, in the same language as the translated document: “This document is an unofficial translation not produced by or endorsed by ICANN and is for information only. The original and authoritative text (in English) may be found at: [link to the most recent English version of the Applicant Guidebook on the ICANN website].”

gTLD History & Policy Development

7.1 How are new gTLDs created?

The decision to establish the New gTLD Program followed a detailed and lengthy consultation process with all constituencies of the global Internet community. Representatives from a wide variety of stakeholders—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinates global Internet policy at ICANN—completed its policy development work on new gTLDs and approved a set of recommendations. 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 ICANN Board of Directors adopted the policy in June 2008. A thorough brief to the policy process can be found at <http://gns0.icann.org/issues/new-gtlds/>.

There are eight gTLDs that predate the formal establishment of ICANN as an organization. These are: **.com .edu .gov .int .mil .net .org .arpa**. ICANN held two previous application rounds, one in 2000 and another in 2003-4, where several proposals were submitted and evaluated. The gTLDs approved during the 2000 round are: **.aero .biz .coop .info .museum .name .pro**. The gTLDs approved during the 2004 round are **.asia .cat .jobs .mobi .tel .travel**. You can find additional information about these previous application rounds at <http://www.icann.org/tlds/app-index.htm> (2000) and <http://www.icann.org/tlds/stld-apps-19mar04/> (2003-4). Applications received during these rounds were evaluated against previously-published criteria, and those applicants who were successful went on to sign **TLD Registry Agreements** with ICANN.

7.2 How did the new gTLD policy development process work?

The Generic Names Supporting Organization (GNSO) is responsible for creating policy applicable to gTLDs. The GNSO policy development process on new gTLDs was aimed at creating a standing policy to guide the ongoing introduction of new gTLDs. The GNSO Policy Development Process (PDP) is formally defined in the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The GNSO's final report on the introduction of New gTLDs can be found here ([Part A](#), [Part B](#)).

7.3 How are the GNSO's policy recommendations being implemented?

ICANN staff reviewed the 19 GNSO recommendations for the introduction of new gTLDs and developed a set of steps to put each of them into practice, while also being cognizant of the guiding principles and

implementation guidelines. One of the main outputs of this implementation work is the *Applicant Guidebook* [PDF, 3.1 MB], which can be thought of as a roadmap for potential gTLD applicants.

Domain Name Basics

8.1 What is a domain name?

Every computer that accesses the Internet has a unique identifying address which is a string of numbers called an "IP address" (IP stands for "Internet Protocol"). As IP addresses are often difficult to remember, these numbers are transposed into characters or letters (the "domain name") and are what a user types in when searching for websites or sending an email.

8.2 What is the Domain Name System (DNS)?

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

8.3 What is a top-level domain (TLD)?

Every domain name around the world ends with a top-level domain (TLD); these are the 2 or more letters that come after the dot. There are currently two types of TLDs: generic top-level domain (gTLDs) such as .com, .mobi, and .info, and country code top-level domains (ccTLDs) such as .uk, .br, and .cn. A gTLD or a ccTLD is managed by a registry operator, an organization that maintains the registry database, including the nameserver information for names registered in the TLD.

8.4 What are second-level and third-level domain names?

The portion of the domain name that precedes the top-level domain is called the second-level domain name (for example, the "icann" in "icann.org"). There are also third-level domain names that appear before the second-level domain name and again are separated by a dot (for example, events.icann.org). Third-level domain names are also called sub-domains and are often used to categorize special sections of a website.

8.5 What is a gTLD?

gTLD stands for generic Top-Level Domain. (what Internet users see as an Internet extension such as .COM, .ORG, or .INFO) and they are part of the structure of the Internet's domain name system. The gTLDs are also sometimes called labels, strings, or extensions.

8.6 What is a ccTLD?

ccTLD stands for country-code Top-Level Domain and are two-letter, top-level domains that identify a country or territory. There are approximately 250 ccTLDs, for example: .ca for Canada, .jp for Japan, and .eu for the European Union. A listing of existing ccTLDs is available at <http://www.iana.org/domains/root/db/>.

8.7 What is an IDN?

IDN stands for Internationalized Domain Name. IDNs are domain names represented by local language characters, or letter equivalents. These domain names could contain characters with diacritical marks (accents) as required by many European languages, or characters from non-Latin scripts (for example, Arabic or Chinese). IDNs make the domain name label as it is displayed and viewed by the end user different from that transmitted in the DNS. To avoid confusion the following terminology is used: **The A-label** is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di". **The U-label** is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.

Miscellaneous

9.1 What is the process for submitting questions about new gTLDs?

ICANN encourages community inquiries on the gTLD process. Questions may be sent to newgtld@icann.org. This FAQ will also be updated periodically based on questions received. Please also check [the New gTLD site](http://newgtlds.icann.org) at <http://newgtlds.icann.org> and [Twitter](#) to find out about the latest developments.

9.2 If I apply for a TLD for my exclusive use and will only issue domain registration for internal use, must I use an ICANN accredited registrar?

Yes. Registry operators must use only ICANN accredited registrars in registering domain names. If a registry operator wishes to issue domain names, it must become an ICANN accredited registrar in order to do so.

9.3 If I want to register a gTLD solely for my own use, for example, solely for use by my company, partners, consultants, shareholders, auditors, etc., can I limit the issuance of second level domains to those individuals? Can I refuse to accept applications for second level domains from members of the public in general?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.4 If I want to register a gTLD solely to promote my own brand and undertake my own marketing plans, can I refuse applications for second level domains from my competitors? Can I also refuse applications for second level domains from individuals who appear to be cybersquatters or scammers?

Yes. The applicant is responsible for setting the business model and policy for how they will use their gTLD, so long as the registry is in compliance with the terms of the registry agreement.

9.5 After delegation, if the applicant's business plan for the new gTLD were to change from the mission/purpose originally stated on question #18, would the now-gTLD operator be penalized?

One of the reasons ICANN is opening the top-level space is to allow for competition and innovation in the marketplace. ICANN recognizes that business models may evolve as the market matures. ICANN will only hold TLD operators responsible for complying with the terms of the registry agreement.

9.6 Will applications be categorized as “sponsored” or “unsponsored” in this New

gTLD application round?

No, applications will not be categorized as “sponsored” or “unsponsored” in this new gTLD application round. ICANN carried out 2 previous new gTLD application rounds. Sponsored and unsponsored TLDs were part of these 2 previous programs. These distinctions are not relevant to the New gTLD program. Under the New gTLD program, a community-based designation can be made on any application. Please refer to section 1.2.3 of the Applicant Guidebook for more information on community-based designation.

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](#).

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EXHIBIT RM-5

gTLD Applicant Guidebook

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

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



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gnso.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

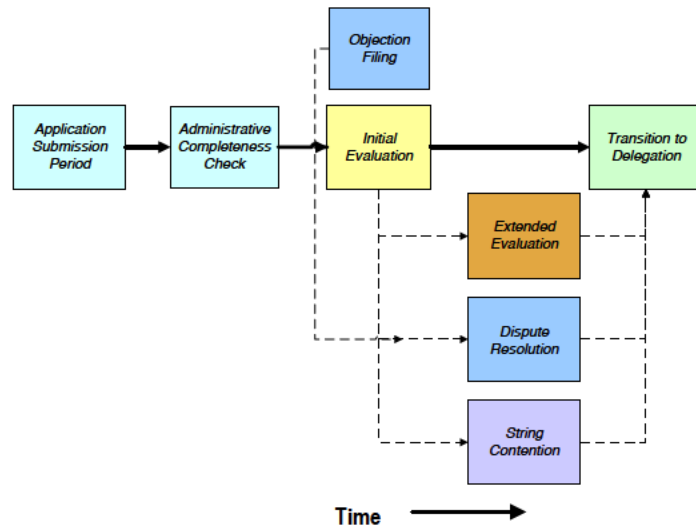


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that 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.

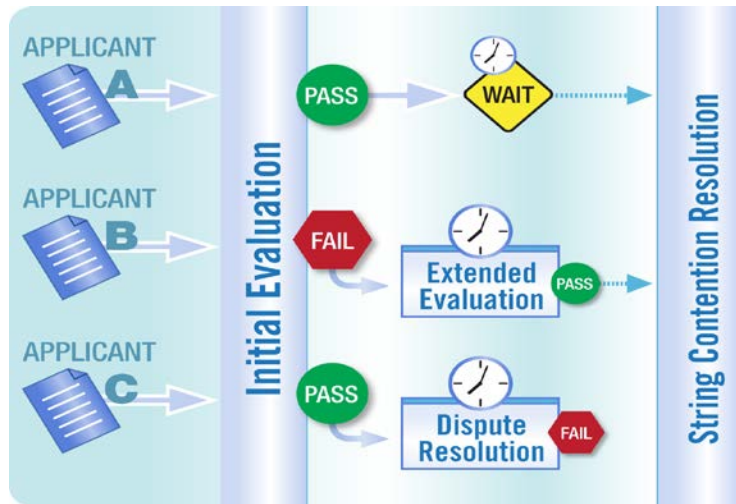


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

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:

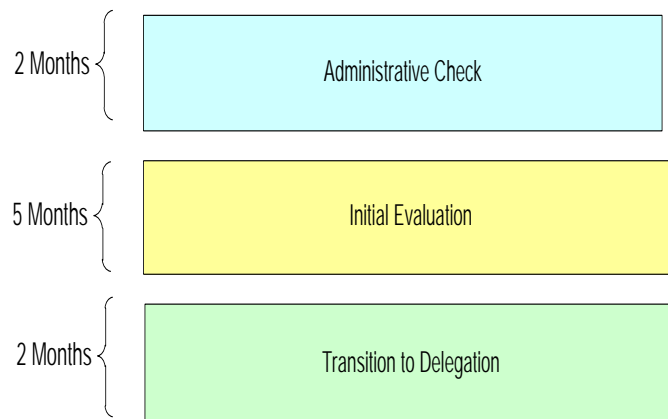


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

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

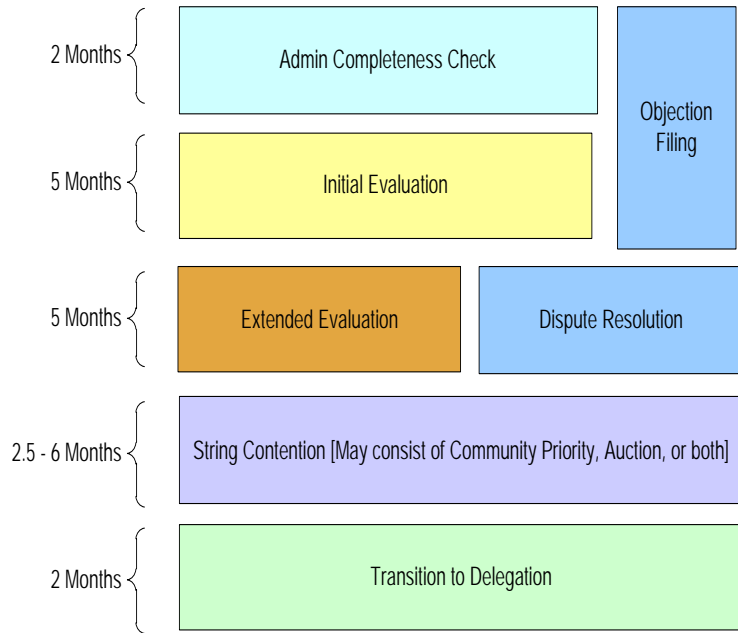


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

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.

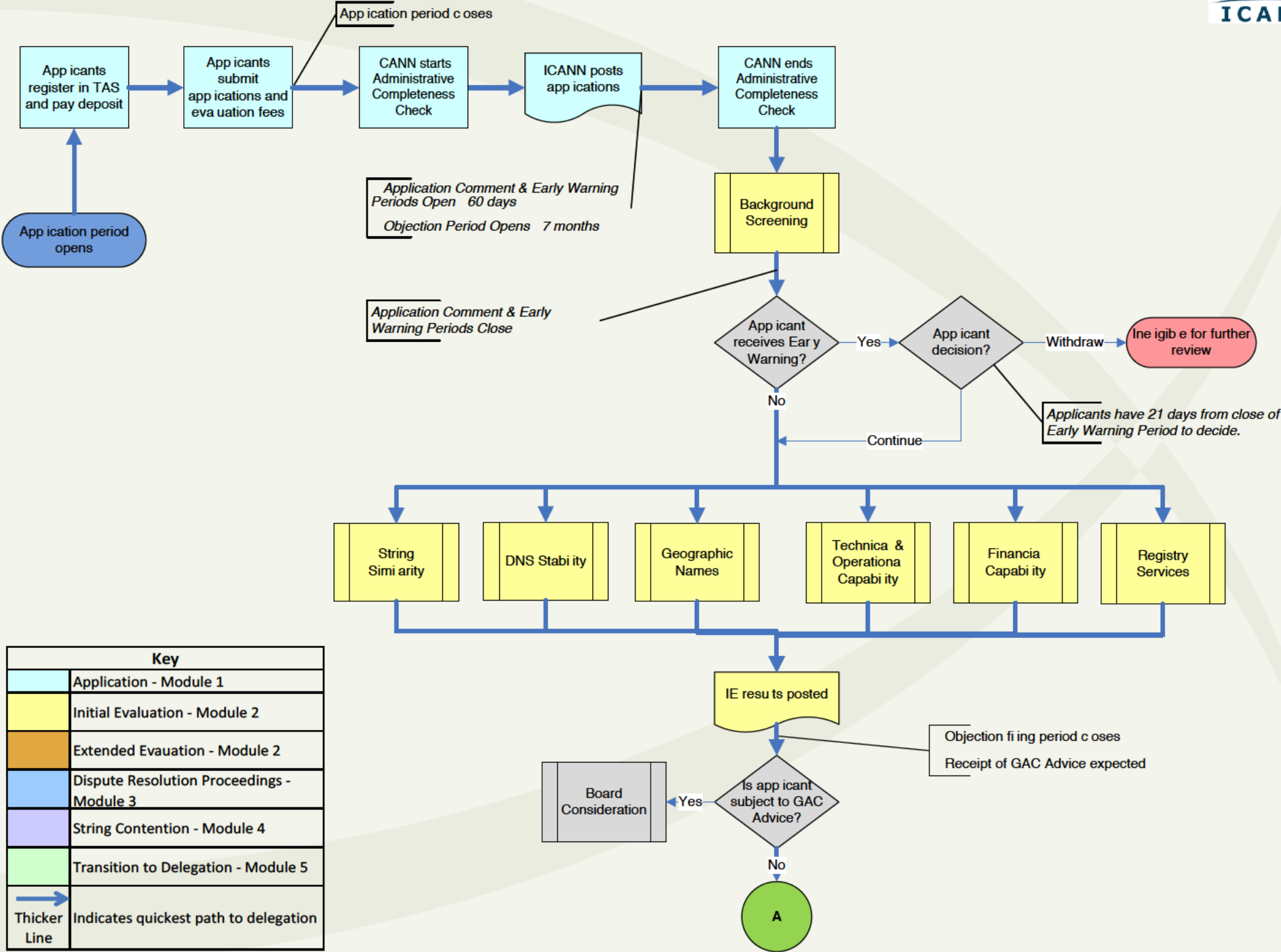
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

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.

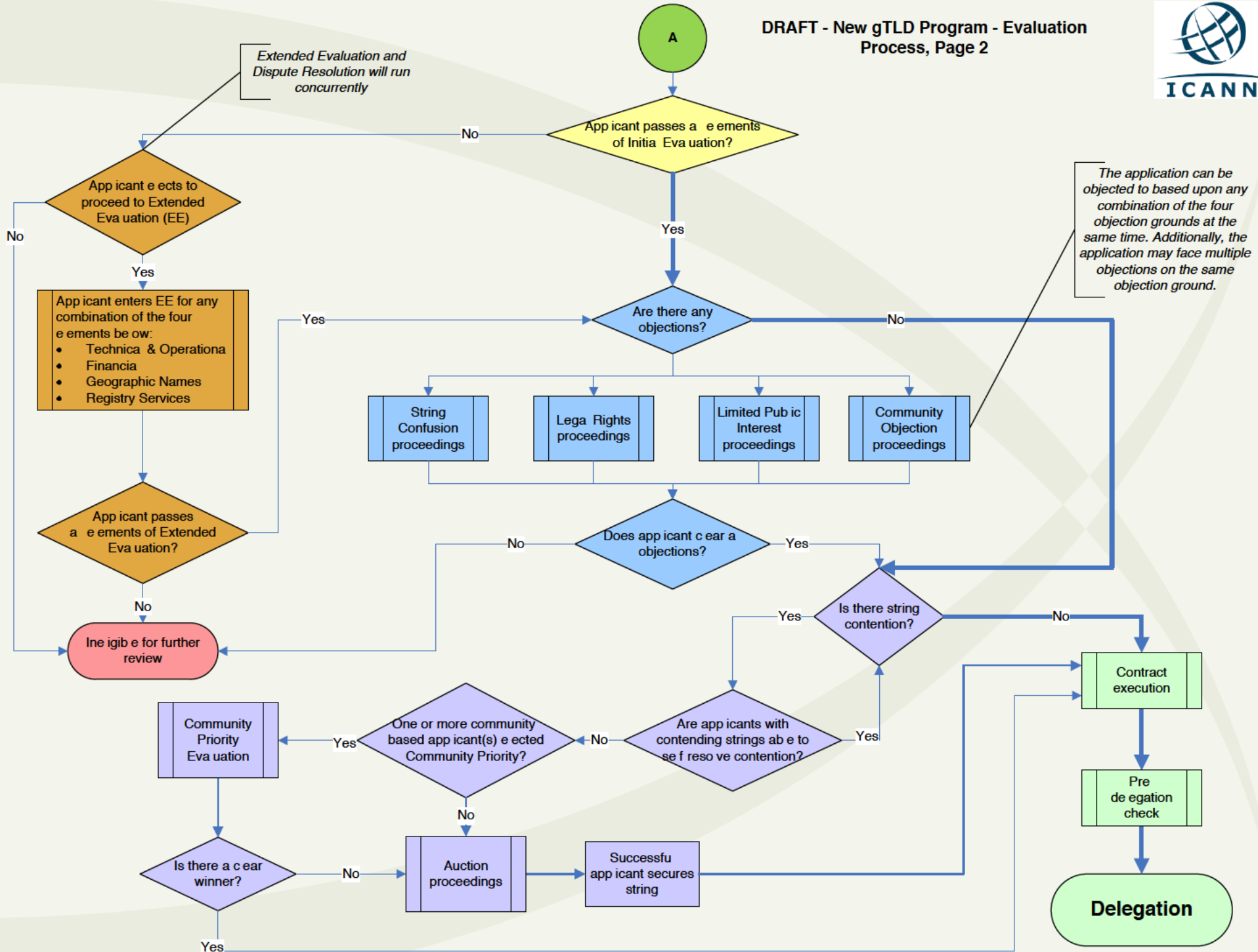
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for 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





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 ألابيصل	لاله ارمح ألابيصل
ءارمحل اقرولبلا	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)*(RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

- NS records and in-balliwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>. This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



App cat on s confirmed as comp ete and ready for eva uat on dur ng Adm n strat ve Comp eteness Check

Background Screening
Th rd-party prov der rev ews app cant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
Str ng S m ar ty Pane rev ews app ed-for str ngs to ensure they are not too s m ar to ex st ng TLDs or Reserved Names.

DNS Stability
A str ngs rev ewed and n extraord nary cases, DNS Stab ty Pane may perform extended rev ew for poss b e techn ca stab ty issues.

Geographic Names
Geograph c Names Pane determ nes f app ed-for str ngs geograph c name requ r ng government support.

Technical and Operational Capability
Techn ca and Operat ona pane rev ews app cant's answers to quest ons and support ng documentat on.

Financial Capability
F nanc a pane rev ews app cant's answers to quest ons and support ng documentat on.

Registry Services
Pre m nary rev ew of app cant's reg stry serv ces and referra to RSTEP for further rev ew dur ng Extended Eva uat on where necessary

Pane compares a app ed-for str ngs and creates content on sets.

Pane conf rms support ng documentat on where requ red.

ICANN w seek to pub sh content on sets pr or to pub cat on of fu IE resu ts.

Does app cant pass a e ements of In ta Eva uat on?

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

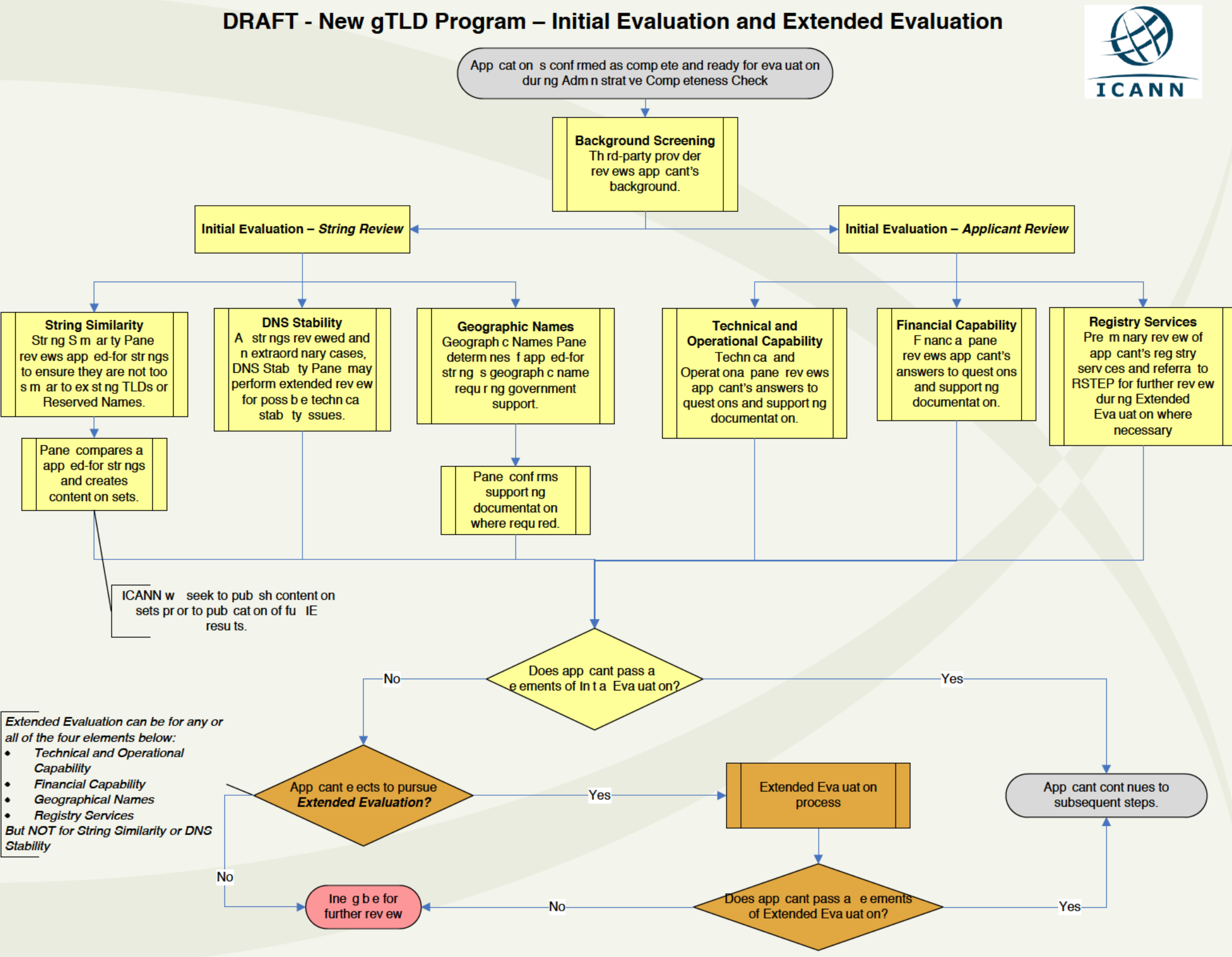
App cant e cts to pursue **Extended Evaluation?**

Extended Eva uat on process

App cant cont nues to subsequent steps.

Ine g b e for further rev ew

Does app cant pass a e ements of Extended Eva uat on?



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>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
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>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				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>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; Policies for handling complaints regarding abuse; Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> ○ Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; ○ Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and ○ Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

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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> <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>

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

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

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		<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	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)		Live / Operational			
		Start-up Costs	Year 1	Year 2	Year 3
Sec.	Reference / Formula				
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62 000	81 600	105 180
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
E) Total Cash Inflows		-	345 000	496 800	698 339
Projected Operating Cash Outflows					
F) Labor:					
I) Marketing Labor		25 000	66 000	72 000	81 000
II) Customer Support Labor		5 000	68 000	71 000	74 000
III) Technical Labor		32 000	45 000	47 000	49 000
G) Marketing		40 000	44 000	26 400	31 680
H) Facilities		7 000	10 000	12 000	14 400
I) General & Administrative		14 000	112 000	122 500	136 000
J) Interest and Taxes		27 500	29 000	29 800	30 760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
I) Hot site maintenance		5 000	7 500	7 500	7 500
II) Partial Registry Functions		32 000	37 500	41 000	43 000
III) (list type of activities being outsourced)		-	-	-	-
IV) (list type of activities being outsourced)		-	-	-	-
V) (list type of activities being outsourced)		-	-	-	-
VI) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12 200	18 000	21 600	25 920
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079
Ia) Break out of Fixed and Variable Operating Cash Outflows					
A) Total Variable Operating Costs		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260
Ib) Break out of Critical Registry Function Operating Cash Outflows					
A) Operation of SRS		-	5 000	5 500	6 050
B) Provision of Whois		-	6 000	6 600	7 260
C) DNS Resolution for Registered Domain Names		-	7 000	7 700	8 470
D) Registry Data Escrow		-	8 000	8 800	9 680
E) Maintenance of Zone in accordance with DNSSEC		-	9 000	9 900	10 890
F) Other		-	-	-	-
G) Total Critical Function Cash Outflows		-	35 000	38 500	42 350
III) Projected Capital Expenditures					
A) Hardware		98 000	21 000	16 000	58 000
B) Software		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment		43 000	22 000	14 000	16 000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
I)		-	-	-	-
II)		-	-	-	-
III)		-	-	-	-
IV)		-	-	-	-
V)		-	-	-	-
VI)		-	-	-	-
E) Other Capital Expenditures		-	-	-	-
F) Total Capital Expenditures		173 000	61 000	54 000	85 000
IV) Projected Assets & Liabilities					
A) Cash		668 300	474 300	413 000	471 679
B) Accounts receivable		-	70 000	106 000	160 000
C) Other current assets		-	40 000	60 000	80 000
D) Total Current Assets		668 300	584 300	579 000	711 679
E) Accounts payable		41 000	110 000	113 000	125 300
F) Short-term Debt		-	-	-	-
G) Other Current Liabilities		-	-	-	-
H) Total Current Liabilities		41 000	110 000	113 000	125 300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
K) Other Long-term Assets		-	-	-	-
L) Total Long-term Assets		359 000	420 000	474 000	559 000
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000
V) Projected Cash flow (excl. 3-year Reserve)					
A) Net operating cash flows	= Sec. I) N	(199 700)	(92 000)	46 000	205 079
B) Capital expenditures	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)
C) Change in Non Cash Current Assets	= Sec. IV) (B) (C): Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)
D) Change in Total Current Liabilities	= Sec. IV) (E) (F): Cur Yr - Prior Yr	41 000	69 000	3 000	12 300
E) Debt Adjustments	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments		-	-	-	-
G) Projected Net Cash flow		(331 700)	(194 000)	(61 000)	58,379
VI) Sources of funds					
A) Debt:					
I) On-hand at time of application		1 000 000	-	-	-
II) Contingent and/or committed but not yet on-hand		-	-	-	-
B) Equity:					
I) On-hand at time of application		-	-	-	-
II) Contingent and/or committed but not yet on-hand		-	-	-	-
C) Total Sources of funds		1 000 000	-	-	-

Comments / Notes
Provide name of local currency used.

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function:
Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support
Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management.

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that I) C equals I) N.

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.
List and describe each identifiable type of outsourcing.

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):
We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods.
Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:
We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:
Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown are adequate to fund our business operations.

Template 1 - Financial Projections: Most Likely

Comments / Notes

In local currency (unless noted otherwise)		Reference / Formula	Live / Operational				Provide name of local currency used.
Sec.			Start-up Costs	Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows							
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
Projected Operating Cash Outflows							
F) Labor:							
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa) Break out of Fixed and Variable Operating Cash Outflows							
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb) Break out of Critical Function Operating Cash Outflows							
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III) Projected Capital Expenditures							
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV) Projected Assets & Liabilities							
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)							
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Other Adjustments						
	H) Projected Net Cash flow						
VI) Sources of funds							
A) Debt:							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
B) Equity:							
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							

Template 2 - Financial Projections: Worst Case						Comments / Notes	
In local currency (unless noted otherwise)			Live / Operational				Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3		
I)	Projected Cash inflows and outflows						
	A) Forecasted registration volume						
	B) Registration fee						
	C) Registration cash inflows						
	D) Other cash inflows						
	E) Total Cash Inflows						
	Projected Operating Cash Outflows						
	F) Labor:						
	i) Marketing Labor						
	ii) Customer Support Labor						
	iii) Technical Labor						
	G) Marketing						
	H) Facilities						
	I) General & Administrative						
	J) Interest and Taxes						
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):						
	i) (list type of activities being outsourced)						
	ii) (list type of activities being outsourced)						
	iii) (list type of activities being outsourced)						
	iv) (list type of activities being outsourced)						
	v) (list type of activities being outsourced)						
	vi) (list type of activities being outsourced)						
	L) Other Operating costs						
	M) Total Operating Cash Outflows						
	N) Projected Net Operating Cash flow						
IIa)	Break out of Fixed and Variable Operating Cash Outflows						
	A) Total Variable Operating Costs						
	B) Total Fixed Operating Costs						
	C) Total Operating Cash Outflows						
		CHECK					
IIb)	Break out of Critical Function Operating Cash Outflows						
	A) Operation of SRS						
	B) Provision of Whois						
	C) DNS Resolution for Registered Domain Names						
	D) Registry Data Escrow						
	E) Maintenance of Zone in accordance with DNSSEC						
	G) Total Critical Registry Function Cash Outflows						
	H) 3-year Total						
III)	Projected Capital Expenditures						
	A) Hardware						
	B) Software						
	C) Furniture & Other Equipment						
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)						
	i)						
	ii)						
	iii)						
	iv)						
	v)						
	vi)						
	E) Other Capital Expenditures						
	F) Total Capital Expenditures						
IV)	Projected Assets & Liabilities						
	A) Cash						
	B) Accounts receivable						
	C) Other current assets						
	D) Total Current Assets						
	E) Accounts payable						
	F) Short-term Debt						
	G) Other Current Liabilities						
	H) Total Current Liabilities						
	I) Total Property, Plant & Equipment (PP&E)						
	J) 3-year Reserve						
	K) Other Long-term Assets						
	L) Total Long-term Assets						
	M) Total Long-term Debt						
V)	Projected Cash flow (excl. 3-year Reserve)						
	A) Net operating cash flows						
	B) Capital expenditures						
	C) Change in Non Cash Current Assets	n/a					
	D) Change in Total Current Liabilities						
	E) Debt Adjustments	n/a					
	F) Other Adjustments						
	G) Projected Net Cash flow						
VI)	Sources of funds						
	A) Debt:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	B) Equity:						
	i) On-hand at time of application						
	ii) Contingent and/or committed but not yet on-hand						
	C) Total Sources of funds						
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):							
Comments regarding how the Applicant plans to Fund operations:							
General Comments regarding contingencies:							



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	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 6^{ter} of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

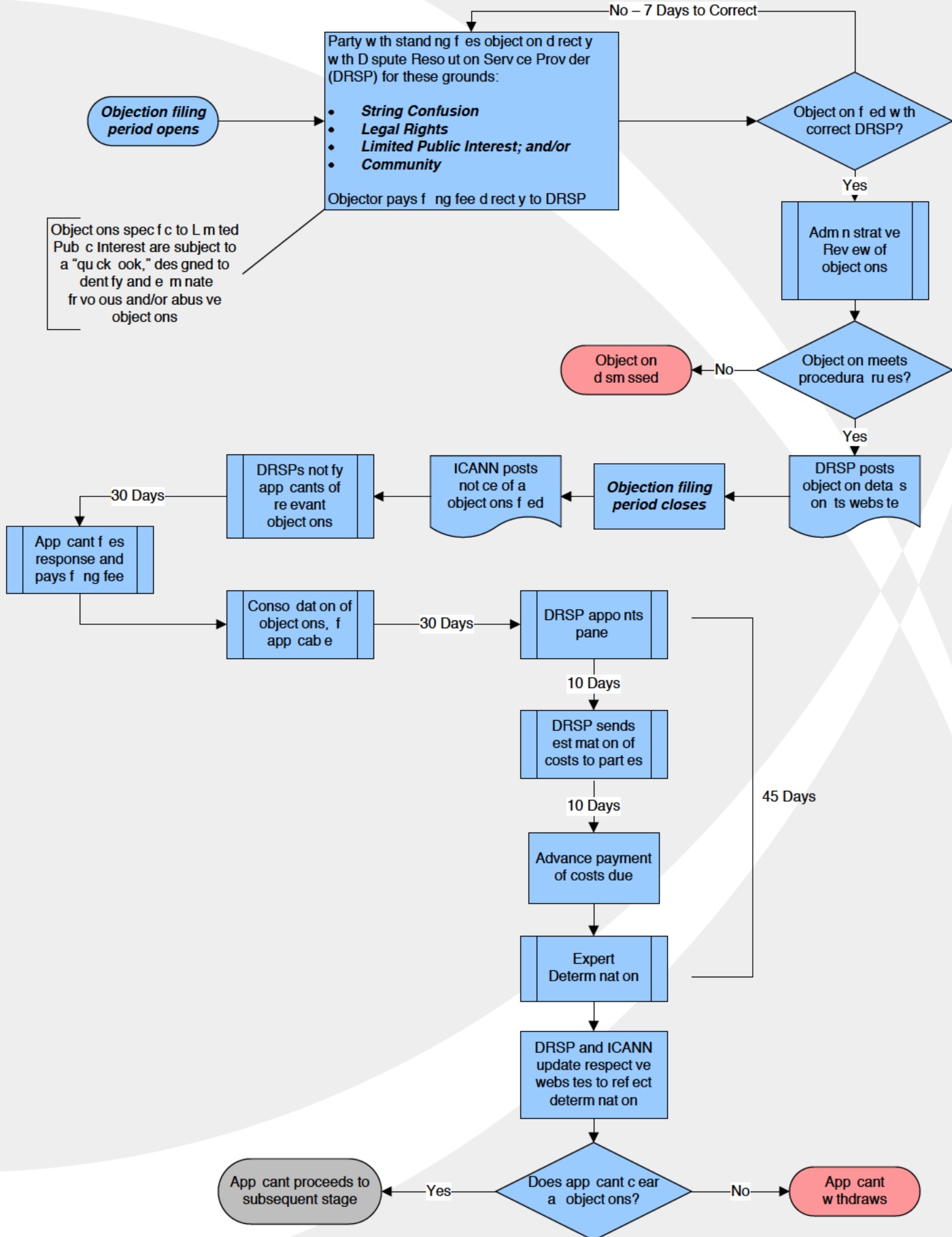
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

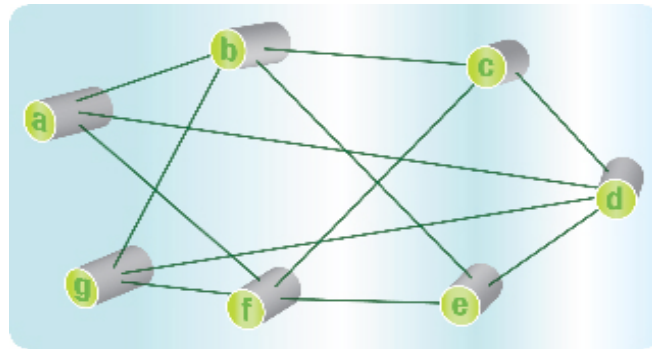


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

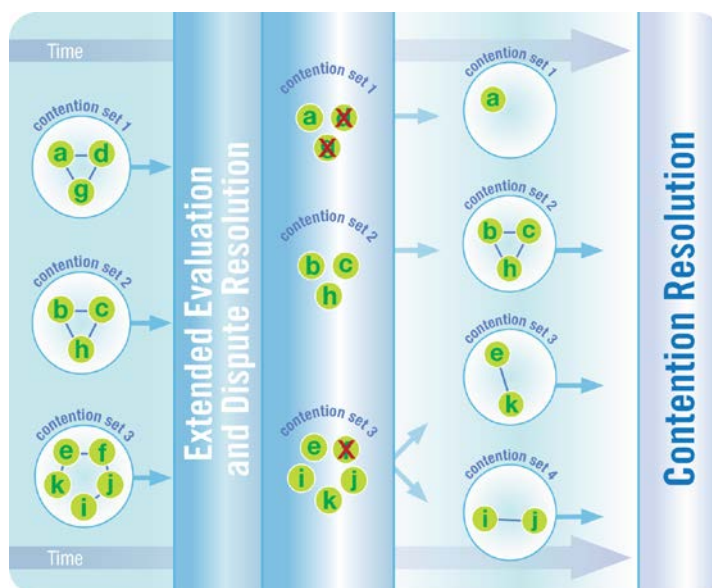


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 Impact of String Confusion Dispute Resolution Proceedings on Contention Sets

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

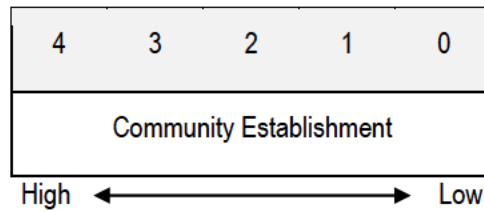
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be:
(a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

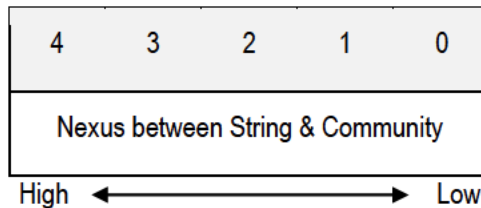
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

3	2	0
The string matches the name of the community or is a well-known short-form or abbreviation of the community	String identifies the community, but does not qualify for a score of 3.	String nexus does not fulfill the requirements for a score of 2.

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

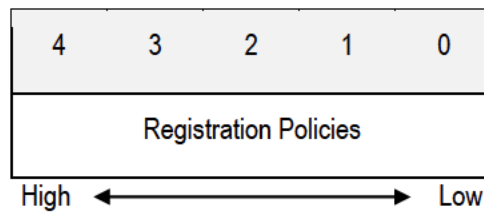
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)

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

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.



Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

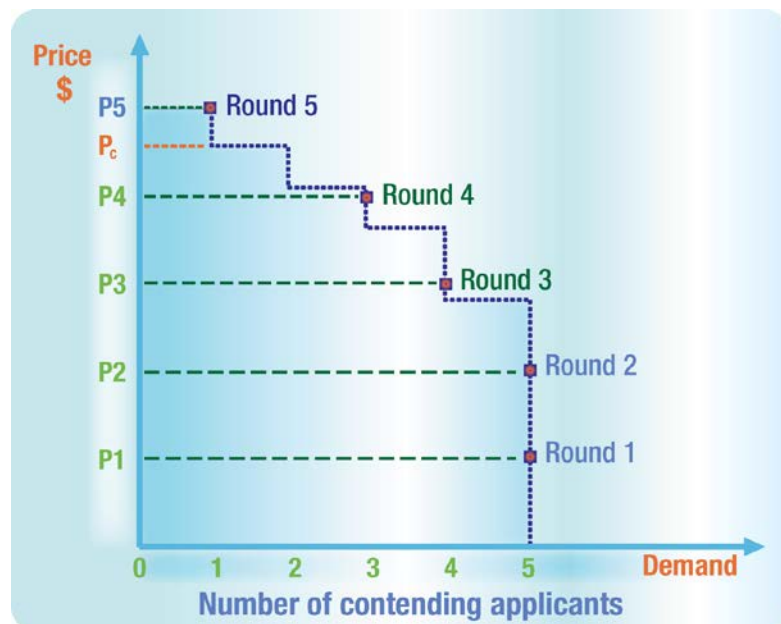


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.² Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

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

4.4 *Contention Resolution and Contract Execution*

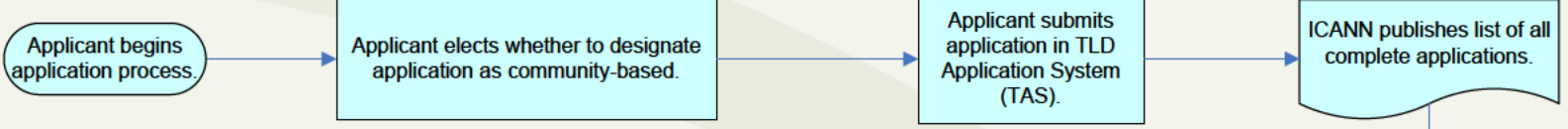
An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

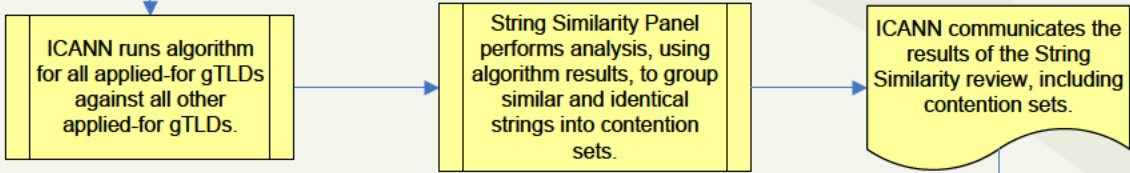
DRAFT - New gTLD Program - String Contention



Application/
Admin Check



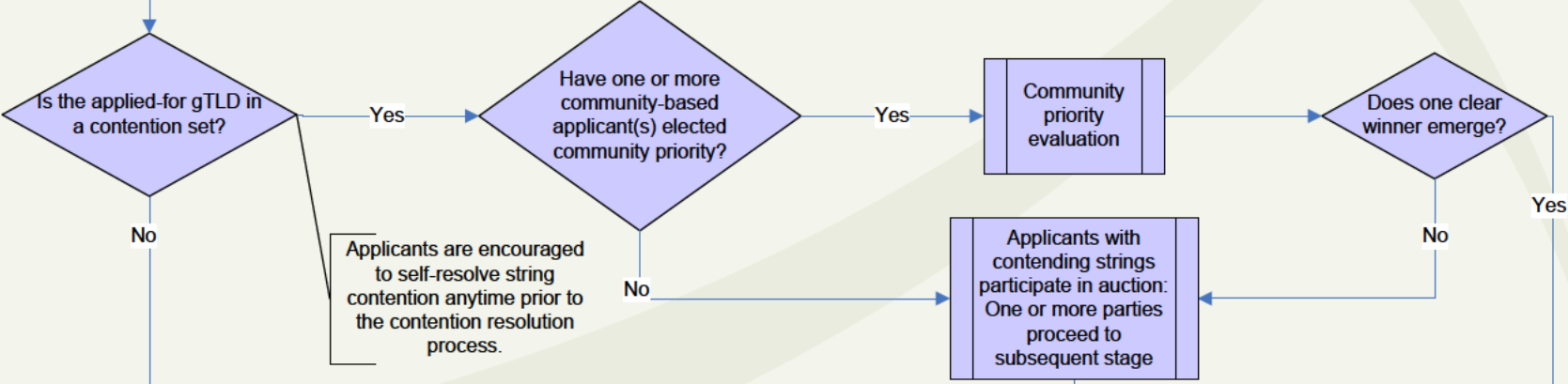
Initial Evaluation (IE)
String Review



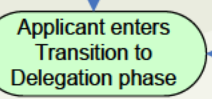
IE + EE
+ Dispute Res

IE, Extended Evaluation (EE), and Dispute Resolution continue. Some applications may not pass certain elements of the review process, **which may alter the contention sets.**

String Contention



Transition to
Delegation





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a “Registry Operator.” In being delegated the role of operating part of the Internet’s domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator’s obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

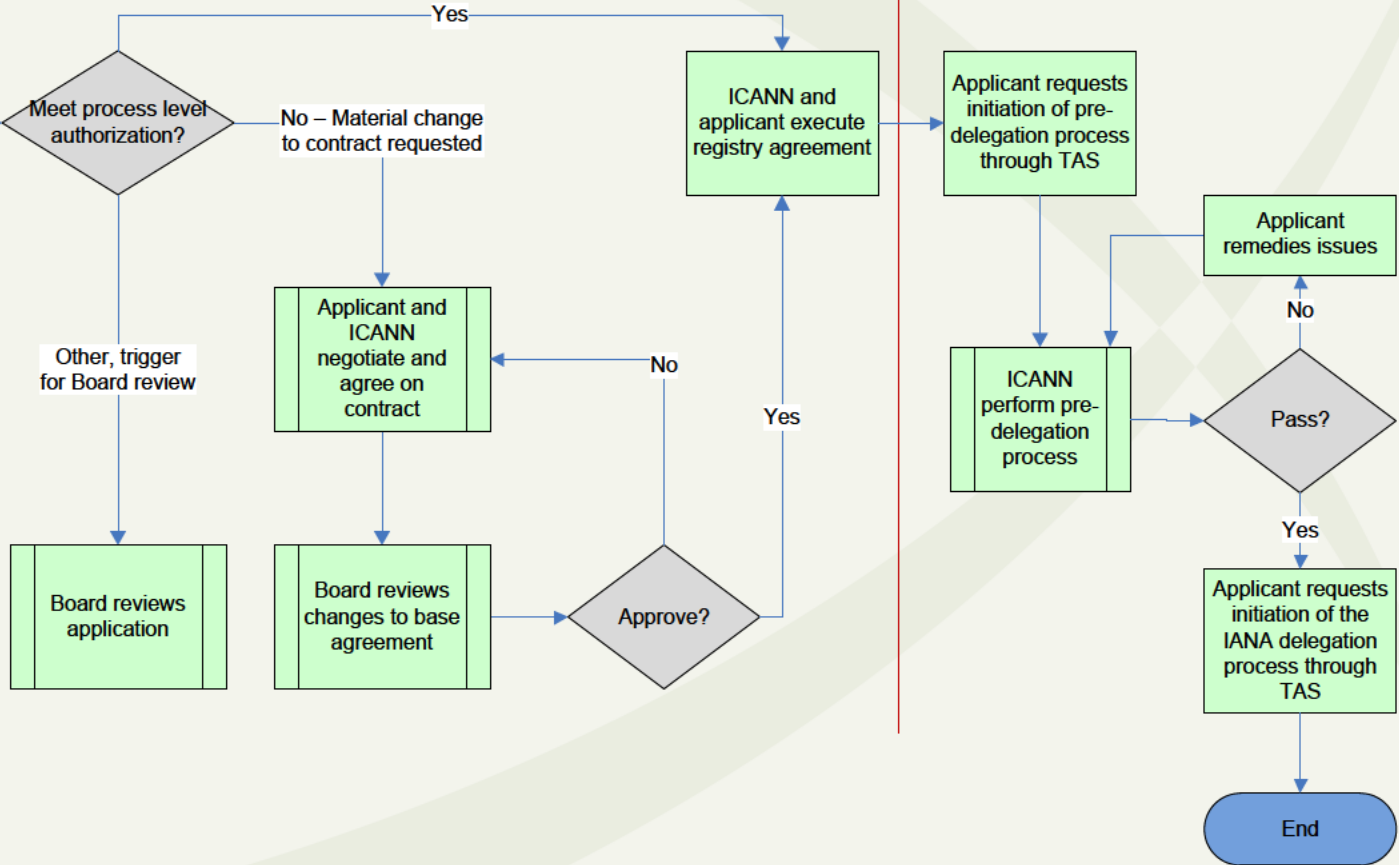
Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months

ICANN provides notice of eligibility to applicant

Applicant prepares documentation for contracting

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



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

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

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

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

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

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provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [*Note: For Community-Based TLDs Only*] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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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 an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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* 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:

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EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.

 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-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 inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.

2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.

3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
 5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
 6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

- 3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.
- 3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.
- 3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

- 4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.
- 4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.
- 4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.
- 4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.
- 4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.
- 4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant’s mark; or

(b) impairing the distinctive character or the reputation of the complainant’s mark; or

(c) creating a likelihood of confusion with the complainant’s mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

- 9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.
- 9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.
- 9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.
- 9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.
- 9.6 Provider shall electronically serve the Threshold Determination on all parties.
- 9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.
- 9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

- 10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.
- 10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.
- 10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
 - 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
 - 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

EXHIBIT RM-6



Board of Directors' Code of Conduct

(As amended 18 July 2018)

The Board of Directors (Board) of the Internet Corporation for Assigned Names and Numbers (ICANN) has adopted the following Code of Conduct ("Code") for its voting directors (Directors) and non-voting liaisons (Liaisons, collectively with the Directors, Board Members). This Code is intended to focus Board Members on areas of ethical risk, provide guidance to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, foster a culture of honesty and accountability, deter wrongdoing and promote fair and accurate disclosure and financial reporting. The Code is not intended to override any applicable laws or any obligations pursuant to ICANN's Bylaws, Conflicts of Interest Policy, Governance Guidelines or any other applicable policies.

No code can anticipate every situation that may arise. Accordingly, this Code is intended to serve as a source of guiding principles and not absolute directives. Generally, however, the goal is to ensure that Board Members strive to foster ICANN's Mission, Core Values and Commitments in an ethical manner. ICANN's Mission, Core Values and Commitments are set forth in Article 1 of ICANN's Bylaws, which is attached as Exhibit A hereto and available at <https://www.icann.org/resources/pages/governance/bylaws-en>.

A. General Statement of Expectation

1. Each Board Member is expected to adhere to a high standard of ethical conduct and to act in accordance with ICANN's Mission, Core Values and Commitments. The good name of ICANN depends upon the way Board Members conduct business and the way the public perceives that conduct. Unethical actions, or the appearance of unethical actions, are not acceptable. Board Members are to be guided by the following principles in carrying out their responsibilities. Note, however, that this Code summarizes such principles and nothing in this Code should be considered as limiting

duties, obligations or legal requirements with which the Board Members must comply.

2. **Loyalty.** Board Members should not be, or appear to be, subject to influences, interests or relationships that conflict with the interests of ICANN organization or its ability to operate for the benefit of the Internet community as a whole. Board Members shall act so as to protect ICANN's interests and those of its staff members, assets and legal rights, and Board Members shall serve the interests of ICANN organization and the global Internet Community over those of any other person, group or stakeholder of ICANN.
3. **Care.** Board Members shall apply themselves with seriousness and diligence to participating in the affairs of the Board and its committees and shall act prudently in exercising oversight of ICANN organization, and shall be attentive to legal ramifications of his or her and the Board's actions. Board Members are expected to be familiar with ICANN's business and the environment in which the company operates, and understand ICANN's principal business plans, policies, strategies and core values.
4. **Inquiry.** Board Members shall take such steps as are necessary to be sufficiently informed to make decisions on behalf of ICANN and to participate in an informed manner in the Board's activities. Board Members are expected to attend all meetings of the Board, except if unusual circumstances make attendance impractical.
5. **Prudent Investment.** Board Members shall avoid speculation with ICANN's assets by giving primary consideration to the probable income and probable safety of ICANN's capital assets and the relation between ICANN's assets and its present and future needs.
6. **Compliance with Laws, Rules and Regulations.** Board Members shall comply with all laws, rules and regulations applicable to ICANN.
7. **Observance of Ethical Standards.** Board Members must adhere to the highest of ethical standards in the conduct of their duties. These include honesty, fairness and integrity.

B. Integrity of Records and Public Reporting

Board Members should promote the accurate and reliable preparation and maintenance of ICANN's financial and other records. Diligence in accurately preparing and maintaining ICANN's records allows ICANN to

fulfill its reporting obligations and to provide stakeholders, governmental authorities and the general public with full, fair, accurate, timely, understandable, open and transparent disclosure.

c. Conflicts of Interest

Board Members must act in accordance with the Conflicts of Interest Policy adopted by the ICANN Board, and as amended from time to time.

D. Corporate Opportunities

Board Members are prohibited from: (a) taking for themselves personally opportunities related to ICANN's business; (b) using ICANN's property, information, or position for personal gain; or (c) competing with ICANN for business opportunities. Board Members shall exercise prudent judgment to avoid the appearance of improper influence when offered opportunities, gifts or entertainment.

E. Confidentiality

Board Members should maintain the confidentiality of information entrusted to them by ICANN as confidential and any other confidential information about ICANN, its operations, customers or suppliers, which comes to them, from whatever source, except when disclosure is authorized or legally mandated. For purposes of this Code, "confidential information" includes all non-public information relating to ICANN, its business, customers or suppliers.

Process surrounding maintenance of confidential information can be found in the Board Governance Committee Code of Conduct Guidelines developed and amended from time to time, as the Board deems appropriate.

F. Board Interaction with Internet Community and Media:

1. The Board recognizes that members of the Internet community, ICANN constituency groups and the public at large have significant interests in ICANN's actions and governance and therefore the Board seeks to ensure appropriate communication, subject to concerns about confidentiality.
2. The Board notes that the President speaks for ICANN, consistent with applicable policy.

3. If comments from the Board to the Internet Community and/or Media on behalf of ICANN are appropriate, they should be reviewed and discussed by the Board in advance, and, in most circumstances, come from the Chair of the Board.

G. Enforcement

Board Members will discuss with the Chair of the Board Governance Committee any questions or issues that may arise concerning compliance with this Code. Breaches of this Code, whether intentional or unintentional, shall be reviewed by the Board Governance Committee or any sub-committee established by the Board Governance Committee (excluding any Board Members whose breaches are under review), which, if necessary, shall make recommendations to the full Board for corrective action. Serious breaches of this Code may be cause for dismissal of the Board Member committing the infraction in accordance with ICANN's Bylaws and applicable law.

H. Affirmation

All Board Members shall read this Code at least annually, and shall certify in writing that they have done so and that they understand the Code.

I. Review

This Code will be reviewed periodically by the Board Governance Committee, which shall make recommendations to the full Board regarding changes to or rescinding of the Code, as deemed appropriate.

Exhibit A

Section 1.1 MISSION

(a) The mission of the Internet Corporation for Assigned Names and Numbers ("ICANN") is to ensure the stable and secure operation of the Internet's unique identifier systems as described in this Section 1.1(a) (the "**Mission**"). Specifically, ICANN:

- (i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level

domain names in generic top-level domains ("**gTLDs**"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

The issues, policies, procedures, and principles addressed in Annex G-1 and Annex G-2 with respect to gTLD registrars and registries shall be deemed to be within ICANN's Mission.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers. In service of its Mission, ICANN (A) provides registration services and open access for global number registries as requested by the Internet Engineering Task Force ("IETF") and the Regional Internet Registries ("**RIRs**") and (B) facilitates the development of global number registry policies by the affected community and other related tasks as agreed with the RIRs.

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations. In service of its Mission, ICANN's scope is to provide registration services and open access for registries in the public domain requested by Internet protocol development organizations.

(b) ICANN shall not act outside its Mission.

(c) ICANN shall not regulate (i.e., impose rules and restrictions on) services that use the Internet's unique identifiers or the content that such services carry or provide, outside the express scope of Section 1.1(a). For the avoidance of doubt, ICANN does not hold any governmentally authorized regulatory authority.

(d) For the avoidance of doubt and notwithstanding the foregoing:

(i) the foregoing prohibitions are not intended to limit ICANN's authority or ability to adopt or implement policies or procedures that take into account the use of domain names as natural-language identifiers;

(ii) Notwithstanding any provision of the Bylaws to the contrary, the terms and conditions of the documents listed in subsections (A) through (C) below, and ICANN's performance of its obligations or duties thereunder, may not be challenged by any party in any proceeding against, or process involving, ICANN (including a request for reconsideration or an independent review process pursuant to Article 4) on the basis that such terms and conditions conflict with, or are in violation of, ICANN's Mission or otherwise exceed the scope of ICANN's authority or powers pursuant to these Bylaws ("**Bylaws**") or ICANN's Articles of Incorporation ("**Articles of Incorporation**"):

(A)

(1) all registry agreements and registrar accreditation agreements between ICANN and registry operators or registrars in force on 1 October 2016, including, in each case, any terms or conditions therein that are not contained in the underlying form of registry agreement and registrar accreditation agreement;

(2) any registry agreement or registrar accreditation agreement not encompassed by (1) above to the extent its terms do not vary materially from the form of registry agreement or registrar accreditation agreement that existed on 1 October 2016;

(B) any renewals of agreements described in subsection (A) pursuant to their terms and conditions for renewal; and

(C) ICANN's Five-Year Strategic Plan and Five-Year Operating Plan existing on 10 March 2016.

(iii) Section 1.1(d)(ii) does not limit the ability of a party to any agreement described therein to challenge any provision of such agreement on any other basis, including the other party's interpretation of the provision, in any proceeding or process involving ICANN.

(iv) ICANN shall have the ability to negotiate, enter into and enforce

agreements, including public interest commitments, with any party in service of its Mission.

Section 1.2 COMMITMENTS AND CORE VALUES

In performing its Mission, ICANN will act in a manner that complies with and reflects ICANN's Commitments and respects ICANN's Core Values, each as described below.

(a) **COMMITMENTS**

In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following (each, a "**Commitment**," and collectively, the "**Commitments**"):

(i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally,

objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) **CORE VALUES**

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN:

(i) To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of, other responsible entities that reflect the interests of affected parties and the roles of bodies internal to ICANN and relevant external expert bodies;

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(v) Operating with efficiency and excellence, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, at a speed that is responsive to the needs of the global Internet community;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of

different stakeholders, while also avoiding capture; and

(viii) Subject to the limitations set forth in [Section 27.2](#), within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on [ICANN](#) outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate [ICANN](#) to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

(c) The Commitments and Core Values are intended to apply in the broadest possible range of circumstances. The Commitments reflect [ICANN's](#) fundamental compact with the global Internet community and are intended to apply consistently and comprehensively to [ICANN's](#) activities. The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve [ICANN's](#) Mission.

Archive

- [Board of Directors' Code of Conduct \(6 May 2012\)](#) – superseded by Board of Directors' Code of Conduct effective 18 July 2018



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EXHIBIT RM-7

Economic Case for Auctions in New gTLDs

8 August 2008

Executive Summary

There are two lines of argument for auctions as the tie-breaking mechanism for resolving contention among competing applicants for new generic TLD strings. First, auctions accomplish the goal of allocative efficiency: putting scarce resources into the hands of those who value them the most. In particular:

- Applicants whose true intentions or abilities are to serve many users would be able to justify higher bids than applicants who will serve few users;
- Applicants capable of providing high-quality service at low cost would be able to justify higher bids than low-quality, high-cost applicants; and
- Applicants who intend to develop the gTLD immediately would be able to justify higher bids than applicants whose purpose is to hold the gTLD, unused, for speculative purposes.

Second, while auctions are not perfectly aligned with ICANN's objectives, alternative allocation mechanisms such as comparative evaluations and lotteries inherently have much more severe limitations and defects, as evidenced by the historical record and by the abandonment of these alternatives in other communications areas.

ICANN intends to use auctions in the new gTLD process as a tie-breaking mechanism, not the primary allocation mechanism, for the resolution of string contention among competing new gTLD applicants for identical or similar strings. Auction would be the final means of settling any contention cases that have not been resolved at any of the previous stages in the process.

1. Background

ICANN is preparing implementation plans for the new gTLD process. Staff is working from the GNSO New gTLD recommendations and input from Internet community to guide the implementation. This memo has been prepared with the assistance of Power Auctions LLC, which has been retained for assistance in auction design.

In 2004, the Organization for Economic Cooperation and Development (OECD) released a paper on "Generic Top Level Domain Names: Market Development and Allocation Issues" (see <http://www.oecd.org/dataoecd/56/34/32996948.pdf>). The OECD paper described allocation methods for gTLD strings, including auction and comparative evaluation. The OECD paper concluded: "On balance the economic arguments favour the use of auctions in some form, where scarcity exists, in relation to the goals set by ICANN for allocation procedures. They are particularly strong in relation to allocation decisions concerning to existing resources and where a 'tie-breaker' is needed during a comparative selection procedure for a new resource. In all cases, the best elements of comparative selection procedures could still be incorporated, at a prequalification stage for registries, using straightforward, transparent, and objective procedures that preserve the stability of the Internet" (pp. 51-52).

The paper acknowledged that comparative evaluation may have the advantage of providing equity for new gTLD applicants, and permits the inclusion of broader objectives in the new gTLD selection process. However, it also noted that comparative evaluation lacks transparency and relies on subjective judgment in the determination of a winner for a proposed gTLD string.

By contrast, auctions provide objectivity and transparency: “Auctions rely on relatively simple and transparent rules that apply to all participants. As such they are fair and transparent. Given that bids are observable and verifiable by a court or any third party, the final allocation is less likely to be legally contested relative to a comparative selection procedure” (see page 42).

The OECD paper highlighted both that auctions are effective for determining the market value and that auctions are advantageous even if revenue maximization is not a primary objective. “Economic theory and experience suggest that auctions are one of the best available mechanisms for realising the true market value of a resource, as the price is decided by those with the best knowledge of the market. In the context of the TLD market the benefits auctions can bring, in this respect, largely depend on the objectives that are set by ICANN.” It continued: “As a notfor-profit organisation, revenue maximisation may not, in fact, be an objective ICANN sets for itself. The value of any new gTLD may, for example, be impacted by the number of other gTLDs that ICANN chooses to make available. ICANN may decide that the increasing the number of new gTLDs can provide greater competition, choice and innovation and give higher priority to meeting those objectives than to revenue maximisation. This does not, however, negate the benefit an auction can yield in terms of determining the value of a resource or in being a tool for efficient allocation” (p. 44).

An additional resource available to ICANN is “An Economic Analysis of Domain Name Policy,” Hastings Communication and Entertainment Law Journal (2003) (by Karl M. Manheim and Lawrence B. Solum) (see <http://law.bepress.com/sandiegolwps/le/art1>). This paper argues that the root is an economically scarce resource, that ICANN should allow a market to develop in top-level domains, and that the market should serve the public interest. It should be noted that TLDs are not necessarily a scarce resource.

Manheim and Solum compare management of the Internet’s system of unique identifiers to telecommunications spectrum and licensing of spectrum in the United States by the Federal Communications Commission (FCC). “Compared to spectrum auctions, we believe gTLD auctions will be relatively simple, both in concept and operation. Nonetheless, we think actual auction design should be worked out by ICANN to assure compatibility with technical standards and to maximize economic efficiency” (pp. 416-417).

Manheim and Solum conclude: “When auctions were first proposed to the FCC, they were dismissed out of hand as “too academic” and ridiculed as “of the realm in which it is merely the fashion of economists to amuse themselves.” The same attitude can be found in many of the objections to gTLD auctions espoused by defenders of the status quo. Just as, over time, auctions have become accepted as means for allocating economically scarce spectrum and telephony resources, we believe they will become seen as the best means for expanding the TLD name space. Indeed, the case for auctioning new gTLDs is compelling” (p. 449).

2. Auctions accomplish the goal of allocative efficiency

Auctions are well suited to accomplishing the goal of *allocative efficiency*: putting scarce resources into the hands of those who value them the most. As such, the results of auctions tend to create greater social value than alternative allocation mechanisms. For example, suppose that one applicant for a gTLD has the true intention and capability of serving many users, while a second applicant has in mind a narrow application that would serve only a few limited interests. The first applicant would generally be able to justify a higher bid for the gTLD than the second applicant; consequently, the first applicant would be likely to win the gTLD in an auction. By contrast, in a comparative evaluation, the second applicant might be able to win the

gTLD if it were more persuasive (or hired the more effective consultant or lobbyist); and in a lottery, the two applicants are by definition equally likely to win. Similarly, an auction process would tend to favor a high-quality, low-cost applicant over a low-quality, high-cost applicant. And an applicant who intends to develop the gTLD immediately would be able to justify a higher bid than an applicant whose purpose is to hold the gTLD, unused, for speculative purposes.

Largely for similar reasons, governments began 15 years ago to allocate telecommunications licenses by auction. In 1993, the US Congress authorized the Federal Communications Commission (FCC) to allocate mobile telephone licenses by auction; and in 1997, it extended this authorization to use auctions for resolving competing applications for radio and TV licenses. Moreover, auctions for allocating radio spectrum have been a truly global phenomenon. They have been used in New Zealand since 1990 and in Australia since 1993; and they have been adopted subsequently in the UK, Germany, Austria, Netherlands, Switzerland, India, Hong Kong, Singapore, Nigeria, Canada, Mexico, Brazil, and Trinidad and Tobago (to provide only a partial list).

The key benefits of a well-designed auction mechanism include the following:

- Transparent and objective means for determining a winner
- Efficient allocation – puts gTLD strings in the hands of those who value them the most and will put them to use (Note - ICANN intends to use auctions as a tiebreaking mechanism, not as the primary allocation mechanism.)
- Efficient process – fully dynamic auction, concludes in one day to one week
- Revenue maximization (with possible options for ensuring that “deepest pockets” do not always win auction) *Note that revenue maximization is not one of ICANN’s goals with the new gTLD process.

Of course, no allocation mechanism will perfectly address needs for transparency, objectivity and scalability, and auctions have received severe criticism in some contexts. For example, the European Telecommunications Network Operators’ Association (ETNO) all but blamed the European UMTS/3G spectrum auctions of 2000 and the subsequent collapse of the telecommunications sector: “The auction process appears to be particularly inappropriate when considering innovative technologies and new markets ... the whole sector has been seriously destabilised and the launch of new services delayed.”¹ ETNO argues that beauty contests are preferable to auctions.²

The timing of the European spectrum auctions coincided with the NASDAQ stock market peak. Given that telecom firms operating outside of Europe or outside the wireless sector suffered similar drops in stock prices as European wireless operators and given the similarly-timed bursting of the “dot-com” bubble, it is more reasonable to view the high European spectrum auction prices as a symptom of the bubble rather than as a cause of its collapse. Oxford University Professor Paul Klemperer has noted: “In retrospect, of course, the licenses look expensive. But in retrospect, shares or houses sometimes look expensive. Like any other

¹ See ETNO Reflection Document Commenting on Auctions and Beauty Contests, Dec. 2004; available at <http://www.etno.eu/Portals/34/ETNO Documents/Information Society i2010/RD203 - FM Auctions and Beauty Contests.pdf> (p. 3).

² As described in the reflection document’s introduction, ETNO represents the voice of Europe’s largest telecom operators. Thus, ETNO has a vested interest in obtaining lower license fees for its member operators and insulating them from new entry. Note that the document also asserts: “The progress in technologies leads to significant evolutions of services and transformation of traditional markets. As a consequence, maintaining a distinction between incumbent operators and new entrants becomes more and more artificial.” (p. 2).

market, an auction simply matches willing buyers and willing sellers — it cannot protect them against their own mistakes.”³

While the spectrum auction experience offers some useful insights, there are major differences between spectrum licenses and gTLDs. Spectrum licenses are unique and are limited to a fixed supply — and specific spectrum licenses are needed to provide specific wireless services. Telecom firms in Europe in 2000 may have perceived that they needed to win specific licenses in order to remain in business. By contrast, gTLDs are unique only in their identifying string and the number of gTLDs can be expanded over time — and any of a large number of alternative gTLD strings can be used for a given purpose. If a bidder fails to win its first-choice gTLD, it can submit a new proposal and apply for an alternative string. In this respect, an auction for gTLDs is more likely to be comparable to an auction for houses⁴ than to an auction for spectrum. There are characteristics of a house that make it unique and more desirable than another home, but if an applicant is unsuccessful in a house auction, there is likely to be another suitable house available. Similarly, an applicant who finds .movie to be too expensive in a gTLD auction can instead apply for .film or .cinema. Participants in gTLD auctions will not generally find themselves in “must-win” situations; their second or third choices will be reasonable substitutes.

It is worth emphasizing that, similar to ICANN, most spectrum agencies have not placed revenue maximization at the top of their list of objectives. Rather, the efficient use of the spectrum, and the putting of spectrum into use in a timely fashion, has generally been uppermost. It has also been widely perceived that scarce spectrum is a valuable public resource that governments should not merely give away to self-interested individuals. Transferring TLD rights to third parties for little or no compensation would be equally as objectionable as spectrum giveaways.

At the same time, allocating these resources for free does not reduce the price to end-consumers.

It is a classic fallacy in economics (the “sunk cost fallacy”) that profit-maximizing firms will set their prices in relation to the level of past fixed costs. Rather, they will take account of the scarcity of the resources that they use, regardless of whether they pay for them or receive them for free. There may be a concern that auctions resolving contention among gTLD applications will result in passing on of costs to consumers. The available evidence after spectrum auctions has been that consumer prices do not depend on the price paid for the spectrum. A similar point has been seen recently in Europe, where utilities received grandfathered carbon emission allowances for free but nevertheless set higher consumer prices that reflected the opportunity cost of the allowances, not the (zero) price they paid.

Finally, various devices can be considered for favoring disadvantaged bidders in an auction. For example, a 25% bidding credit could be offered to community-based bidders whose community is located primarily in least-developed countries: a \$300,000 bid from such a bidder would be viewed as equivalent to a \$400,000 bid from a wealthy country. (Obviously, in such event, measures would need to be taken so that bidders in wealthy countries could not establish shell corporations for the primary purpose of “gaming” such bidding credits.) Such devices might make auctions more attractive to the Internet community.

³ Klemperer, P., “The Wrong Culprit for Telecom Trouble,” *Financial Times*, 26 Nov. 2002, p. 21.

⁴ Auctions for houses are commonplace and work well in various parts of the world, for example, in Sydney, Australia.

3. Alternative allocation mechanisms are deficient

Manheim and Solum (2003, p. 367) consider four possible allocation mechanisms:

- Rule of first occupancy⁵
- Lotteries
- Comparative evaluations
- Auctions

Meanwhile, the OECD paper does not even consider a rule of first occupancy and summarily dismisses lotteries: “These are little used by OECD governments where allocative choice is required” (p. 39). Both papers come down decisively in favor of auctions. While part of the reason to use auctions is the set of attractive properties outlined in the previous section, another reason to use auctions is that the alternatives are grossly deficient.

A rule of first occupancy does not seem worthy of any further attention, so we limit consideration to the two other alternatives: lotteries and comparative evaluations.

Lotteries

In the telecommunications area, the best known use of lotteries was in connection with the allocation of US mobile telephone licenses, beginning in 1981. The experience was summarized by Manheim and Solum (2003, pp. 396-397): “Applications came in by the hundreds of thousands. Winners would often ‘flip’ or resell their licenses to larger entities at substantial profit without ever delivering service to a single customer. Some licenses won at lottery were resold in short order for tens of millions of dollars. The windfalls continued, as per the Coase Theorem.⁶ But the transaction costs were high, including the cost of delay in getting licenses to firms that could actually use them. One estimation of social cost for the ten-year delay in licensing of cellular providers [by lottery] was 2 percent of Gross National Product (GNP). By 1985, the FCC indicated its desire to eliminate the lottery system.”

In addition, awarding rights to gTLDs by lottery or “coin flip” might be contrary to the laws in certain jurisdictions. We take no opinion on the legal argument, as conducting a lottery would otherwise appear antithetical to economic principles and to ICANN’s objectives.

Comparative evaluations

Before lotteries, radio spectrum licenses in the US were allocated by comparative evaluation. The process is summarized in Paul Milgrom’s book, “Putting Auction Theory to Work,” Cambridge University Press (2004, p. 3): “Spectrum rights (licenses) in the United States and many other countries had long been assigned in comparative hearings, in which regulators compared proposals to decide which applicant would put the spectrum to its best use. The process was hardly objective: it involved lawyers and lobbyists arguing that their plans and

⁵ A rule of “first occupancy” allocates an item to the first individual to gain possession of or make use of the item.

⁶ The Coase Theorem was introduced by University of Chicago Law & Economics Professor Ronald Coase, see <http://www.law.uchicago.edu/socrates/coase.html>. Coase won the 1991 Nobel Prize for his work. The theorem is summarized as “In a world where there are no transaction costs, an efficient outcome will occur regardless of the initial allocation of property rights.”

clients were most deserving of a valuable but free government license. With its formal procedures and appeals, a comparative hearing could take years to complete.” Milgrom adds in a footnote: “The process was once characterized by an FCC Commissioner as the ‘FCC’s equivalent of the Medieval trial by ordeal’ (as quoted by Kwerel and Felker (1985).”

The International Olympic Committee uses a comparative evaluation process for determining the site of the Olympic Games. In one of the more notorious episodes, it was alleged that in connection with the selection of Salt Lake City for the 2002 Winter Games, IOC members accepted more than \$1 million in cash, gifts, trips and scholarships. As a result of this bribery scandal, 10 members of the IOC were expelled, another 10 members were sanctioned, and several criminal prosecutions ensued. While the IOC is unlikely to replace its comparative evaluation process with an explicit auction, the episode highlights that comparative evaluations without clear criteria for deciding an allocation are invitations to corruption. By contrast, since auctions are transparent and objective, it is much more difficult to influence the outcome in favor of a particular bidder.

The disadvantages of comparative evaluations can be summarized as follows:

- It is difficult to establish meaningful transparent and objective criteria that allow the evaluator to distinguish among and select one of multiple competing applications;
- As a consequence, the comparative evaluations take a long period of time and require the investment of exhaustive resources by both applicants and the evaluator;
- Also as a consequence, the comparative evaluation process is vulnerable to corruption;
- The awards, once made, are unlikely to withstand judicial review;
- If other than the highest-value applicant wins the comparative evaluation, the winner is likely to ‘flip’ the rights for speculative profits;
- Depending on how the comparative evaluation is structured, the process may favor well-connected applicants, and thus may not be any more protective of disadvantaged applicants than auctions; and
- In the language of the economics and political science literatures, the comparative evaluation process may thus be an ‘all-pay auction’ which dissipates revenues (through expenditures on consultants and lobbyists) instead of collecting revenues that can be channeled to the good of the internet community.

At the same time, as emphasized by the OECD paper and noted in Section 1 above, most of the advantages of comparative evaluations can be obtained through a pre-qualification process before the auction. The pre-qualification procedures could apply straightforward, transparent and objective standards that would deal with concerns that a stand-alone auction might otherwise engender among the Internet community. However, the pre-qualification process would often fail to eliminate multiple competing applications for new generic TLD strings, which would then be resolved by auction. Pre-qualification and evaluation will still be used as a primary allocation method, but auctions would serve as the tie-breaker for resolving contention among identical or similar string applications

EXHIBIT RM-8

Google

From ICANNWiki

Google is a multi-national company providing search, advertising, cloud computing services and many other business solutions. The company's mission is to organize the world's information and make it universally accessible and useful.^[3] The company ranked 4th on Fortune 100 Best Companies to Work For in 2011.^[4]

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Company Background

In 1996, Larry Page and Sergey Brin, both Stanford University graduate students, partnered in building BackRub, a search engine that determined the importance of individual web pages. This search engine operated for more than a year at Stanford servers until it took too much bandwidth to suit the university.^[5]

In 1997, Page and Brin decided to change the name of the BackRub search engine, the two brainstormed and came up with Google -- a term derived from the mathematical term googol, which means the numeral 1 followed by 100 zeros.^[6] The name reflects the founders objective, which is to organize an infinite amount of information on the web.

On September 4, 1998, Google was incorporated in California. The company started its business operations in a garage at Menlo Park. Craig Silverstein, was the first employee hired by Page and Brin, a fellow computer science graduate from Stanford. PC Magazine recognized Google as one of the Top 100 Web Sites for 1998.^[7]

ICANN and Google

Google is an ICANN accredited registrar of seven top level domain names which include .com, .net, .org, .biz, .info, .name and .pro.^[8]

One of the significant policies implemented by Google in 2008 is the introduction of a Domain Kiting Detection System, to stop the domain name registration abuses by profiteers known as domain tasting and domain kiting. The modus operandi of profiteers is taking advantage of the five-day Add Grace Period for domain tasting by checking and calculating how much a particular domain generates revenue from ads while parked at a monetization page. With regards to domain kiting, a registrant deletes a newly registered domain name before the grace period ends and immediately registers it again, to reset the grace period and postpone the registration payment.^[9]



ICANNWiki Partner

Type	Publicly Held
Industry	Internet & Technology
Founded	1998
Founder(s)	Larry Page Sergey Brin
Headquarters	1600 Amphitheatre Parkway Mountain View, CA 94043
Country	USA
Employees	20,000 ^[1]
Revenue	\$ 29, 321 million as of 2009 ^[2]
Website	www.google.com (http //www.google.com)
Blog	Google Blogspot (http //googleblog.blogspot.com/)
Facebook	Google Facebook (http //www.facebook.com/Google)
LinkedIn	Google (http //www.linkedin.com/company/google)
Twitter	@google (http //twitter.com/google)

Key People

Larry Page, CEO

Eric Schmidt, Executive Chairman
 Sergey Brin, Co-Founder
 Jordyn Buchanan, Site Reliability Manager
 Sarah Falvey, Policy Manager
 Hal Bailey, Strategic Partnerships Director
 Nikesh Arora, Senior VP and Chief Business Officer
 Shona L. Brown, Senior VP Business Operations
 David C. Drummond, Senior VP, Corporate Devt. & Chief Legal Officer
 Alan Eustace, Senior VP, Engineering and Research
 Patrick Pichette, Senior VP & Chief Financial Officer
 Jonathan Rosenberg, Senior VP Product Management
 Vinton Cerf, Internet Evangelist

Google's announcement stirred concerns and debate within the internet community, prompting ICANN to immediately act; although the organization had been preparing a policy to deter the practices of domain tasting and domain kiting prior to Google's move. ICANN conducted a debate in the Spring of 2008 regarding the elimination of the AGP. Meanwhile, ICANN's At-Large Advisory Committee requested the board to investigate the practices to formulate a relevant policy to prevent the abusive practices of domain tasters and kitters.^[10]

In June 2008, ICANN implemented a provisional policy (from July 1, 2008 to June 30, 2009) as a short-term solution in response to the internet community's concern regarding domain tasting. Under the policy, registrars will not be entitled to receive a \$0.20 refund, for administration fees, if more than 10 percent of their registered domains were deleted. The policy was successful in dropping the number of deleted domains from 18 million to 2 million. After the provisional period ICANN adopted a tougher policy which required registrars to pay \$6.75 for every excessive delete.^[11]

Vinton Cerf Joins Google

Renowned DARPA scientist, Vinton Cerf, joined Google in September, 2005 as Vice-president and Chief Internet Evangelist;^[12] Cerf co-designed the TCP/IP protocols that were used to develop the architecture of the internet and he is considered as one of the **Fathers of Internet**.^[13]

As Google's VP and Chief Internet Evangelist, Cerf helped the company in building standards for next generation applications, network infrastructure, architectures, and systems.^[14] He also served as one of Google's public figures in the Internet community worldwide. While working with Google, Cerf also continued his position as chairman of the board of ICANN, which began in 2000 and lasted until 2007.^[15]

New gTLDs

It was confirmed in April, 2012, before the scheduled closure of the application period of ICANN's new gTLD program, that Google was applying for its own branded TLDs (i.e., .google, .youtube), and some other relevant generic terms. Their announcement created excitement that Google's search engine would add significant attention to new gTLDs, and anxiety that the very large player would walk away with some of the most sought after new extensions.^[16]

On May 31, 2012, Google's Chief Internet Evangelist Vinton Cerf posted on Google's Official blog that the company submitted applications for new TLDs with the following categories ^[17]

- Google Trademarks (example .google)
- Domains related to Google's Core Business (example .docs)
- Domains that Improve User Experience (example .youtube)
- Domains that are interesting and has creative potential (example .lol)

Vint also assured people that making new TLDs successful through security measure and abuse prevention as high priority, working with all ICANN-accredited registrars and with brand owners to develop sensible rights protection mechanisms built upon ICANN's requirements.

In a related report, Ad Age Digital reported that Google applied for more than 50 TLDs. The information was revealed by a source within Google who is familiar with the company's application. ^[18]

Based on ICANN's List of New gTLD Applied-For Strings, Google applied for 101 new gTLDs through its wholly-owned subsidiary, Charleston Road Registry Inc.. The company spent more than \$18.6 million in application fees. Google's primary competitor is Amazon, which filed for 21 similar domain name strings including .drive, .search and .play. Sarah Falvey, Senior Policy Analyst of Google is the main contact person in the application. ^{[19] [20]}

Three of Google's applications, .and, .are and .est, were for protected strings and cannot be implemented as New gTLDs given their status as the ISO 3166-1 alpha-3 country codes (for Andorra, United Arab Emirates, and Estonia respectively). It was later confirmed that Google withdrew these applications.^[21]

In January of 2014, it was confirmed that Google's first domain registration for a New gTLD was جوجل.شبكة, which is a transliteration of Google. It was registered during the Sunrise Period for the TLD .shabaka. ^[22]

Applications

Google's 101 originally applied for strings, separated by contested and non-contested, are .app, .baby, .blog, .book, .buy, .cloud, .corp, .cpa, .dds, .dev, .diy, .docs, .dog, .dot, .drive, .earth, .family, .film, .free, .fun, .fyi, .game, .gmbh, .goo, .home, .inc, .live, .llc, .llp, .lol, .love, .mail, .map, .mba, .med, .mom, .moto, .movie, .music, .pet, .phd, .play, .plus, .search, .shop, .show, .site, .spot, .srl, .store, .talk, .team, .tech, .tube, .vip, .web, .wow, .you

.ads, .and, .android, .are, .boo, .cal, .car, .channel, .chrome, .dad, .day, .dclk, .eat, .esq, .est, .fly, .foo, .gbiz, .gle, .gmail, .goog, .google, .guge, .hangout, .here, .how, .ing, .kid, .meme, .mov, .new, .nexus, .page, .prod, .prof, .rsvp, .soy, .tour, .youtube, .zip, .みんな, .グーグル, .谷歌^[23]

Withdrawn Applications

Google applied for .and as a TLD for its Android services, and .are and .est as domain hacks that would allow domains such as fast.est and dogs.are/cute. All three applications were withdrawn. They were immediately criticized as flying directly in the face of ICANN's applicant guidebook given that it clearly lays out that geographic and territory names on the ISO 3166-1 standard list are protected. AND is on that list as a designation of Andorra; EST is for Estonia; and ARE is reserved for the United Arab Emirates. Thus, it was quickly suggested that the applications would be rejected outright.^{[24][25]} In September, 2012 it was noted that Google had withdrawn all three applications.^[26]

Complaints Over Closed gTLDs

In September, 2012, an influential consumer advocacy group, Consumer Watchdog, sent a letter to U.S. Sen. Rockefeller, who is the chair of the Senate Commerce, Science and Transportation Committee. Sen. Rockefeller's senate subcommittee is the same that had held hearings regarding ICANN and its new gTLD program just before its launch. Consumer Watchdog is upset over both Google and Amazon's plans to acquire generic TLDs and then to restrict them only for their own use. The letter states "If these applications are granted, large parts of the Internet would be privatized. It is one thing to own a domain associated with your brand, but it is a huge problem to take control of generic strings. Both Google and Amazon are already dominant players on the Internet. Allowing them further control by buying generic domain strings would threaten the free and open Internet that consumers rely upon. Consumer Watchdog urges you to do all that you can to thwart these outrageous efforts and ensure that the Internet continues its vibrant growth while serving the interests of all of its users." The whole letter can be seen here (<http://www.consumerwatchdog.org/resources/ltrockefeller091912.pdf>).^[27]

This letter came just a day after a similar appeal by a group of domain industry regulars was announced. Michele Neylon, CEO of Blacknight Internet Solutions Ltd and a highly active member of the ICANN community, led the signatories of a letter addressing the same issue, though it does not name Google nor Amazon by name. Instead it focuses on any and all use of generic terms that are being sought after only to become closed TLDs – generic words used in a generic way belong to all people. It is inherently in the public interest to allow access to generic new gTLDs to the whole of the Internet Community, e.g., .BLOG, .MUSIC, .CLOUD. Allowing everyone to register and use second level domain names of these powerful, generic TLDs is exactly what we envisioned the New gTLD Program would do. In contrast, to allow individual Registry Operators to segregate and close-off common words for which they do not possess intellectual property rights in effect allows them to circumvent nation-states' entrenched legal processes for obtaining legitimate and recognized trademark protections. Other signatories include Scott Pinzon, former Director of ICANN; Kelly Hardy, domain industry consultant; Frédéric Guillemaut, MailClub.fr; Robert Birkner, IAPI GmbH; the whole letter can be seen here (https://docs.google.com/document/d/1ZUNlookOWyaSW8lXfi_37zVFsVk9xcxcvmeE0uwPEFY/edit).

In mid-February 2013, it was announced that an applicant represented by industry lawyer Philip Corwin would be contacting and lobbying lawmakers in Washington and Brussels, or raising litigation, against Google. The applicant in question remains unknown though it is in contention with Google for at least one TLD. It is not in contention with Amazon, which has in fact applied for many more closed TLDs than Google. The issue at hand is the competition advantage that Google has given its search dominance and its ownership of sites such as youtube. Therefore, its applications for .film, .movie, .mov, .live, .show and .tube could all be used to create further market dominance within the online video and content streaming markets.^[28]

▪ More on closed gTLDs

In early March, 2013, Google announced via public comments ICANN held on the Closed Generic issue that it would no longer be seeking to close off any of its generic applications, and specifically noted the offending applications, .app, .blog, .cloud and .search. It noted that it planned to affect these changes through amendments to its applications.^[29]

GAC Early Warnings

Google was warned by ICANN's Governmental Advisory Committee (GAC), regarding 4 of its applications, for .cloud, .app, .search, and .blog. All 4 warnings came from the Australian GAC representative, and GAC Chair, Heather Dryden. She issued the most warning of any representative, and warned every applicant that had applied for a generic term to be used exclusively by the applicant, arguing that this inhibits competition on the Internet and is not in the public's interest. All of Google's warnings were warned for this reason, and it was warned far fewer times than its major competitors, such as Amazon.^{[30][31]}

Trade Association

During a special ICANN session held in January 2013 in Amsterdam, Google supported and facilitated a parallel working session outside of the ICANN meeting to discuss the possibility of creating a New gTLD Trade Association that could spread consumer awareness and provide business advocacy for New TLDs. The meeting was the first stage in creating such a body and preliminary discussions included funding sources, membership requirements, and universal TLD acceptance issues.^[32] The meeting was reportedly very well attended, and participants agreed that the trade association should focus on the Domain Industry as a whole rather than just New gTLDs. There were immediate questions of feasibility in creating a large enough entity with enough backing to launch its efforts prior to the implementation of the first New gTLDs.^[33]

Change in Google's Search Algorithm

In May 2013, it appeared that Google was preparing for the new gTLD environment by updating its search algorithm in order to give weight in searches to ccTLDs. In the past, more weight has been given to the common .com and .org strings, among others.^{[34][35]}

"Dotless" Domains Proposal

Google's application for the .search new gTLD includes a proposal for a dotless TLD, which has been with significant objection from Microsoft and other companies.^[36] An excerpt from Google's application explains the proposal "Charleston Road Registry will provide a service on the dotless search domain that will allow users to designate the search functionality of their choice and then perform queries that will automatically be redirected to the appropriate website. This facility should provide simple, consistent access to the user's preferred search functionality that does not exist today."^[37]

Domain Name Association Membership

Google became a member of the Domain Name Association, an organization that promotes the domain name industry and includes Registrars and Registries as its members.^[38]

Issues

.ie Disruptions

On October 9th, 2012, both Google and Yahoo! experienced prolonged disruptions in their services under the .ie country code top-level domain name (ccTLD). Technology.ie was the first party to report that Google's nameservers had experienced an unauthorised change that directed them to fraudulent nameservers in Indonesia.^[39]

Though the Irish ccTLD registry, IEDR, initially stated that an unauthorised change was made to two .ie domains on an independent registrar's account which resulted in a change of DNS nameservers, on November 9th, it stated that a further investigation confirmed that neither the Registrar of the affected domains nor its systems had any responsibility for this incident. The registry further said that hackers probed its system for 25 days before breaking in via a vulnerability in its Joomla content management system, which enabled the attackers to access back-end databases and upload malicious PHP scripts.^[40]

Google & ITU

The United Nations' International Telecommunication Union is holding the World Conference on International Telecommunications (WCIT) in Dubai from December 3rd to December 14th, 2012. Government representatives from 178 nations around the world will be working to renegotiate the *International Telecommunications Regulations* (ITR), an information and communications treaty that outlines rules for how traffic should flow between telecom networks and how to calculate charges for traffic between different international carriers interfacing with one another. The treaty has not been updated since its signing in 1988.^[41] Of the goals of the updated treaty, the ITU has said that it hopes to ensure the free flow of information around the world, promoting affordable and equitable access for all and laying the foundation for ongoing innovation and market growth.^[42]

One of the treaty's possible impacts includes a change in internet governance structures, from regulation under a U.S.-based group like ICANN to a more global organization.^[43]

Google has been vocal about their opposition of ITU control of the internet and has launched a *Take Action* campaign in response. The *Take Action* website states, "A free and open world depends on a free and open Internet... But not all governments support the free and open internet... They note that forty-two countries filter and censor content, and says of the December ITU meeting that, "Some of these governments are trying to use a closed-door meeting in December to regulate the internet... Proposed changes to the treaty could increase censorship and threaten innovation. Google's main criticisms of the ITU are that it is a secretive organization with confidential conferences and proposals, which are open only to governments and not to the general public. Google states that, "Internet policy should work like the Internet -- open and inclusive."^[44]

Other opponents include the European Parliament^[42] and the U.S. Government^[45] Proponents may include the Russian government, according to a leaked file from WCITLeaks.^{[42][46]}

First Investors

Andy Bechtolsheim, co-founder of Sun Microsystems, was Google's first investor in 1998, followed by Ram Shriram, former President of Junglee and current Managing Director at Sheralo Ventures. On June 7, 1999, Google received a major equity funding of \$25 million from Sequoia Capital and Kleiner Perkins; John Doerr and Michael Moritz joined the company's board of directors.^[47]

Company Growth and Expansion

In 2000, Google was already available in different languages, including French, German, Italian, Swedish, Finnish, Spanish, Portuguese, Dutch, Norwegian, Danish,^[48] Chinese, Japanese, and Korean.^[49] Google Adwords and the Google toolbar were launched with 350 customers. On June 11, 2000, the Google home page became the largest search engine, with 1 billion items.^[50]

In 2001, Google was available in 26 languages. Eric Schmidt was appointed Chairman and Wayne Rosing was hired as VP for Engineering.^[51] The following year, Schmidt was elected CEO while Page assumed the position of president for products and Brin became president for technology.^[52]

The company also launched the Google Search Appliance, a new device that allowed corporations to use its search technology to scan their own networks;^[53] Adwords Select, an enhanced version of Adwords was released, a self-service advertising system with the Cost-Per Click (CPC) feature,^[54] the First Google API which enables developers to query more than 2 billion web documents and programs in their favorite environments, and the Google Labs.^[55] The Google News and Froogle were also launched. Since then Google has released numerous products and services for Internet users and businesses worldwide.

Initial Public Offering

Google's Initial Public Offering (IPO) was filed with the Securities and Exchange Commission on April 29, 2004.^[56] and offered 19.6 million shares at a price of \$85 per share.^[57]

International Offices

The company also opened international offices in Australia, India, Japan, Korea, Sao Paulo, Mexico City, Belgium, Denmark, Copenhagen, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom and many other countries around the world.

Google China

Dr. Kaifu Lee joined Google as head of the Chinese R&D Center. Microsoft filed a suit against Dr. Lee and Google, arguing that they violated the one year non-compete agreement on his contract with the company.^[58] Microsoft and Google arrived at a settlement agreement over Dr. Lee's hiring in December of the same year.^[59]

Google.cn, a local domain version of Google in China was launched in 2006 with some government restrictions. There, Google.com is down 10% most of the time, and Google news is never available. The Chinese government has been blocking and re-directing users searches to other websites.^[60]

Partnerships

Google and AOL have been search partners since 2002. The partnership of the two companies has been reportedly extended until 2015; and their new advertising, content and search agreements have been expanded to include mobile searches and the placement of AOL's content on YouTube.^[61]

In 2007, Google and China Mobile inked a partnership to provide mobile and internet search services in China^[62] as well as with Sales Force combining the company's on-demand CRM applications with the Google AdWords to provide a more successful integrated sales and marketing for businesses.^[63] They have also joined with IBM on an Academic Cluster Computing Initiative to inspire future computer scientists to think big and help them to learn to work on a global Internet scale, and on contemporary computing challenges.^[64]

Community Services

On August 16, 2006, Google launched the free city wide WiFi in Mountainview, as its way to give back to the community.^[65]

In 2008, Google.org announced its five key initiatives, Google Flu Trends, Google Powermeter, RE<C, Google Earth Engine and Google Crisis Response as part of the company's objective to help combat the many challenges in the world using the company's strength in information and technology.^[66]

In March, 2011, Goggle gave \$125 million to the Network Startup Resource Center, a project of the University of Oregon that helps deploy and build Internet infrastructure and ICT capabilities in under-served communities and countries throughout the world.^[67]

Acquisitions

Google acquired numerous companies since its establishment to present which include Deja Usenet, Blogger.com, Urchin, Writely, Android, JotSpot, which was later launched as Google Sites, Doubleclick, Aardvark, YouTube, Picnik, Admob, reCaptcha, Slide, ITA Software, and many others.^[68]

Google Apps For Your Domain

In 2006, Google partnered with eNom, Inc., one of the largest ICANN accredited wholesale domain registrars, to the new domain registration services featured in Google Apps for Your Domain,^[69] a platform which enables any type of organization to offer powerful communication and collaboration tools with their users while being hosted by Google without maintenance, as well as hardware or software installation. Meanwhile, eNom will power private domain registration and identity protection for a \$10 annual fee.^[70]

Domaining

Google has been using its .co, g.co, as an internal link shortener. It apparently paid 7 figures for the domain, which it acquired in July, 2011. The first reported uses of the g.co shortener was for internal links within its Google Maps features; they hope the new space will assure customers of the safety and security of their links.^[71]

However, it failed to pick up the g.co.uk extension in October, 2011. They were outbid by ANY-Web, a well-known domain speculator who bought a rumored 50,000 pounds worth of short .co.uk addresses.^[72]

On August 17, 2011, Google submitted a UDRP request to the National Arbitration Forum over the domain goggle.com,^[73] which is currently being used for cybersquatting purposes. On October 17th, the NAF announced that it would decline to consider the case. According to goggle.com registrant David Csumrik, represented by Zak Muscovitch, the domain's previous owners had existed in a co-existence relationship contract with Google, which enabled the owners to operate the domain without fear of litigation from Google, and that this right may have been passed down to him upon purchase of the domain.^[74]

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EXHIBIT RM-9

2017

ANNUAL REPORT

web.com®

Dear Valued Shareholder,

Web.com is in the midst of a strategic repositioning that will differentiate us in the market and expand our leadership position as a provider of value-added digital marketing solutions to small businesses. Small businesses have evolved from simply needing an online presence to transforming their website and domain name into an integral part of their business in order to be found, drive leads, interact with customers and ultimately convert sales. Most small businesses are focused on running their businesses, not becoming online marketing experts. At Web.com, we help them do more with their online presence by providing hands-on marketing expertise. This unique niche we are carving out, value-added services, is growing rapidly, has little national competition, and provides us good returns on our marketing investments. We are organized around three main sales channels that support our strategy.

- Our **Retail** channel meets the needs of the mass market of small businesses with offerings like domains, Do-It-Yourself (DIY) websites, and a wide range of value-added solutions, like email and security.
- **Premium Services** serves larger and more sophisticated small business owners by helping them grow their business and be more productive. Lead Stream, our anchor product, is all about what businesses want – qualified leads. We also provide vertical market solutions that are unique to specific industries to help small business owners be more efficient and engage with potential and existing customers.
- **Web Brand Networks (WBN)** sells to multi-location and franchise businesses that ultimately need the same services as all small, local businesses. We help them optimize their marketing spend and provide business intelligence solutions unique to networked enterprises.

For 2017, we laid out four key goals that were critical to our strategy. I'm pleased to report that we made substantial progress on each of these key objectives, which enabled the company to return to revenue growth as we exited the year.

1. First, we focused on **stabilizing and optimizing our Retail** sales channel, which includes our more mature domain and DIY products. There remain areas of strength in retail value-added services for us to cross and upsell into. We were successful in this regard with Retail revenue down modestly.
2. Our second goal was to **complete the integration of Yodle**. Yodle doubled the size of our value added services portfolio accelerating our strategic repositioning. We finalized the first phase of the integration and delivered on our target of \$32 million in cost synergies. This is the latest example of our team's strong ability to achieve operational efficiencies of acquired assets. Beyond cost savings, we also completed the combination of our Leads by Web solution with Yodle's Local Max product to create Lead Stream, which is a key offering in our Premium Services area. As part of the integration, we also underwent a significant reorganization of our Premium Services sales team, which now aligns better with our marketing efforts and is showing productivity improvements.
3. Our third goal was to **invest in and grow** our vertical market solutions and WBN. Vertical markets represent a large, fragmented and underpenetrated opportunity, and we are very pleased with our results so far. We are currently focused on the real estate and dental industries, and will look to expand to additional verticals over time. TORCHx, our real estate solution, is seeing terrific adoption, and we are expanding our distribution capabilities with a growing sales team, as well as a strategic alliance with RE/MAX and a preferred vendor arrangement with Berkshire Hathaway HomeServices, which together represent more than 150,000 realtors throughout the United States. In our dental vertical solution, we introduced Fill-in, a new feature that automatically identifies and fills last minute appointment cancellations, which are estimated to be a \$30,000 per year lost opportunity for dental offices. WBN was a strong performer in 2017. WBN provides a unique solution that gives us the ability to land

large, recognizable enterprise brand name franchisors, and then expand by selling into their sizable franchisee base. We see a large market opportunity to help this customer base improve their operational efficiency and better align their corporate objectives with specific franchisee needs.

4. Our final goal for the year was to continue our **international expansion**. We accomplished this with the successful acquisition and integration of DonWeb, which now gives us a strong presence and platform in the growing and fragmented Latin America market. While international represents a small part of Web.com's business today, it is an area we look to invest in to drive incremental growth in the years ahead.

2017 Financial Highlights

- Non-GAAP revenue of \$755.8 million
- Adjusted EBITDA of \$193.3 million
- Operating cash flow of \$149.8 million
- Used \$108.5 million of cash to pay down debt and repurchase stock during the year
- Refinanced term loan and revolving credit facility to increase our financial flexibility

2017 Operating Metrics

- Trailing twelve month retention rate of 84.5%
- Approximately 3.4 million subscribers
- Exited the year with fourth quarter ARPU of \$18.38

2018 Objectives

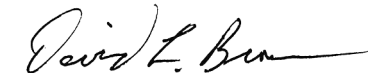
As we enter 2018, we are committed to the strategy we have been executing on for the past two years. Our strategic priorities will largely remain consistent with 2017.

1. **Stabilize and optimize Retail.** We will continue to be disciplined in our investments in this market, focusing on growing areas in the value-added services portfolio where we generate attractive returns.
2. **Invest in high-growth and high-return markets.** We are still in the early stages of the opportunity for Premium Services, WBN and International. We are seeing good success in these areas and have a strong competitive position. We will continue to expand our product and distribution capabilities in these strategic markets.
3. **Improve retention.** With our product integration and sales force reorganization complete, we will focus on expanding on the progress we made in improving customer retention in 2017. There is significant potential to leverage both our technology assets and our over 20 years of strong customer support in order to streamline and optimize our customer acquisition, onboarding and service capabilities.
4. **Realize additional synergies.** As we continue to shift the business towards value-added services, there are additional opportunities to combine platforms, rationalize our infrastructure, and harmonize processes across the Company to more efficiently develop and deliver solutions to our customers.

In summary, Web.com is successfully executing on its repositioning as a leading provider of value-added digital marketing solutions for small businesses. We enter 2018 with a strengthened competitive position, expanded product portfolio, and an organization aligned for success. We are confident in our strategy and our ability to deliver on our objectives, which will help us achieve our near and long-term financial goals. The dedication and commitment of our employees will drive our

success, along with the continued support of our customers, partners, shareholders and board of directors. We are excited about the successful year ahead for Web.com.

David L. Brown



Chairman, Chief Executive Officer and President

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

Forward-Looking Statement Disclaimer

The statements in this letter regarding whether Web.com is successfully executing its repositioning as a leading provider of value-added digital marketing solutions for small businesses, and Web.com's ability to deliver on its stated objectives in 2018 are "forward looking statements." These statements are based on Web.com's current beliefs or expectations. There are a number of important factors that could cause actual results or outcomes to differ materially from those contemplated by the forward-looking statements, including, without limitation, risks related the risk factors set forth under the caption, "Risk Factors," in Web.com's annual report on Form 10-K for the year ended December 31, 2017, as filed with the U.S. Securities and Exchange Commission ("SEC"), which is available on a website maintained by the Securities and Exchange Commission at www.sec.gov. These or other uncertainties may cause Web.com's results to be materially different than those expressed in the forward-looking statements. Web.com expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein as a result of new information, future events or otherwise. You are encouraged to read Web.com's reports filed with the SEC.

NON GAAP RECONCILIATIONS

Reconciliation of GAAP revenue to non-GAAP revenue and non-GAAP subscription revenue used in ARPU (in thousands, except ARPU)		
	Q4/17	FY 2017
GAAP revenue	\$ 188,845	\$ 749,261
Fair value adjustment to deferred revenue	2,289	6,529
Non-GAAP revenue	<u>\$ 191,134</u>	<u>\$ 755,790</u>
Professional services and other revenue	\$ (1,806)	
Non-GAAP subscription revenue used in ARPU	<u>\$ 189,328</u>	
Average Subscribers during period	3,434	
ARPU	<u>\$ 18.38</u>	

Reconciliation of GAAP net income to adjusted EBITDA (in thousands)	
	FY 2017
GAAP net income	\$ 53,629
Depreciation and amortization	71,544
Loss on sale of assets	44
Asset impairment	291
Stock based compensation	23,201
Restructuring expense	1,260
Corporate development	1,642
Fair value adjustment to deferred revenue	6,529
Fair value adjustment to deferred expense	171
Interest expense, net	33,061
Income tax expense	1,925
Adjusted EBITDA	<u>\$ 193,297</u>

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2017
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission File Number: 000-51595

Web.com Group, Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization) 12808 Gran Bay Parkway, West, Jacksonville, FL (Address of principal executive offices) Registrant's telephone number, including area code: (904) 680-6600 Securities registered pursuant to Section 12(b) of the Act: None. Securities registered pursuant to section 12(g) of the Act: Common Stock, \$0.001 par value (Title of class)	94-3327894 (I.R.S. Employer Identification No.) 32258 (Zip Code)
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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
 Non-accelerated filer Smaller reporting company

(Do not check if a smaller reporting company)

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant was approximately \$1,010,242,713 as of June 30, 2017 based on the closing sale price of the common stock as quoted by the NASDAQ Global Market reported for such date. Shares of common stock held by each executive officer and each director and by each person who is known by the registrant to own 10% or more of the outstanding common stock have been excluded from this calculation as such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

Common Stock, par value \$0.001 per share, outstanding as of February 20, 2018: 48,956,360

DOCUMENTS INCORPORATED BY REFERENCE

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Forward-Looking Statements

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to the “safe harbor” created by those sections. Forward-looking statements are based on our management’s beliefs and assumptions and on information currently available to our management. All statements other than statements of historical facts are “forward-looking statements” for purposes of these provisions. In some cases, you can identify forward-looking statements by terms such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “will,” “would” and similar expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance, time frames or achievements to be materially different from any future results, performance, time frames or achievements expressed or implied by the forward-looking statements. We discuss many of these risks, uncertainties and other factors in this Annual Report on Form 10-K in greater detail under the heading “Risk Factors.” Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this filing. You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify our forward-looking statements by these cautionary statements. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

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Item 1. Business.

Web.com Group, Inc. (referred to as “we”, “the Company”, “Web.com Group, Inc.” or “Web.com” herein) provides a full range of Internet services to small businesses to help them compete and succeed online. Web.com meets the needs of small businesses anywhere along their lifecycle with affordable, subscription-based solutions including domains, hosting, website design and management, search engine optimization, online marketing campaigns, local sales leads, social media, mobile products and eCommerce solutions. Headquartered in Jacksonville, Florida, Web.com is a publicly traded company (NASDAQ: WEB) serving approximately 3.4 million customers, primarily in North America, with approximately 3,600 employees in North America, South America and the United Kingdom.

Web.com was incorporated under the General Corporation Law of the State of Delaware on March 2, 1999 as Website Pros, Inc. We offered common stock to the public for the first time on November 1, 2005 as Website Pros (NASDAQ: WSPI) and began trading as Web.com (NASDAQ: WWWW) following our acquisition of the legacy Web.com business in September 2007. On November 9, 2015, the Company changed its trading symbol from WWWW to WEB, which continues to be traded on the NASDAQ.

In March 2016, we completed the acquisition of 100% of the outstanding shares of Yodle, Inc., a Delaware corporation, (“Yodle”). Yodle provides cloud-based local marketing solutions for small businesses with approximately 1,400 employees and 53,000 subscribers, which are reflected in the above headcount and customer totals. With the Yodle platform, we are able to provide our customers with an online, mobile and social presence and automate, manage and optimize our customers' marketing activities and other consumer interactions. Yodle's solutions are highly integrated and designed to be easy-to-use, helping businesses navigate the rapidly evolving, technologically challenging and highly fragmented digital marketing landscape without having to invest a significant amount of time and money.

On January 31, 2017, Web.com acquired DonWeb, located in Rosario, Argentina. DonWeb is a web hosting and domain registration company catering to the Latin American market.

On November 1, 2017, Web.com acquired certain assets and liabilities of Acquisio, Inc, located in Brossard, Canada. Acquisio provides machine-learning technology to online advertising management.

Market Opportunity

Web.com's focus is to help small businesses succeed online. Small business owners, including sole proprietors, have limited support staff and must devote most of their time to running the daily operations of their businesses. They often have limited knowledge of how to build a web presence and market their business online and limited time to acquire the skills to do so. At the same time, there is growing acceptance among these small business owners that an effective Internet presence is critical to their marketing efforts and there is evidence that these businesses are shifting their marketing budgets from traditional media to online channels.

What We Do

Using a consultative approach, Web.com offers small businesses one-stop shopping for an array of effective, affordable online products and services that will help drive their businesses. We have positioned ourselves as a partner to small businesses across all phases of their adoption of Internet marketing, from their initial entry onto the web to more advanced online marketing solutions. As a global domain registrar, we enable small businesses to establish an online presence by buying a domain name. This basic service is the entry point to greater value-added offerings, which span the range of customer budgets and expertise, from inexpensive Do-It-Yourself ("DIY") websites and hosting to Do-It-For-Me ("DIFM") custom website design services, online marketing, social media and eCommerce solutions for those needing full service. We further differentiate our DIY offerings with a modified approach to the market, which is called "Do-It-With-Me" ("DIWM"), which provides our DIY customers with an opportunity to speak and work with us via chat, email or telephone while they are building their websites. We are frequently the technology enabler between small businesses and Internet innovators such as Google and Facebook, allowing the small business customer to take advantage of today's online and social media outreach.

Through the combination of proprietary software, automated work flow processes, and specialized and high quality workforce development and management techniques, Web.com achieves production efficiencies that enable us to offer sophisticated web services at affordable, monthly subscription rates.

Our Services and Products

Our goal is to provide a broad range of web services and products that enable small businesses to establish, maintain, promote, and optimize their online presence. Customers can subscribe to bundled products that meet a variety of needs, and which can be enhanced with additional services. Alternatively, they can choose to purchase 'a la carte' services and products.

As our customers demand more advanced products and consultative services, they move from low-priced domain registrations towards high-priced, value-added offerings. These DIFM offerings have relatively high barriers to entry, as they require sophisticated technological and business-process expertise. We are unique in having deployed our feature-rich DIFM website offerings at an unrivaled scale.

The acquisition of Yodle in March of 2016 brings vertically focused solutions that help small businesses attract new business and retain existing customers through cloud-based marketing platforms and that complement our service and product offerings.

Domain Name Registration and Services

We are one of the largest domain name registrars in the world and offer .com and .net domains as well as the latest top-level domains. We also offer a full suite of domain name services, including domain name registration, transfers, renewals, expiration protection and privacy services. Domain name customers have a highly proprietary need to maintain their distinct Internet address, and our goal is to continue to be their resource for maintaining and extending their registration. Furthermore, these customers represent prime opportunities for more domain name sales, particularly as additional top-level domain names become available. Since online activity typically starts with a domain name, we anticipate continuing to be a market leader in selling and servicing these accounts.

Do-It-For-Me Web Solutions

We created these services to allow Web.com to undertake virtually all of the work associated with building, maintaining, marketing and enhancing a business online to ultimately drive leads to the small business owner. Since access to these services is through an affordable monthly subscription, these businesses can have an effective online presence with a minimum outlay of resources. We bundle the most needed products in an efficient manner so the small business owner can focus on his or her core business while the responsibility for making sure the website is optimized for business generation is outsourced to Web.com. Some of our DIFM solutions include:

- *Custom Website.* A custom website with built-in marketing, analytics and hosting.
- *Local Business Listings.* Enables websites to be promoted in the most frequently searched directories.
- *Facebook.* Design or update our customers' Business Profile page on Facebook including advertising and postings.
- *eCommerce.* Design, setup and configure the online store and shopping cart.

Do-It-Yourself Web Solutions

We offer a variety of DIY website building and marketing solutions for small businesses that want to build their own websites or enhance their websites with online marketing. Our DIY services include:

- *Hosting services.* We offer core products that are standardized. Our scalable managed hosting services place numerous customers on a single shared server, a cost benefit that is passed along to the customer.
- *Website Builder.* Our Website Builder package is an easy-to-use website building tool that enables users to quickly and easily launch and customize their website design. In addition, we combine our easy-to-use DIY tools with our customer support and coaching to assist our customers in building their website.

Online Marketing Services

Business success on the Internet begins with a compelling website, but is only fully realized when the website is "found," prominently displayed by the various search engines, and ultimately when potential customers are motivated to contact the business. We sell a variety of products and services designed to increase the potential that a website receives prominence in the major search engines like Google™ and Bing, and we have expertise in providing pay-per-click advertising as well. Our online marketing proficiency has been recognized by our selection as a Google Premier Partner. Some of our online marketing products include:

- *Search Engine Optimization (SEO).* Products and services designed to help improve organic search engine rankings and to increase qualified traffic and lead generation.
- *Search Engine Marketing.* Local and national search engine marketing services, sometimes known as pay-per-click advertising, where we manage an advertising budget for our customers.
- *Lighthouse.* Automated communications designed to help dental practices keep patient-visit schedules full and maximize office productivity by attracting and engaging patients.
- *TORCHx.* Premium lead-generation and CRM solutions designed to help real estate professionals attract and convert more clients.
- *Centermark.* A marketing and business intelligence platform that enables franchise and multi-location businesses to coordinate their brand and marketing efforts across their network of locations to effectively attract and engage customers in local markets.
- *Lead Stream.* A service offered by Web.com to research relevant keywords in the customer's industry which in turn helps the Company to create ads designed to bring traffic to the customer's website. When prospects search for a service, they are driven to a lead generation site to request a quote, and then leads are delivered to the subscriber's computer or phone for follow up.
- *Renovation Experts.* Premium lead generation service specific to contractors, homebuilders and remodeling professionals. We provide a competitive marketplace that matches homeowners in need of remodeling services with qualified contractors in their local area.

Other Revenue

- *Monetization.* Domain names are digital assets with a lifecycle that can be managed to generate advertising cash flow and resale revenue for Web.com. We strive to maximize revenue from domains that are newly registered, purchased from third parties, canceled, expired or retained for our in-house portfolio of domain names.
- *Directory Listings.* An online search directory that gives businesses online exposure to ensure that each business maximizes its potential in order to attract new customers. A local business listing typically contains business name, address, phone number, as well as, other details.

Sales Channels

The sales organization for our web services and products comprises several distinct sales channels, including:

Online. We primarily promote our services through the Web.com, Network Solutions.com, Yodle.com and Register.com websites. To drive potential customers to these sites, we engage in online marketing and advertising campaigns. Our partners also promote our services by including our products on their websites and by including services in their ongoing marketing and promotional efforts with their customers.

Outbound and Inbound Telesales. We utilize our telesales organization to cross-sell and up-sell our full product offerings to our entire customer base. In addition, we target customer lists provided by companies with which we have strategic marketing relationships. We believe that the relationships our customers have with their strategic partners enhances the ability to reach a decision maker, make a presentation, have our offer considered, and close the sale during the initial call. In addition, we maintain a separate team of sales specialists specifically focused on responding to inbound inquiries generated by programs initiated by the company and its strategic marketing partners through a mix of e-mail, direct mail, website, direct response television (DRTV) and other marketing efforts to help promote services to prospective customers.

Product Marketing. We often promote products through digital and television advertising. In addition to legacy ads supporting our Custom Website and Facebook™ by Web.com solutions, we sometimes use branded spots, which describe us and feature real customers who have derived significant business value from our solutions.

Local Direct Sales. We have a local sales initiative in approximately 20 geographic markets throughout the United States, and expect to expand our penetration by expanding our inside sales organization to complement the markets where we do not have a physical presence. Our local sales teams are equipped to sell a full complement of solutions including Leads by Web, Custom Website Design, Social Media and Paid Search programs.

Branding. In 2012, we entered a 10-year agreement to become the umbrella sponsor of the renamed Web.com Tour and an official marketing partner of the PGA TOUR. As a sponsor, our brand name has gained heightened visibility, and we believe this relationship will help us reach our target market of small business owners.

Reseller, Affiliate Network and Private Label Partners. We have developed affiliate partners and resellers who sell our services and provide additional opportunities to up-sell and cross-sell Do-It-For-Me services. We have worked closely with these resellers to develop sales support and fulfillment processes that integrate with the resellers' sales, service, support, and billing practices. We provide ongoing marketing and technical support for our partners to ensure a positive customer experience for their end customers. Additionally, we provide these resellers with training and sales materials to support the web services being offered.

Multi-location/Franchise Sales. We have a sales channel that targets franchise networks and corporations. These businesses are unique because they have a corporate organization that is affiliated with a network of small, local businesses or divisions. Our sales resources in this channel are dedicated to selling to both the corporate entity and into individual locations, like franchisees, in the network.

Marketing

Our marketing activities are principally focused on acquiring new subscribers and promoting additional products and services to our existing customers. Our marketing activities include:

- Websites: Web.com, NetworkSolutions.com, Register.com, Leads.com, Leads by Web.com, 1ShoppingCart.com, RenovationExperts.com, SolidCactus.com, Submitawebsite.com, Scoot.co.uk, Snapnames.com, Yodle.com, DonWeb.com and Acquisio.com;
- Search engine and other online advertising;
- Targeted e-mail and direct response campaigns to prospects and customers;
- Affiliate programs; and
- Sponsorships.

Customers

As of December 31, 2017, we had approximately 3.4 million customers. We generally target small businesses with less than 20 employees. We seek to create long-term relationships with these businesses by helping them leverage the Internet as a channel to promote and grow their business.

Data Centers

We maintain major operational facilities in Jacksonville, Florida; Atlanta, Georgia; Austin, Texas; Herndon, Virginia; New York, New York; Spokane, Washington; Hazleton, Pennsylvania; Barrie, Ontario; New Glasgow, Nova Scotia; and Yarmouth, Nova Scotia for most of our internal operations. These facilities are monitored through our redundant Network Operations Centers (NOC); which are staffed 24 hours a day, seven days a week. The servers that provide our customers' website data to the Internet are located within third-party co-location facilities in Jacksonville, Florida, Atlanta, Georgia, New York, New York and Montreal, Quebec. We are in the process of migrating the legacy Yodle co-location centers into our Atlanta and Jacksonville co-locations. These co-location facilities have a secured network infrastructure including intrusion detection at the router level, full network traffic monitoring, end point monitoring, data collection and event reporting. Our contract obligates our co-location provider to provide us a secured space within their overall data center. The facilities are secured through card-key numeric entry and biometric access. Infrared detectors are used throughout the facility. In addition, the co-location facilities are staffed 24 hours a day, seven days a week, with experts to manage and monitor the carrier networks and network access. The co-location facilities also provide multiple Internet carriers to help ensure bandwidth is available to our customers. The availability of electric power at the co-location facilities is provided through multiple uninterruptible power supply and generator systems should power supply fail at any of our major facilities.

Customer data is redundant through the use of multiple application and web servers. Customer data is backed up to other disk arrays with fail-over to help ensure high availability. Customer data is also maintained at our national design center and can be republished from archival data at any time. Currently, this process could take approximately 24 hours. Our financial system reporting also uses redundant systems and can be reconstituted in approximately 12 hours. Our customer data is stored on systems that are compliant and certified to meet CISP and PCI security standards. Furthermore, we have a highly available redundant infrastructure, which provides disaster recovery backup to prevent a disruption to our customers.

We continue to work on plans to provide active load balancing and built in disaster-recovery operations between our Atlanta and Jacksonville co-location sites. Under this scenario, a full copy of data would be backed up at each site. Each co-location site would provide fail-over capability for the other to prevent a disruption of our customers' websites should either co-location site become unavailable.

Competition

The market for web services is highly competitive and evolving. We expect competition to increase from existing competitors as well as new market entrants. Most existing competitors typically offer a limited number of specialized solutions and services, but may provide a more comprehensive set of services in the future. These competitors include, among others, website designers, domain name registrars, Internet service providers, Internet search engine providers, local business directory providers, eCommerce service providers, lead generation companies and hosting companies. Some of the companies we compete with are: GoDaddy, Wix.com, Ltd., 1&1 Internet and Endurance International Group. Some of our competitors have greater resources, more brand recognition, larger installed bases of customers than we do, and we cannot ensure that we will be able to compete favorably against them or our other competitors.

We believe the principal competitive factors in the small business segment of the web services, online marketing and lead generation industry include:

- Value, breadth and flexibility of service offerings;
- Proprietary workflow processes and customer relationship management software;
- Brand name and reputation;
- Price;
- Quality of customer support;
- Speed of customer service;
- Ease of implementation, use and maintenance;
- Industry expertise and focus; and
- Trade shows.

Intellectual Property

Our success and ability to compete is dependent in significant part on our ability to develop and maintain the proprietary aspects of our technology and operate without infringing upon the proprietary rights of others. We currently rely primarily on a combination of copyright, trade secret and trademark laws, confidentiality procedures, contractual provisions, and other similar measures to protect our proprietary information. As of December 31, 2017, we owned 43 issued U.S. patents. We also have several additional patent applications pending but not yet issued.

Due to the rapidly changing nature of applicable technologies, we believe that the improvement of existing offerings, reliance upon trade secrets and unpatented proprietary know-how, and development of new offerings generally will continue to be our principal source of proprietary protection. While we have hired third-party contractors to help develop our software and design websites, we own the intellectual property created by these contractors. Our software is not substantially dependent on any third-party software, although our software does utilize open source code. Notwithstanding the use of this open source code, we do not believe our usage requires public disclosure of our own source code nor do we believe the use of open source code is material to our business.

We also have an ongoing service mark and trademark registration program pursuant to which we register some of our product names, slogans and logos in the United States and in some foreign countries. License agreements for our software include restrictions intended to protect our intellectual property. These licenses are generally non-transferable and are perpetual. In addition, we require all of our employees, contractors and many of those with whom we have business relationships to sign non-disclosure and confidentiality agreements and to assign to us in writing all inventions created while working for us. Some of our products also include third-party software that we obtain the rights to use through license agreements. In such cases, we have the right to distribute or sublicense the third-party software with our products.

We have entered into confidentiality and other agreements with our employees and contractors. We have also entered into nondisclosure agreements with suppliers, distributors and some customers to limit access to and disclosure of our proprietary information. Nonetheless, neither the intellectual property laws nor contractual arrangements, nor any of the other steps we have taken to protect our intellectual property can ensure that others will not use our technology or that others will not develop similar technologies.

We license or lease from others, many technologies used in our services. We expect that we and our customers could be subject to third-party infringement claims as the number of websites and third-party service providers for web-based businesses grows. Although we do not believe that our technologies or services infringe on the proprietary rights of any third parties, we cannot ensure that third parties will not assert claims against us in the future or that these claims will not be successful.

Employees

As of December 31, 2017, we had approximately 3,600 employees. None of our employees are represented by unions. We consider the relationship with our employees to be good and have not experienced interruptions of operations due to labor disagreements.

Available Information

We make available free of charge on or through our investor relations website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the Securities Exchange Commission ("SEC").

You may read and copy this Form 10-K at the SEC's public reference room at 100 F Street, NE, Washington D.C. 20549. Information on the operation of the public reference room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding our filings at www.sec.gov.

Item 1A. Risk Factors.

In evaluating Web.com and our business, you should carefully consider the risks and uncertainties set forth below, together with all of the other information in this report. The following risks should be read in conjunction with our "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes. The risks and uncertainties described below are not the only ones we face. If any of the following risks occur, our business, financial condition, operating results, and prospects could be materially harmed. In that event, the price of our common stock could decline, and you could lose part or all of your investment.

Our operating results are difficult to predict and fluctuations in our performance may result in volatility in the market price of our common stock.

Due to our evolving business model and the unpredictability of our evolving industry our operating results are difficult to predict. We expect to experience fluctuations in our operating and financial results due to a number of factors, such as:

- our ability to retain and increase sales to existing customers, attract new customers and satisfy our customers' requirements;
- the cost of attracting new customers;
- the renewal rates and renewal terms for our services;
- changes in our pricing policies;
- the introduction of new services and products by us or our competitors;
- our ability to hire, train and retain members of our sales force;
- the rate of expansion and effectiveness of our sales force;
- technical difficulties or interruptions in our services;
- general economic conditions;
- additional investment in our services or operations;
- our ability to successfully identify acquisition targets and integrate acquired businesses and technologies; and
- our success in maintaining and adding strategic marketing relationships.

These factors and others all tend to make the timing and amount of our revenue unpredictable and may lead to greater period-to-period fluctuations in revenue than we have experienced historically.

Additionally, in light of current global and U.S. economic conditions, we believe that our quarterly revenue and results of operations are likely to vary significantly in the future and that period-to-period comparisons of our operating results may not be meaningful. The results of one quarter may not be relied on as an indication of future performance. If our quarterly revenue, profitability, operating metrics, or results of operations fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially.

We may expand through acquisitions of, or investments in, other companies or technologies, which may result in additional dilution to our stockholders, consume resources that may be necessary to sustain our business and increase debt for funding acquisitions.

One of our business strategies is to acquire complementary services, technologies or businesses. In connection with one or more of those transactions, we may:

- issue additional equity securities that would dilute our stockholders;
- use cash that we may need in the future to operate our business; and
- incur debt that could have terms unfavorable to us or that we might be unable to repay.

Business acquisitions also involve the risk of unknown liabilities associated with the acquired business. In addition, we may not realize the anticipated benefits of any acquisition, including securing the services of key employees. Incurring unknown liabilities or the failure to realize the anticipated benefits of an acquisition could seriously harm our business.

The failure to integrate successfully the businesses of Web.com and an acquired company, if any, in the future within the expected timeframe would adversely affect the combined company's future results.

One of our business strategies is to acquire complementary services, technologies or businesses. The success of any future acquisition, including our acquisition of DonWeb and Acquisio, will depend, in large part, on the ability of the combined company to realize the anticipated benefits, including annual net operating synergies, from combining the businesses of Web.com and the acquired company. To realize these anticipated benefits, the combined company must successfully integrate the businesses of Web.com and an acquired company. This integration will be complex and time consuming.

The failure to integrate successfully and to manage successfully the challenges presented by the integration process may result in the combined company's failure to achieve some or all of the anticipated benefits of the acquisition.

Potential difficulties that may be encountered in the integration process include the following:

- lost sales and customers as a result of customers of either of the two companies deciding not to do business with the combined company;
- complexities associated with managing the larger, more complex, combined business;
- integrating personnel from the two companies while maintaining focus on providing consistent, high quality services and products;
- risks associated with our expansion into new international markets and doing business internationally;
- potential unknown liabilities and unforeseen expenses, delays or regulatory conditions associated with the acquisition;
- performance shortfalls at one or both of the companies as a result of the diversion of management's attention caused by completing the acquisition and integrating the companies' operations;
- in the case of foreign acquisitions, the need to integrate operations across different cultures and languages and to address the particular economic, currency, political and regulatory risks associated with specific countries;
- in certain instances, the ability to exert control over acquired businesses that include earn out provisions in the agreements relating to such acquisitions or the potential obligation to fund an earn out for, or other obligations related to, a business that has not met expectations;
- liability for activities of the acquired company before the acquisition, including intellectual property and other litigation claims or disputes, information security vulnerabilities, violations of laws, rules and regulations, commercial disputes, tax liabilities and other known and unknown liabilities.

Successful integration of Web.com's and an acquired company's operations, products and personnel may place a significant burden on the combined company's management and internal resources. Challenges of integration include the combined company's ability to incorporate acquired products and business technology into its existing product offerings, and its ability to sell the acquired products through Web.com's existing or acquired sales channels. Web.com may also experience difficulty in effectively integrating the different cultures and practices of the acquired company, as well as in assimilating its broad and geographically dispersed personnel. Further, the difficulties of integrating the acquired company could disrupt the combined company's ongoing business, distract its management focus from other opportunities and challenges, and increase the combined company's expenses and working capital requirements. The diversion of management attention and any difficulties encountered in the transition and integration process could harm the combined company's business, financial condition and operating results.

We rely heavily on the reliability, security, and performance of our internally developed systems and operations, and any difficulties in maintaining these systems may result in service interruptions, decreased customer service, or increased expenditures.

The software and workflow processes that underlie our ability to deliver our web services and products have been developed primarily by our own employees. The reliability and continuous availability of these internal systems are critical to our business, and any interruptions that result in our inability to timely deliver our web services or products, or that materially impact the efficiency or cost with which we provide these web services and products, would harm our reputation, profitability, and ability to conduct business. In addition, many of the software systems we currently use will need to be enhanced over time or replaced with equivalent commercial products, either of which could entail considerable effort and expense. If we fail to develop and execute reliable policies, procedures, and tools to operate our infrastructure, we could face a substantial decrease in workflow efficiency and increased costs, as well as a decline in our revenue.

System and Internet failures could harm our reputation, cause our customers to request reimbursement for services paid for and not received or cause our customers to seek another provider for services.

We must be able to operate the systems that manage our network around the clock without interruption. Our operations depend upon our ability to protect our network infrastructure, equipment, and customer files against damage from human error, fire, earthquakes, hurricanes, floods, power loss, telecommunications failures, sabotage, intentional acts of vandalism and similar events. Our networks are currently subject to various points of failure. For example, a problem with one of our routers (devices that move information from one computer network to another) or switches could cause an interruption in the services that we

provide to some or all of our customers. In the past, we have experienced periodic interruptions in service. We have also experienced, and in the future, we may again experience, delays or interruptions in service as a result of the accidental or intentional actions of Internet users, current and former employees, or others. Any future interruptions could:

- cause customers or end users to seek damages for losses incurred;
- require us to replace existing equipment or add redundant facilities;
- damage our reputation for reliable service;
- cause existing customers to cancel their contracts; or
- make it more difficult for us to attract new customers.

We have been adversely affected by information security breaches and cyber security attacks and could be adversely affected by breaches or attacks in the future.

Information security risks have generally increased in recent years, in part because of the proliferation of new technologies and the use of the Internet, and the increased sophistication and activities of organized crime, hackers, terrorists, activists, and other external parties, some of which may be linked to terrorist organizations or hostile foreign governments. Our web services involve the storage and transmission of our customers' and employees' proprietary information. Our business relies on our digital technologies, computer and email systems, software, and networks to conduct its operations. Our technologies, systems and networks may become the target of criminal cyberattacks or information security breaches that could result in the unauthorized release, gathering, monitoring, misuse, loss or destruction of confidential, proprietary and other information of Web.com or third parties with whom we deal, or otherwise disrupt our or our customers' or other third parties' business operations. It is critical to our business strategy that our facilities and infrastructure remain secure and are perceived by the marketplace to be secure. Although we employ appropriate security technologies (including data encryption processes, intrusion detection systems), and conduct comprehensive risk assessments and other internal control procedures to assure the security of our customers' data, we cannot guarantee that these measures will be sufficient for this purpose.

In 2015, we were subject to an unauthorized breach of one of our computer systems. If our security measures are breached again as a result of third-party action, employee error or otherwise, and as a result our customers' or end users' data becomes available to unauthorized parties, we could incur liability and our reputation would be damaged, which could lead to the loss of current and potential customers. If we experience any breaches of our network security or sabotage, we might be required to expend significant capital and other resources to detect, remedy, protect against or alleviate these and related problems, and we may not be able to remedy these problems in a timely manner, or at all. Because techniques used by outsiders to obtain unauthorized network access or to sabotage systems change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or implement adequate preventative measures. As cyber threats continue to evolve, we may be required to expend significant additional resources to continue to modify or enhance our protective measures or to investigate and remediate any information security vulnerabilities. Although we have insurance in place that covers such incidents, the cost of a breach or cyberattack could well exceed any such insurance coverage.

Our servers are also frequently subjected to denial of service attacks and other attempts to disrupt traffic to ours and our customers' websites. Although we have been able to minimize these disruptions in the past, there is no guarantee that we will be able to do so successfully in the future. Our customers and employees have been and will continue to be targeted by parties using fraudulent "spoof" and "phishing" emails to misappropriate personal information or to introduce viruses or other malware through "trojan horse" programs to our users' computers. These emails appear to be legitimate emails sent by us, but direct recipients to fake websites operated by the sender of the email or request that the recipient send a password or other confidential information through email or download malware. Despite our efforts to mitigate "spoof" and "phishing" emails through product improvements and user education, "spoof" and "phishing" activities remain a serious problem that may damage our brands, discourage use of our websites and services and increase our costs.

We could become involved in claims, lawsuits or investigations that may result in adverse outcomes.

We may become a target of government investigations, private claims, or lawsuits, involving but not limited to general business, patent, or employee matters, including consumer class actions challenging our business practices. Such proceedings may initially be viewed as immaterial but could prove to be material. Litigation is inherently unpredictable, and excessive verdicts do occur. Adverse outcomes could result in significant monetary damages, including indemnification payments, or injunctive relief that could adversely affect our ability to conduct our business. Given the inherent uncertainties in litigation, even when we are able to reasonably estimate the amount of possible loss or range of loss and therefore record an aggregate litigation accrual for probable and reasonably estimable loss contingencies, the accrual may change in the future due to new developments or changes in approach. In addition, such investigations, claims and lawsuits could involve significant expense or divert management's attention and resources from other matters.

If we cannot adapt to technological advances, our web services and products may become obsolete and our ability to compete would be impaired.

Changes in our industry occur very rapidly, including changes in the way the Internet operates or is used by small businesses and their customers. As a result, our web services and products could become obsolete quickly. The introduction of competing products employing new technologies and the evolution of new industry standards could render our existing products or services obsolete and unmarketable. To be successful, our web services and products must keep pace with technological developments and evolving industry standards, address the ever-changing and increasingly sophisticated needs of our customers, and achieve market acceptance. If we are unable to develop new web services or products, or enhancements to our web services or products, on a timely and cost-effective basis, or if our new web services or products or enhancements do not achieve market acceptance, our business would be seriously harmed.

In the future, we may be unable to generate sufficient cash flow to satisfy our debt service obligations.

As of December 31, 2017, we had \$389.7 million of aggregate principal amount of our Term Loan and \$10.0 million of Revolving Credit Facility (defined in Note 4, *Long-Term Debt*) and \$258.8 million aggregate principal amount of 1.00% Senior Convertible Notes due August 15, 2018 ("2018 Notes") outstanding. We entered into an Amendment to Credit Agreement, dated as of February 11, 2016, which became effective on March 9, 2016, of our Term Loan and Revolving Credit Facility pursuant to which certain of our lenders have provided an additional \$200.0 million of senior secured term loans, the proceeds of which, together with \$115.0 million of revolving loans and cash on hand, was used to fund the acquisition of Yodle. We further amended the credit agreement on May 18, 2017 ("Second Amendment") and under the Second Amendment our creditors issued us an incremental \$50.0 million of secured Term Loan and an incremental \$110.0 million of borrowing capacity on the Revolving Credit Facility with maturity dates that were commensurate with the Amended Credit Agreement. The Company used the proceeds from the incremental Term Loan to repay the then outstanding amount drawn on the Revolving Credit Facility at the date of closing.

Our ability to generate cash flow from operations to make principal and interest payments on our debt will depend on our future performance, which will be affected by a range of economic, competitive and business factors. If our operations do not generate sufficient cash flow from operations to satisfy our debt service obligations, we may need to seek additional capital to make these payments or undertake alternative financing plans, such as refinancing or restructuring our debt, selling assets or reducing or delaying capital investments and acquisitions. We cannot assure you that such additional capital or alternative financing will be available on favorable terms, if at all. Our inability to generate sufficient cash flow from operations or obtain additional capital or alternative financing on acceptable terms could harm our business, financial condition and results of operations. We may also choose to use cash flow from operations to repurchase shares of our common stock which would otherwise be available to pay down long-term debt.

We might require additional capital to support our growth, and this capital might not be available on acceptable terms or at all.

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new services and products, enhance our existing web services, or our operating infrastructure and acquire complementary businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds.

In the event of another global financial crisis, such as the one experienced in 2008, which included, among other things, significant reductions in available capital from banks and other providers of credit and substantial reductions or fluctuations in equity and currency values worldwide, may make it difficult for us to obtain additional financing on terms favorable to us, if at all. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of our common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly impaired.

Mobile devices are increasingly being used to access the Internet, and our cloud-based and mobile support products may not operate or be as effective when accessed through these devices, which could harm our business.

We offer our products across several operating systems and through the Internet. Mobile devices, such as smartphones and tablets, are increasingly being used as the primary means for accessing the Internet and conducting eCommerce. We are

dependent on the functionality of our products with third-party mobile devices and mobile operating systems, as well as web browsers that we do not control. Any changes in such devices, systems or web browsers that impact the functionality of our products or give preferential treatment to competitive products could adversely affect usage of our products. In addition, because a growing number of our customers access our products through mobile devices, we are dependent on the interoperability of our products with mobile devices and operating systems. Improving mobile functionality is integral to our long-term product development and growth strategy. In the event that our customers or endusers have difficulty accessing and using our products on mobile devices, our customer growth, business and operating results could be adversely affected.

Our failure to build and maintain brand awareness could compromise our ability to compete and to grow our business.

As a result of the highly competitive nature of our market, and the likelihood that we will face competition from new entrants, we believe our own brand name recognition and reputation are important. If we do not continue to build and maintain brand awareness, we could be placed at a competitive disadvantage to companies whose brands are more recognizable than ours.

Providing web services and products to small businesses designed to allow them to Internet-enable their businesses is a fragmented and changing market; if this market fails to grow, we will not be able to grow our business.

Our success depends on a significant number of small businesses outsourcing website design, hosting, and management as well as adopting other online business solutions. The market for our web services and products is relatively fragmented and constantly changing. Custom website development has been the predominant method of Internet enablement, and small businesses may be slow to adopt our template-based web services and products. Further, if small businesses determine that having an online presence is not giving their businesses any advantages, they would be less likely to purchase our web services and products. If the market for our web services and products fails to grow or grows more slowly than we currently anticipate, or if our web services and products fail to achieve widespread customer acceptance, our business would be seriously harmed.

A portion of our web services are sold on a month-to-month basis, and if our customers are unable or choose not to subscribe to our web services, our revenue may decrease.

A portion of our web service offerings are sold pursuant to month-to-month subscription agreements and our customers generally can cancel their subscriptions to our web services at any time with little or no penalty.

There are a variety of factors, which have in the past led, and may in the future lead, to a decline in our subscription renewal rates. These factors include the cessation of our customers' businesses, the overall economic environment in the United States and its impact on small businesses, the services and prices offered by us and our competitors, and the evolving use of the Internet by small businesses. If our renewal rates are low or decline for any reason, or if customers demand renewal terms less favorable to us, our revenue may decrease, which could adversely affect our financial performance.

We were profitable for the years ended December 31, 2017, 2016 and 2015, but we may not be profitable in the future.

We were profitable for the years ended December 31, 2017, 2016 and 2015, but we may not be profitable in future years. As of December 31, 2017, we had an accumulated deficit of approximately \$195.0 million. We expect that our expenses relating to the sale and marketing of our web services, technology improvements and general and administrative functions, as well as the costs of operating and maintaining our technology infrastructure, will remain consistent as a percentage of revenue. Accordingly, we may need to maintain or increase our revenue levels to be able to continue to maintain profitability. We may not be able to reduce in a timely manner or maintain our expenses in response to any decrease in our revenue, and our failure to do so would adversely affect our operating results and our level of profitability.

If Internet usage does not grow or if the Internet does not continue to be the standard for eCommerce, our business may suffer.

Our success depends upon the continued development and acceptance of the Internet as a widely used medium for eCommerce and communication. Rapid growth in the uses of, and interest in, the Internet is a relatively recent phenomenon and its continued growth cannot be assured. A number of factors could prevent continued growth, development and acceptance, including:

- the unwillingness of companies and consumers to shift their purchasing from traditional vendors to online vendors;
- the Internet infrastructure may not be able to support the demands placed on it, and its performance and reliability may decline as usage grows;
- security and authentication issues may create concerns with respect to the transmission over the Internet of confidential information; and

- privacy concerns, including those related to the ability of websites to gather user information without the user's knowledge or consent, may impact consumers' willingness to interact online.

Any of these issues could slow the growth of the Internet, which could limit our growth and revenues.

Charges to earnings resulting from acquisitions may adversely affect our operating results.

One of our business strategies is to acquire complementary services, technologies or businesses and we have a history of such acquisitions. Under applicable accounting, we allocate the total purchase price of a particular acquisition to an acquired company's net tangible assets and intangible assets based on their fair values as of the date of the acquisition, and record the excess of the purchase price over those fair values as goodwill. Our management's estimates of fair value are based upon assumptions believed to be reasonable but are inherently uncertain. Going forward, the following factors, among others, could result in material charges that would adversely affect our financial results:

- impairment of goodwill and/or intangible assets;
- charges for the amortization of identifiable intangible assets and for stock-based compensation;
- accrual of newly identified pre-merger contingent liabilities that are identified subsequent to the finalization of the purchase price allocation; and
- charges to eliminate certain of our pre-merger activities that duplicate those of the acquired company or to reduce our cost structure.

Additional costs may include costs of employee redeployment, relocation and retention, including salary increases or bonuses, accelerated amortization of deferred equity compensation and severance payments, reorganization or closure of facilities, taxes and termination of contracts that provide redundant or conflicting services. Some of these costs may have to be accounted for as expenses that would decrease our net income and earnings per share for the periods in which those adjustments are made.

If we fail to refinance our 2018 Notes which are due on August 15, 2018, and we utilize the remainder of our borrowing capacity under our current credit facility, our ability to do further acquisitions or increase capital expenditures using cash will be curtailed.

The outstanding 2018 Notes are due on August 15, 2018, and we will need to either refinance the 2018 Notes or utilize our existing bank facilities to pay off such 2018 Notes on the due date. We cannot assure you that additional alternative financing will be available on favorable terms, if at all. Further, if we draw down on our existing credit facilities to pay off the obligations under the 2018 Notes, our ability to do further acquisitions or increase capital expenditures may be limited unless we obtain additional borrowing limits from our banks. We cannot assure you that increased borrowing limits will be available on favorable terms, if at all.

Weakened global economic conditions may harm our industry, business and results of operations.

Our overall performance depends in part on worldwide economic conditions, which may remain challenging for the foreseeable future. Global financial developments, such as the United Kingdom's decision to exit the European Monetary Union, may adversely impact the economy of the European Union, seemingly unrelated to us or our industry may harm us. The United States and other key international economies have been impacted by falling demand for a variety of goods and services, poor credit, restricted liquidity, reduced corporate profitability, volatility in credit, equity and foreign exchange markets, bankruptcies, and overall uncertainty with respect to the economy. These conditions affect spending and could adversely affect our customers' ability or willingness to purchase our service, delay prospective customers' purchasing decisions, reduce the value or duration of their subscriptions, or affect renewal rates, all of which could harm our operating results.

Our existing and target customers are small businesses. These businesses may be more likely to be significantly affected by economic downturns than larger, more established businesses. For instance, a financial crisis affecting the banking system or financial markets or the possibility that financial institutions may consolidate or go out of business would result in a tightening in the credit markets, which could limit our customers' access to credit. Additionally, these customers often have limited discretionary funds, which they may choose to spend on items other than our web services and products. If small businesses experience economic hardship, or if they behave more conservatively in light of the general economic environment, they may be unwilling or unable to expend resources to develop their online presences, which would negatively affect the overall demand for our services and products and could cause our revenue to decline.

If we fail to comply with the established rules of credit card associations, we will face the prospect of financial penalties and could lose our ability to accept credit card payments from customers, which would adversely affect our business and financial condition.

A substantial majority of our revenue originates from online credit card transactions. Under credit card association rules, penalties may be imposed at the discretion of the association. Any such potential penalties would be imposed on our credit card processor by the association. Under our contract with our processor, we are required to reimburse our processor for such penalties. We face the risk that one or more credit card associations may, at any time, assess penalties against us or terminate our ability to accept credit card payments from customers, which would have a material adverse effect on our business, financial condition and results of operations.

Our data centers are maintained by third parties. A disruption in the ability of one of these service providers to provide service to us could cause a disruption in service to our customers.

A substantial portion of the network services and computer servers we utilize in the provision of services to customers are housed in data centers owned by other service providers. In particular, a significant number of our servers are housed in data centers in Atlanta, Georgia, Jacksonville, Florida and New York, New York. We obtain Internet connectivity for those servers, and for the customers who rely on those servers, in part through direct arrangements with network service providers and in part indirectly through the owners of those data centers. We also utilize other third-party data centers in other locations. In the future, we may house other servers and hardware items in facilities owned or operated by other service providers.

A disruption in the ability of one of these service providers to provide service to us could cause a disruption in service to our customers. A service provider could be disrupted in its operations through a number of contingencies, including unauthorized access, computer viruses, accidental or intentional actions, electrical disruptions, and other extreme conditions. Although we believe we have taken adequate steps to protect our business through contractual arrangements with our service providers, we cannot eliminate the risk of a disruption in service resulting from the accidental or intentional disruption in service by a service provider. Any significant disruption could cause significant harm to us, including a significant loss of customers. In addition, a service provider could raise its prices or otherwise change its terms and conditions in a way that adversely affects our ability to support our customers or could result in a decrease in our financial performance.

We face intense and growing competition. If we are unable to compete successfully, our business will be seriously harmed.

The market for our web services and products is highly competitive and is characterized by relatively low barriers to entry. Our competitors vary in terms of their size and what services they offer. We encounter competition from a wide variety of company types, including:

- website design and development service and software companies;
- Internet service providers and application service providers;
- Internet search engine providers;
- local business directory providers;
- website domain name providers and hosting companies; and
- eCommerce platform and service providers.

In addition, due to relatively low barriers to entry in our industry, we expect the intensity of competition to increase in the future from both established and emerging companies. Increased competition may result in reduced gross margins, the loss of market share, or other changes which could seriously harm our business. We also expect that competition will increase as a result of industry consolidations and formations of alliances among industry participants.

Many of our current and potential competitors have longer operating histories, significantly greater financial, technical, marketing and other resources, greater brand recognition and, we believe, a larger installed base of customers. These competitors may be able to adapt more quickly to new or emerging technologies and changes in customer requirements. They may also be able to devote greater resources to the promotion and sale of their services and products than we can. If we fail to compete successfully against current or future competitors, our revenue could increase less than anticipated or decline and our business could be harmed.

We are subject to export control and economic sanctions laws that could impair our ability to compete in international markets and subject us to liability if we are not in full compliance with applicable laws.

Our business activities are subject to various restrictions under U.S. export controls and trade and economic sanctions laws, including the U.S. Commerce Department's Export Administration Regulations and economic and trade sanctions regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control, or OFAC. If we fail to comply with these laws

and regulations, we could be subject to civil or criminal penalties and reputational harm. U.S. export control laws and economic sanctions laws also prohibit certain transactions with U.S. embargoed or sanctioned countries, governments, persons and entities.

Our business depends in part on our ability to continue to provide value-added web services and products, many of which we provide through agreements with third parties. Our business will be harmed if we are unable to provide these web services and products in a cost-effective manner.

A key element of our strategy is to combine a variety of functionalities in our web service offerings to provide our customers with comprehensive online solutions, such as Internet search optimization, local yellow pages listings, and eCommerce capabilities. We provide many of these services through arrangements with third parties, and our continued ability to obtain and provide these services at a low cost is central to the success of our business. For example, we currently have agreements with several service providers that enable us to provide, at a low cost, Internet yellow pages advertising. However, these agreements may be terminated on short notice, typically 30 to 90 days, without penalty. If any of these third parties were to terminate their relationships with us, or to modify the economic terms of these arrangements, we could lose our ability to provide these services at a cost-effective price to our customers, which could cause our revenue to decline or our costs to increase.

The Company's ability to use its net operating loss carry forwards ("NOLs") to offset future taxable income may be limited if taxable income does not reach sufficient levels, or as a result of a change in control which could limit available NOLs.

As of December 31, 2017, the Company has U.S. Federal NOLs of approximately \$182.2 million available to offset future taxable income and expire between 2020 and 2036. These NOLs are subject to various limitations under Section 382 of the Internal Revenue Code, as amended (the "Code"). If the Company experiences any future "ownership change" as defined in Section 382 of the Code, the Company's ability to further utilize its U.S. Federal NOLs could be limited. Similar results could apply to our U.S. state NOLs because the states in which we operate generally follow Section 382.

As of December 31, 2017, the Company also had \$57.5 million of NOLs in the United Kingdom ("UK") related to Scoot, of which the substantial portion was incurred in pre-acquisition periods. Although not subject to expiration, pre-acquisition NOLs could be eliminated under certain circumstances, as determined under applicable tax laws in the United Kingdom, in the three year periods both before and after the acquisition date. Although the Company does not believe the pre-acquisition NOLs are subject to any such limitations to date, future activities could subject these NOLs to limitation. As of December 31, 2017, the Company continues to maintain a full valuation allowance against its net deferred tax asset in the UK, excluding indefinite lived intangibles, as it more likely than not that these net deferred tax assets will not be realized. The net deferred tax values related to the net UK deferred tax assets and associated valuation allowance increased as a result of changes in foreign exchange rates during the year.

The Company's ability to use its NOLs will also depend on the amount of taxable income generated in future periods. The U.S. NOLs may expire before the Company can generate sufficient taxable income to utilize the NOLs.

The accounting method for convertible debt securities that may be settled in cash, such as the 2018 Notes, could have a material effect on our reported financial results.

Under Accounting Standards Codification ("ASC") ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as the 2018 Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer's economic interest cost. The effect of ASC 470-20 on the accounting for the 2018 Notes is that the equity component is required to be included in the additional paid-in-capital section of stockholders' equity on our consolidated balance sheet, and the value of the equity component would be treated as original issue discount for purposes of accounting for the debt component of the 2018 Notes. As a result, we will be required to record a greater amount of non-cash interest expense from the amortization of the discounted carrying value of the 2018 Notes to their face amount over the term of the 2018 Notes, which would result in lower net income or increased net loss in our financial results, as well as potentially impact the trading price of our common stock and the trading price of the 2018 Notes.

In addition, under certain circumstances, convertible debt instruments (such as the 2018 Notes) that may be settled entirely or partly in cash may be accounted for utilizing the treasury stock method, the effect of which is that the shares that would be issuable upon conversion of the 2018 Notes are not included in the calculation of diluted earnings per share except to the extent the conversion value of the 2018 Notes exceeds their principal amount. Under the treasury stock method, for diluted earnings per share purposes, the transaction is accounted for as if the number of shares of common stock that would be necessary to settle such excess, if we elected to settle such excess in shares, are issued. We cannot be sure that the accounting standards in the future will continue to permit our use the treasury stock method. If we are unable to use the treasury stock method in

accounting for the shares issuable upon conversion of the 2018 Notes, then our diluted earnings per share may be adversely affected.

Any growth could strain our resources and our business may suffer if we fail to implement appropriate controls and procedures to manage our growth.

Growth in our business may place a strain on our management, administrative, and sales and marketing infrastructure. If we fail to successfully manage our growth, our business could be disrupted, and our ability to operate our business profitably could suffer. Growth in our employee base may be required to expand our customer base and to continue to develop and enhance our web service and product offerings. To manage growth of our operations and personnel, we will need to enhance our operational, financial, and management controls and our reporting systems and procedures. This will require additional personnel and capital investments, which will increase our cost base. The growth in our fixed cost base may make it more difficult for us to reduce expenses in the short term to offset any shortfalls in revenue.

If we fail to maintain an effective system of internal controls, we may not be able to accurately or timely report our financial results, which could cause our stock price to fall or result in our stock being delisted.

Effective internal controls are necessary for us to provide reliable and accurate financial reports. We will need to devote significant resources and time to comply with the requirements of Sarbanes-Oxley with respect to internal control over financial reporting. In addition, Section 404 under Sarbanes-Oxley requires that we assess and our auditors attest to the design and operating effectiveness of our internal control over financial reporting. Our ability to comply with the annual internal control report requirement in future years will depend on the effectiveness of our financial reporting and data systems and controls across our company and our operating subsidiaries. We expect these systems and controls to become increasingly complex as we integrate acquisitions and our business grows. To effectively manage this complexity, we will need to continue to improve our operational, financial, and management controls and our reporting systems and procedures. Any failure to implement required new or improved controls, or difficulties encountered in the implementation or operation of these controls, could harm our operating results or cause us to fail to meet our financial reporting obligations, which could adversely affect our business and jeopardize our listing on the NASDAQ Global Select Market, either of which would harm our stock price.

We are dependent on our executive officers, and the loss of any key personnel may compromise our ability to successfully manage our business and pursue our growth strategy.

Our future performance depends largely on the continuing service of our executive officers and senior management team, especially that of David Brown, our Chief Executive Officer. Our executives are not contractually obligated to remain employed by us. Accordingly, any of our key employees could terminate their employment with us at any time without penalty and may go to work for one or more of our competitors after the expiration of their non-compete period. The loss of one or more of our executive officers could make it more difficult for us to pursue our business goals and could seriously harm our business.

Our growth will be adversely affected if we cannot continue to successfully retain, hire, train, and manage our key employees, particularly in the telesales and customer service areas.

Our ability to successfully pursue our growth strategy will depend on our ability to attract, retain, and motivate key employees across our business. We have many key employees throughout our organization that do not have non-compete agreements and may leave to work for a competitor at any time. In particular, we are substantially dependent on our telesales and customer service employees to obtain and service new customers. Competition for such personnel and others can be intense, and there can be no assurance that we will be able to attract, integrate, or retain additional highly qualified personnel in the future. In addition, our ability to achieve significant growth in revenue will depend, in large part, on our success in effectively training sufficient personnel in these two areas. New hires require significant training and in some cases may take several months before they achieve full productivity, if they ever do. Our recent hires and planned hires may not become as productive as we would like, and we may be unable to hire sufficient numbers of qualified individuals in the future in the markets where we have our facilities. If we are not successful in retaining our existing employees, or hiring, training and integrating new employees, or if our current or future employees perform poorly, growth in the sales of our services and products may not materialize and our business will suffer.

Increases in payment processing fees, changes to operating rules, the acceptance of new types of payment methods or payment fraud could increase our operating expenses and adversely affect our business and results of operations.

Our customers pay for our services predominately using credit and debit cards (together, "payment cards"). Our acceptance of these payment cards requires our payment of certain fees. From time to time, these fees may increase, either as a result of rate

changes by the payment processing companies or as a result of a change in our business practices which increase the fees on a cost-per-transaction basis. Such increases may adversely affect our results of operations.

As our services continue to evolve and expand internationally, we will likely explore accepting various forms of payment, which may have higher fees and costs than our currently accepted payment methods. In addition, if more of our customers utilize higher cost payment methods, our payment costs could increase and our results of operations could be adversely impacted.

Furthermore, we do not obtain signatures from customers in connection with their use of payment methods. To the extent we do not obtain customer signatures, we may be liable for fraudulent payment transactions, even when the associated financial institution approves payment of the orders.

From time to time, fraudulent payment methods are used to obtain service. While we do have certain safeguards in place, we nonetheless experience some fraudulent transactions. The costs to us of these fraudulent transaction includes the costs of implementing as well as updating our safeguards. These fraudulent accounts also increase our bad debt expense and complicate our forecasting efforts as they result in almost 100% customer loss when they are discovered. We do not currently carry insurance against the risk of fraudulent payment transactions. A failure to adequately control fraudulent payment transactions may harm our business and results of operations.

Our business could be affected by new governmental regulations regarding the Internet.

To date, government regulations have not materially restricted the use of the Internet in most parts of the world. The legal and regulatory environment pertaining to the Internet, however, is uncertain and may change. New laws may be passed, existing but previously inapplicable or unenforced laws may be deemed to apply to the Internet or regulatory agencies may begin to rigorously enforce such formerly unenforced laws, or existing legal safe harbors may be narrowed, both by U.S. federal or state governments and by governments of foreign jurisdictions. These changes could affect:

- the liability of online resellers for actions by customers, including fraud, illegal content, spam, phishing, libel and defamation, infringement of third-party intellectual property and other abusive conduct;
- other claims based on the nature and content of Internet materials;
- user privacy (including but not limited to General Data Protection Regulation) and security issues;
- consumer protection;
- sales taxes by the states in which we sell certain of our products and other taxes, including the value-added tax of the European Union member states, which could impact how we conduct our business by requiring us to set up processes to collect and remit such taxes and could increase our sales audit risk;
- characteristics and quality of services; and
- cross-border eCommerce.

The adoption of any new laws or regulations, or the application or interpretation of existing laws or regulations to the Internet, could hinder growth in use of the Internet and online services generally, and decrease acceptance of the Internet and online services as a means of communication, eCommerce and advertising. In addition, such changes in laws could increase our costs of doing business, subject our business to increased liability or prevent us from delivering our services over the Internet, thereby harming our business and results of operations.

Changes in legislation or governmental regulations, policies or standards applicable to our product offerings may have a significant impact on our ability to compete in our target markets.

The telecommunications industry is regulated by the Federal Communications Commission ("FCC") in the U.S. While most such regulations do not affect us directly, certain of those regulations may affect our product offerings. For example, effective October 16, 2013, FCC rules were adopted to require companies to obtain prior express written consent from consumers before calling them with prerecorded telemarketing "robocalls" or before using an autodialer to call their wireless numbers with telemarketing messages unless an unambiguous written consent is obtained before the telemarketing call or text message. If we are unable to satisfy such FCC rules, we could be prevented from providing such product offering to our customers, which could materially and adversely affect our future revenues.

Our business could be materially harmed if the administration and operation of the Internet no longer rely upon the existing domain system.

The domain registration industry continues to develop and adapt to changing technology. This development may include changes in the administration or operation of the Internet, including the creation and institution of alternate systems for directing Internet traffic without the use of the existing domain system. The widespread acceptance of any alternative systems could eliminate the need to register a domain to establish an online presence and could materially adversely affect our business, financial condition and results of operations.

Activities of customers or the content of their websites could damage our reputation and brand or harm our business and financial results.

As a provider of domain name registration and hosting products and services, we may be subject to potential liability for the activities of our customers in connection with their use (including their misuse) of our offerings. Although our agreements with our customers prohibit unauthorized use of our products and services and permit us to take appropriate actions for such use, customers may nonetheless engage in prohibited activities, which could subject us to liability. Our reputation and brand may also be negatively impacted by the actions of customers. We do not proactively monitor or review the appropriateness of customers' use of our products or services, and we do not have control over customer activities. While we have safeguards in place, these mechanisms may not be sufficient to avoid harm to our reputation and brand.

Certain federal statutes may apply to us with respect to various activities of our customers, including: the Digital Millennium Copyright Act of 1998 ("DMCA"); the Communications Decency Act of 1996 ("CDA"); and the Anticybersquatting Consumer Protection Act ("ACPA"). The DMCA and the CDA generally protect online service providers like us from liability for certain activities of their customers. For example, the safe harbor provisions of the DMCA shield Internet service providers and other intermediaries from direct or indirect liability for copyright infringement. Under the CDA, we are generally not responsible for the customer-created content hosted on our servers and thus are generally immunized from liability for torts committed by others. Under the safe harbor provisions of the ACPA, domain name registrars are shielded from liability in many circumstances.

Changes to these laws and/or court rulings in pending or future litigation may narrow the scope of protection afforded us. Regardless of these protections, the activities of our customers may result in threatened or actual litigation against us. If such claims are successful, our business and operating results could be adversely affected, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, could divert the resources of our management and adversely affect our business and operating results.

We may be unable to protect our intellectual property adequately or cost-effectively, which may cause us to lose market share or otherwise harm our competitive position.

Our success depends, in part, on our ability to protect and preserve the proprietary aspects of our technology, web services, and products. If we are unable to protect our intellectual property, our competitors could use our intellectual property to market services and products similar to those offered by us, which could decrease demand for our web services and products. We may be unable to prevent third parties from using our proprietary assets without our authorization. We do not currently rely on patents to protect all of our core intellectual property. To protect, control access to, and limit distribution of our intellectual property, we generally enter into confidentiality and proprietary inventions agreements with our employees, and confidentiality or license agreements with consultants, third-party developers, and customers. We also rely on copyright, trademark, and trade secret protection. However, these measures afford only limited protection and may be inadequate. Enforcing our rights to our technology could be costly, time-consuming and distracting. Additionally, others may develop non-infringing technologies that are similar or superior to ours. Any significant failure or inability to adequately protect our proprietary assets will harm our business and reduce our ability to compete.

Provisions in our amended and restated certificate of incorporation and bylaws or under Delaware law might discourage, delay, or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.

Our amended and restated certificate of incorporation and bylaws contain provisions that could depress the trading price of our common stock by acting to discourage, delay, or prevent a change of control of our company or changes in our management that the stockholders of our company may deem advantageous. These provisions:

- establish a classified board of directors so that not all members of our board are elected at one time;
- provide that directors may only be removed for cause and only with the approval of 66 2/3% of our stockholders;
- require super-majority voting to amend some provisions in our amended and restated certificate of incorporation and bylaws;

- authorize the issuance of blank check preferred stock that our board of directors could issue to increase the number of outstanding shares to discourage a takeover attempt;
- prohibit stockholder action by written consent, which requires all stockholder actions to be taken at a meeting of our stockholders;
- provide that the board of directors is expressly authorized to make, alter, or repeal our bylaws; and
- establish advance notice requirements for nominations for elections to our board or for proposing matters that can be acted upon by stockholders at stockholder meetings.

Additionally, we are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder and which may discourage, delay, or prevent a change of control of our company.

Impairment of goodwill and other intangible assets would result in a decrease in earnings.

Current accounting rules require that goodwill and other intangible assets with indefinite useful lives may not be amortized, but instead must be tested for impairment at least annually. These rules also require that intangible assets with definite useful lives be amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. We have substantial goodwill and other intangible assets, and we would be required to record a significant charge to earnings in our financial statements during the period in which any impairment of our goodwill or intangible assets is determined. Any impairment charges or changes to the estimated amortization periods could have a material adverse effect on our financial results.

Uncertainties in the interpretation and application of the 2017 Tax Cuts and Jobs Act could materially affect our tax obligations and effective tax rate.

Substantial change to tax policies and other regulations may have an impact on our business. On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (the “Act”) was signed into law making significant changes to the Internal Revenue Code. Changes include, but are not limited to, a federal corporate tax rate decrease from 35% to 21% for tax years beginning after December 31, 2017, the transition of U.S international taxation from a worldwide tax system to a territorial system, and a one-time transition tax on the mandatory deemed repatriation of foreign earnings. We have estimated our provision for income taxes in accordance with the Act and guidance available as of the date of this filing and recorded a \$22.9 million net tax benefit in the fourth quarter of 2017 as result of the legislation enactment. The estimates are subject to the finalization of management's analysis related to such matters, including but not limited to developing interpretations of the provisions of the Act, changes to certain estimates and amounts related to the earnings and profits of certain subsidiaries and the filing of our tax returns. U.S. Treasury regulations, administrative interpretations or court decisions interpreting the Act may require further adjustments and changes in our estimates, which could have a material adverse effect on our business, results of operations or financial conditions. The final analysis of the Act will be completed as additional information becomes available, but no later than one year from the enactment of the 2017 Tax Act. Any subsequent adjustment to these amounts will be recorded to current tax expense in 2018 when the analysis is complete. We cannot predict the impact, if any, of these changes to our business. Any future changes that may be enacted are not incorporated and until we know what additional changes are enacted, we will not know whether in total we will benefit from, or will be negatively affected by, the changes.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

The Company owns a 32,780 square foot building in Spokane, Washington, in which a web services sales center is located. In addition, we lease the following principal facilities:

	Location	Square Feet	Lease Expiration
Headquarters and principal administrative, finance, and marketing operations	Jacksonville, FL	112,306	July 2019
Sales and customer support operations center	Austin, TX	97,153	August 2021
Technology administrative center	Herndon, VA	43,874	August 2025
Sales and customer support operations center	Hazleton, PA	39,429	January 2023
Sales and customer support operations center	Scottsdale, AZ	36,503	February 2028
Sales and customer support operations center	Charlotte, NC	34,462	February 2024
Sales and customer support operations center	Jacksonville, FL	31,720	July 2019
Sales and customer support operations center	Yarmouth, Nova Scotia, Canada	30,400	January 2018
Technology, sales and customer support operations center	New York, NY	83,639(*)	April 2024
Sales and customer support operations center	New Glasgow, Nova Scotia, Canada	25,770	September 2026
Sales and customer support operations center	Halifax, Nova Scotia, Canada	11,270	May 2022
Technology administrative center	Buenos Aires, Argentina	10,000	December 2019
Technology administrative center	Brossard, Quebec, Canada	17,417	August 2023
Sales and customer support operations center	Stockton, England, United Kingdom	10,000	March 2022
Technology administrative center	Atlanta, GA	9,959	November 2021

(*) Effective January 2017, the Company has subleased 55,758 square feet of this lease through the lease expiration date of April 2024.

Item 3. Legal Proceedings.

On July 13, 2017, the Company was named as a defendant in a lawsuit filed in the United States District Court for the Middle District of Florida. The plaintiff in the case alleges that the Company infringed upon certain copyrights, misappropriated trade secrets, breached contracts, and violated the Florida Deceptive and Unfair Trade Practices Act in connection with the Company’s Ignite products. The plaintiff seeks damages in an unspecified amount, plus the recovery of its costs and attorneys’ fees incurred in the suit. The Company believes that it has meritorious defenses against the asserted claims and is no longer offering the afore mentioned products for sale. A preliminary injunction against the Company was entered and the appeal is pending. The Company has reserved an immaterial amount which it determined to be commensurate with the liability, damage and coverage issues presented by the subject claims at this early stage of the pending lawsuit. It is also not currently possible to reasonably estimate the amount or range of any amounts that the Company may be required to pay as damages in the event that liability is found against the Company in excess of the amount reserved without plaintiff providing more detail on its claims and without expert discovery on the damage and apportionment issues presented by the claims.

From time to time, the Company and its subsidiaries receive inquiries from foreign, federal, state and local regulatory authorities or are named as defendants in various legal actions that are incidental to our business and arise out of or are related to claims made in connection with our marketing practices, customer and vendor contracts and employment related disputes. Although the results of these legal actions in which we are involved cannot be predicted with any certainty, we believe that the resolution of these legal actions will not have a material adverse effect on our financial position, marketing practices or results of operations. Defending these legal actions in which we are involved is costly and can impose significant burden on management and there can be no assurance that favorable final outcomes will be obtained. At December 31, 2017, there were no material legal matters for which a loss is reasonably possible or estimable other than the item noted above.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Effective November 10, 2015, our common stock began trading under the ticker symbol "WEB" on the NASDAQ Global Select Market. Prior to that, our common stock traded under the symbol "WWW" from January 3, 2011 to November 9, 2015, also on the NASDAQ Global Select Market. From October 27, 2008 to January 2, 2011, our common stock was listed on the NASDAQ Global Market under the symbol "WWW". Prior to October 27, 2008, our common stock was listed on the NASDAQ Global Market under the symbol "WSPI". Prior to November 1, 2005, there was no public market for our common stock. The following table sets forth the high and low stock prices of our common stock for the last two fiscal years as reported on the NASDAQ Global Select Market, as appropriate.

	2017		2016	
	High	Low	High	Low
First Quarter	\$ 22.50	\$ 18.40	\$ 20.17	\$ 15.71
Second Quarter	\$ 25.55	\$ 17.25	\$ 20.49	\$ 16.21
Third Quarter	\$ 25.95	\$ 21.65	\$ 19.37	\$ 16.43
Fourth Quarter	\$ 25.80	\$ 20.60	\$ 21.20	\$ 12.90

The closing price for our common stock as reported by the NASDAQ Global Select Market on February 20, 2018 was \$17.55 per common share. As of February 20, 2018, there were 704 stockholders of record of our common stock.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain any future earnings to fund the development and expansion of our business, and therefore we do not anticipate paying cash dividends on our common stock in the foreseeable future. None of our outstanding capital stock is entitled to any dividends and any future determination to pay dividends will be subject to the limitations set forth in our credit agreements and will be at the discretion of our board of directors.

Securities Authorized for Issuance Under Equity Compensation Plan

Refer to *Notes 11 and 12* in the consolidated financial statements included in Item 15 for required information.

Issuer Purchases of Equity Securities

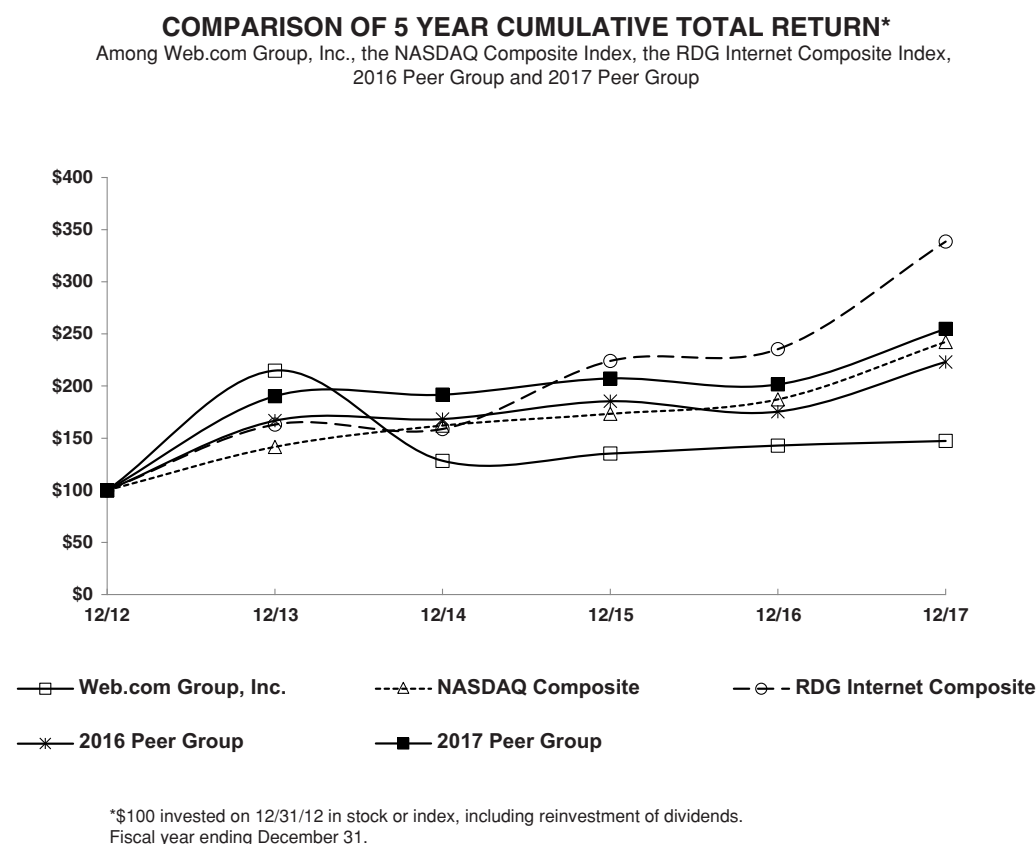
There were no share repurchases during the three months ended December 31, 2017. Cumulative repurchases of 7.9 million common shares totaling \$166.2 million have been made since we announced our stock repurchase program on November 5, 2014, which authorized the repurchase of up to an aggregate of \$100 million of our outstanding shares of common stock from time to time. This program, according to its terms, expired on December 31, 2016. In October 2016, the Company's Board of Directors authorized that the share repurchase program of the Company's outstanding securities be extended through December 31, 2018 and be increased by an additional \$100.0 million. Repurchases under the programs may take place in the open market or in privately negotiated transactions, including derivative transactions, and may be made under a Rule 10b5-1 plan. The approximate dollar value of shares that may yet be purchased under the program is \$33.8 million.

Stock Performance Graph

The graph below compares the cumulative 5-Year total return provided shareholders on Web.com Group, Inc.'s common stock relative to the cumulative total returns of the NASDAQ Composite index, the RDG Internet Composite index and two customized peer groups of thirteen companies and eleven companies respectively, whose individual companies are listed in footnotes 1 and 2 below. An investment of \$100 (with reinvestment of all dividends) is assumed to have been made in our common stock, in each index and in each of the peer groups on December 31, 2012 and its relative performance is tracked through December 31, 2017.

(1) There are nine companies included in the company's first customized peer group which are: Angi Homeservices Inc., Comscore Inc., Concurrent Technologies Plc, Cornerstone OnDemand Inc., Endurance International Group Holdings Inc., Godaddy Inc., Internap Corp, Verisign Inc. and Zillow Group Inc.

(2) The ten companies included in the company's second customized peer group are: Angi Homeservices Inc., Cimpress Nv, Costar Group Inc., Endurance International Group Holdings Inc., Envestnet Inc., Godaddy Inc., J2 Global Inc., Pandora Media Inc., Verisign Inc. and Zillow Group Inc.



This performance graph shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the Exchange Act), or incorporated by reference to any filing of Web.com under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 6. Selected Financial Data.

	Year Ended December 31,				
	2017 ⁽²⁾⁽³⁾⁽⁶⁾⁽⁷⁾	2016 ⁽²⁾⁽³⁾⁽⁶⁾	2015 ⁽³⁾	2014 ^(1,3)	2013 ^(1,3)
	(in thousands, except per share data)				
Consolidated Statements of Comprehensive Income (Loss):					
Revenue	\$ 749,261	\$ 710,505	\$ 543,461	\$ 543,937	\$ 492,315
Income from operations	\$ 88,615	\$ 44,704	\$ 61,714	\$ 37,663	\$ 10,241
Net income (loss)	\$ 53,629	\$ 3,990	\$ 89,961	\$ (12,458)	\$ (65,664)
Basic income (loss) per common share	\$ 1.10	\$ 0.08	\$ 1.79	\$ (0.24)	\$ (1.34)
Diluted income (loss) per common share	\$ 1.06	\$ 0.08	\$ 1.72	\$ (0.24)	\$ (1.34)
Basic weighted average common shares outstanding	48,629	49,262	50,243	50,920	48,947
Diluted weighted average common shares outstanding	50,654	50,880	52,442	50,920	48,947

	As of December 31,				
	2017 ⁽⁷⁾	2016 ⁽⁶⁾	2015	2014 ⁽⁵⁾	2013 ⁽⁵⁾

(in thousands)

Consolidated Balance Sheet Data:

Cash and cash equivalents	\$ 11,976	\$ 20,447	\$ 18,706	\$ 22,485	\$ 13,806
Working capital deficiency (4)	\$ (219,906)	\$ (209,318)	\$ (167,671)	\$ (117,987)	\$ (118,872)
Total assets	\$1,496,243	\$1,513,833	\$1,157,339	\$1,237,579	\$1,275,723
Long-term debt	\$ 630,358	\$ 647,294	\$ 411,409	\$ 500,262	\$ 554,718
Accumulated deficit	\$ (194,996)	\$ (276,634)	\$ (280,624)	\$ (370,585)	\$ (358,127)
Total stockholders' equity	\$ 274,636	\$ 235,452	\$ 238,177	\$ 174,090	\$ 170,045

- The Consolidated Statements of Comprehensive Income (Loss) includes a \$1.8 million and \$20.7 million loss from extinguishing long-term debt during the years ended December 31, 2014 and 2013, respectively. In addition, a \$0.4 million gain from the sale of an equity method investment was recorded during the year ended December 31, 2013.
- The Consolidated Statements of Comprehensive Income for the year ended December 31, 2017 includes an asset impairment charge of \$0.2 million primarily related to abandoning certain technology and \$0.1 million from writing down domain inventory names and the year ended December 31, 2016 includes an asset impairment charge of \$7.1 million for leasehold improvements that were abandoned as part of exiting the operating lease acquired in the March 2016 Yodle acquisition and \$2.0 million from writing down domain name inventory.
- Included in the Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2017, 2016, 2014, and 2013 is income tax expense of \$1.9 million, \$10.3 million, \$21.5 million and \$21.3 million, respectively. Included in the Consolidated Statement of Comprehensive Income for the year ended December 31, 2015 is \$48.3 million of income tax benefit. The Company adopted the Act in the fourth quarter of 2017, which contributed a tax benefit of \$22.9 million. The Company released \$68.8 million of valuation allowance on its deferred tax assets in the fourth quarter of 2015. See Note 13, *Income Taxes*, for information on these transactions.
- The working capital deficiency at December 31, 2017, 2016, 2015, 2014 and 2013 is due primarily to the current portion of deferred revenue, partially offset by deferred expenses and deferred tax assets, which is amortized to revenue or expense/benefit rather than settled with cash. As of December 31, 2017, 2016, 2015, 2014 and 2013, our working capital deficiency does not include an offset for deferred tax assets due to the effects of the adoption of Accounting Standards Update ("ASU ") 2015-17, *Balance Sheet Classification of Deferred Taxes*, requiring all deferred tax assets and liabilities and any related valuation allowance to be classified as non-current on our Consolidated Balance Sheets. Prior periods were not retrospectively adjusted.
- The Company retrospectively adopted ASU 2015-03, *Interest-Imputation of Interest (Subtopic 835-30), Simplifying the Presentation of Debt Issuance Costs*, during the fourth quarter of 2015. The impact on the Consolidated Balance Sheets resulted in a decrease of total assets of \$2.0 million as of December 31, 2013. Long-term debt decreased by \$1.8 million as of December 31, 2013. The current portion of debt decreased \$4 thousand and \$0.2 million as of December 31, 2014 and 2013, respectively.
- The Consolidated Statement of Comprehensive Income includes the operations of Yodle from March 9, 2016 through December 31, 2016. The Consolidated Balance Sheet contains the assets and liabilities of Yodle as of December 31, 2016.
- The Consolidated Statement of Comprehensive Income includes the operations of DonWeb from January 31, 2017 through December 31, 2017 and includes the operations of Acquisio from November 1, 2017 through December 31, 2017. The Consolidated Balance Sheet contains the assets and liabilities of DonWeb and Acquisio as of December 31, 2017. In addition, the Company adopted ASU 2016-09, *Compensation-Stock Compensation Improvements to Employee Share-Based Payment Accounting*, using the modified retrospective transition method and recorded a cumulative-effect adjustment of \$28.0 million for previously unrecognized excess tax benefits in opening accumulated deficit on January 1, 2017.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Safe Harbor

In the following discussion and analysis of results of operations and financial condition, certain financial measures may be considered "non-GAAP financial measures" under Securities and Exchange Commission rules. These rules require supplemental explanation and reconciliation, which is provided in this Annual Report on Form 10-K.

We believe presenting non-GAAP operating income and Adjusted EBITDA measures are useful to investors, because they describe the operating performance of the Company, excluding some recurring charges that are included in the most directly comparable measures calculated and presented in accordance with GAAP. We use these non-GAAP measures as important indicators of our past performance and in planning and forecasting our performance in future periods. The non-GAAP financial information we present may not be comparable to similarly-titled financial measures used by other companies, and investors should not consider non-GAAP financial measures in isolation from, or in substitution for, financial information presented in compliance with GAAP.

Overview

Web.com Group, Inc. ("Web.com", the "Company" or "We") provides a full range of internet services to small businesses to help them compete and succeed online. Web.com meets the needs of small businesses anywhere along their lifecycle with affordable, subscription-based solutions including domains, hosting, website design and management, search engine optimization, online marketing campaigns, local sales leads, social media, mobile products and eCommerce solutions. For more

information about the Company, please visit <http://www.web.com>. We do not incorporate information obtained on or accessible through, our website into this Annual Report on Form 10-K and you should not consider it a part of this Annual Report on Form 10-K.

In March 2016, we completed the acquisition of 100% of the outstanding shares of Yodle, Inc., a Delaware corporation, ("Yodle"). Yodle provides cloud-based local marketing solutions for small businesses with approximately 1,400 employees and 53,000 subscribers. With the Yodle platform, we are able to provide our customers with an online, mobile and social presence, and automate, manage and optimize our customers' marketing activities and other consumer interactions. Yodle's solutions are highly integrated and designed to be easy-to-use, helping businesses navigate the rapidly evolving, technologically challenging and highly fragmented digital marketing landscape without having to invest a significant amount of time and money.

In January 2017, we completed the acquisition of DonWeb, located in Rosario, Argentina, and is a web hosting and domain registration company catering to the Spanish-speaking market.

On November 1, 2017, the Company acquired certain assets and liabilities of Acquisio, Inc., located in Brossard, Quebec, a business software provider of online advertising management.

Key Business Metrics

Management periodically reviews certain key business metrics to evaluate the effectiveness of our operational strategies, allocate resources and maximize the financial performance of our business. These key business metrics include:

Net Subscriber Additions

We define total subscribers as the approximate number of subscribers that, as of the end of a period, are identified as subscribing to our products on a paid basis. A unique subscriber with subscriptions of more than one brand or with more than one distinct billing relationship or product subscription with us, are counted as one subscriber. Total subscribers for a period reflects adjustments to add or subtract subscribers as we integrate acquisitions and/or are otherwise able to identify subscribers that meet, or do not meet, this definition of total subscribers.

We define net subscriber additions in a particular period as the gross number of subscribers added during the period, less subscriber cancellations during the period. For this purpose, we only count subscribers as those customers whose subscriptions have extended beyond the free trial period, if applicable.

We review this metric to evaluate whether we are effectively implementing our business plan. An increase in net subscriber additions could signal an increase in subscription revenue, higher customer retention, and an increase in the effectiveness of our sales efforts. Similarly, a decrease in net subscriber additions could signal decreased subscription revenue, lower customer retention, and a decrease in the effectiveness of our sales efforts.

Customer Retention Rate (Retention Rate)

Customer retention rate is defined as the trailing twelve month retention metric which we measure as the subscribers at the end of the period divided by the sum of the subscribers at the beginning of the period and the new subscribers added during the last twelve months. Customer cancellations in the trailing twelve months include cancellations from subscriber additions, which is why we include subscriber additions in the denominator. Retention rate is the key metric that allows management to evaluate whether we are retaining our existing subscribers in accordance with our plans.

Average Revenue per User (Subscriber)

Monthly average revenue per user, or ARPU, is a metric we measure on a quarterly basis. We define ARPU as quarterly subscription non-GAAP revenue divided by the average of the number of subscribers at the beginning of the quarter and the number of users at the end of the quarter, divided by three months. We exclude from subscription revenue the impact of the fair value adjustments to deferred revenue resulting from acquisition-related write downs. The fair market value adjustment was \$6.5 million, \$18.4 million, and \$15.9 million for the years ended December 31, 2017, 2016 and 2015, respectively. ARPU is a key metric that allows management to evaluate the impact on monthly revenue from product pricing, product sales mix trends, and up-sell/cross-sell effectiveness.

Sources of Revenue

Subscription Revenue

We currently derive a substantial majority of our revenue from fees associated with our subscription services, which generally include web services, online marketing, eCommerce, and domain name registration offerings. We bill a majority of our customers in advance and recognize revenue on a daily basis over the life of the contract.

Professional Services and Other Revenue

We generate professional services revenue from custom website design, eCommerce store design and support services. Our custom website design and eCommerce store design work is typically billed on a fixed-price basis and over very short periods. Generally, revenue is recognized when the service has been completed.

Cost of Revenue and Operating Expenses

Cost of Revenue (Excluding Depreciation and Amortization)

Cost of revenue consists of expenses related to compensation of our web page development staff, domain name registration costs, directory listing fees, eCommerce store design, online marketing costs for services provided, billing costs, hosting expenses and allocated occupancy overhead costs. We allocate occupancy overhead costs such as rent and utilities to all departments based on headcount. Accordingly, general overhead expenses are reflected in each cost of revenue and operating expense category.

Sales and Marketing Expense

Our direct marketing expenses include the costs associated with the online marketing channels we use to promote our services and acquire customers. These channels include search marketing, affiliate marketing, and online partnerships. Sales costs consist primarily of compensation and related expenses for our sales and marketing staff as well as our customer support staff and allocated occupancy overhead costs. Sales and marketing expenses also include marketing programs, such as advertising, corporate sponsorships and other corporate events and communications.

We plan to continue to invest in sales and marketing to add new customers and to increase sales of additional and new services and products to our existing customer base. We continue to invest a portion of our marketing budget in branding activities such as the umbrella sponsorship of the Web.com Tour and other sports marketing activities.

Technology and development

Technology and development represents costs associated with creation, development and distribution of our products and websites. Technology and development expenses primarily consist of headcount-related costs associated with the design, development, deployment, testing, operation and enhancement of our products and costs associated with the data centers and all systems infrastructure costs and allocated occupancy overhead costs.

General and Administrative Expense

General and administrative expenses consist of compensation and related expenses for executive, finance, administration, as well as professional fees, corporate development costs, other corporate expenses, and allocated occupancy overhead costs.

Depreciation and Amortization Expense

Depreciation and amortization expenses relate primarily to our intangible assets recorded due to the acquisitions we have completed, as well as depreciation expense from computer and other equipment, internally developed software, furniture and fixtures, and building and improvement expenditures.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles ("GAAP") in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, and expenses and related disclosure of contingent assets and liabilities. We review our estimates on an ongoing basis. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results may differ from these estimates under different assumptions or conditions. While our significant accounting policies and estimates are described in more detail in Note 1, *The Company and Summary of Significant*

Accounting Policies, to our consolidated financial statements included in this report, we believe the following accounting policies to be critical to the judgments and estimates used in the preparation of our consolidated financial statements.

Revenue Recognition

We recognize revenue in accordance with ASC 605, *Revenue Recognition*. We recognize revenue when all of the following conditions are satisfied: (1) there is persuasive evidence of an arrangement; (2) the service has been provided to the customer; (3) the amount of fees to be paid by the customer is fixed or determinable; and (4) the collection of our fees is reasonably assured.

Thus, we recognize subscription revenue on a daily basis, as services are provided. Customers are billed for the subscription on a monthly, quarterly, semi-annual, annual or on a multi-year basis, at the customer's option. For all of our customers, regardless of the method we use to bill them, subscription revenue is recorded as deferred revenue in the accompanying consolidated balance sheets. As services are performed, we recognize subscription revenue on a daily basis over the applicable service period. When we provide a free trial period, we do not begin to recognize subscription revenue until the trial period has ended and the customer has been billed for the services.

We account for our multi-element arrangements in accordance with ASC 605-25, *Revenue Recognition: Multiple-Element Arrangements*. We may sell multiple products or services to customers at the same time. For example, we may design a customer website and separately offer other services such as hosting and marketing or a customer may combine a domain registration with other services such as private registration or e-mail. In accordance with ASC 605-25, each element is accounted for as a separate unit of accounting provided the following criteria are met: the delivered products or services has value to the customer on a standalone basis; and for an arrangement that includes a general right of return relative to the delivered products or services, delivery or performance of the undelivered product or service is considered probable and is substantially controlled by the Company. We consider a deliverable to have standalone value if the product or service is sold separately by us or another vendor or could be resold by the customer. Our products and services do not include a general right of return relative to the delivered products. In cases where the delivered products or services do not meet the separate unit of accounting criteria, the deliverables are combined and treated as one single unit of accounting for revenue recognition. We assign value to the separate units of accounting in multiple element arrangements using the relative selling price method which is calculated by taking the standalone selling price of each unit to the total selling price of the arrangement, multiplied by the total sales price. Typically, the deliverables within multiple-element arrangements are provided over the same service period, and therefore revenue is recognized over the same period.

To determine the selling price in multiple-element arrangements, the Company establishes vendor-specific objective evidence of the selling price using the price of the deliverable when sold separately. If we are unable to determine the selling price because vendor-specific objective evidence does not exist, the Company will first look to third-party evidence, and if that is not sufficient, it will determine an estimated sales price through consultation with and approval by the Company's management, taking into consideration the Company's relative costs, target profit margins, and any other information gathered during this process.

Goodwill and Intangible Assets

ASC 350, *Intangibles-Goodwill and Other*, permits an entity to first assess qualitative factors to determine whether it is more likely than not (likelihood of greater than 50%) that the fair value of indefinite-lived intangible assets and goodwill balances are less than their carrying amount as a basis for determining whether it is necessary to perform the quantitative test which is also described in ASC 350. However, we continue to perform the quantitative tests to determine whether the carrying value of our indefinite-lived intangible assets and our goodwill is impaired during the year ended December 31, 2017. We test goodwill using one reporting unit. We use a market approach to test our goodwill for impairment, while our intangible asset test uses the income approach. The following is not a complete discussion of our calculation, but outlines the general assumptions and steps for testing goodwill and intangible assets for impairment:

Goodwill

The first step involves comparing the fair value of our reporting unit to their carrying value, including goodwill. We use a market capitalization approach after considering an estimated control premium.

If the carrying value of the reporting unit exceeds its fair value, the second step of the test is performed by comparing the carrying value of goodwill to its implied fair value. An impairment charge is recognized for the excess of the carrying value over its implied fair value.

Intangible Assets

We estimate the fair value of indefinite-lived intangibles using the relief-from-royalty method, a form of the income approach. It is based on the principle that ownership of the intangible asset relieves the owner of the need to pay a royalty to another party in exchange for rights to use the asset. Key assumptions in estimating the fair value include, among other items, forecasted revenue, royalty rates, tax rate, and the benefit of tax amortization. We employ a weighted average cost of capital approach to determine the discount rates used in our projections. The determination of the discount rate includes certain factors such as, but not limited to, the risk-free rate of return, market risk, size premium, and the overall level of inherent risk.

If the carrying value of the intangibles exceeds its fair value, an impairment charge is recognized.

The results of these analyses indicated that our indefinite-lived intangible assets and our goodwill were not impaired at December 31, 2017. See Note 6, *Goodwill and Intangible Assets*, in the consolidated financial statements for additional information.

Accounting for Purchase Business Combinations

All of our acquisitions have been accounted for as purchase transactions, and the purchase price is allocated based on the fair value of the assets acquired and liabilities assumed. The excess of the purchase price over the fair value of net assets acquired or net liabilities assumed is allocated to goodwill. Management weighs several factors in determining the fair value. The analysis typically considers, but is not limited to, the nature of the acquired company's business, its competitive position, strengths, and challenges; its operating and non-operating assets, if any; its historical financial position and performance; and future plans for the combined entity. Amortizable intangibles, which primarily consists of developed technology, customer relationships, non-compete agreements and trade names, are typically valued using third-party valuation experts, valuation studies and other tools in determining the fair value of amortizable intangibles. While we use our best estimates and assumptions as a part of the purchase price allocation process to accurately value assets acquired and liabilities assumed at the acquisition date, our estimates are inherently uncertain and subject to refinement.

Income Taxes

We record a provision for income taxes using the asset and liability method. Recognition of deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred income taxes are recognized by applying enacted statutory tax rates applicable to future years to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases as well as net operating loss and tax credit carryforwards. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance for any tax benefits for which future realization is uncertain using a "more likely than not" threshold. In making such assessments, the Company considers the expected reversals of our existing deferred tax liabilities within the applicable jurisdictions and carry forward periods, based on our existing Section 382 limitations. The Company does not consider deferred tax liabilities related to indefinite lived intangibles or tax deductible goodwill as a source of future taxable income. Additionally, the determination of the amount of deferred tax assets which are more likely than not to be realized is also dependent on projections of future earnings, which are subject to uncertainty and estimates that may change given economic conditions and other factors. A valuation allowance is recorded to reflect the amount of our deferred tax assets that are more likely than not to be realized based on the above methodology. We review the adequacy of the valuation allowance on an ongoing basis and adjust our valuation allowance in the appropriate period, if applicable.

Although we believe our assumptions, judgments and estimates are reasonable, changes in tax laws or our interpretation of tax laws and the resolution of any tax audits could significantly impact the amounts provided for income taxes in our consolidated financial statements.

In evaluating our ability to recover our deferred tax assets, in full or in part, we consider all available positive and negative evidence, including our past operating results, and our forecast of future earnings, future taxable income and prudent and feasible tax planning strategies. The assumptions utilized in determining future taxable income require significant judgment and are consistent with the plans and estimates we are using to manage the underlying businesses. Actual operating results in future years could differ from our current assumptions, judgments and estimates. We record a valuation allowance to reduce our deferred tax assets to the net amount we believe is more likely than not to be realized. At December 31, 2017 the valuation allowance of \$30.4 million was primarily related to certain foreign and state net operating losses ("NOLs") that we are not expected to realize.

We record liabilities for uncertain tax positions related to federal, state and foreign income taxes in accordance with ASC 740, *Income Taxes*. These liabilities reflect the Company's best estimate of its ultimate income tax liability based on the tax code, regulations, and pronouncements of the jurisdictions in which we do business. Estimating our ultimate tax liability involves significant judgments regarding the application of complex tax regulations across many jurisdictions. If the Company's actual

results differ from estimated results, our effective tax rate and tax balances could be affected. As such, these estimates may require adjustment in the future as additional facts become known or as circumstances change. If applicable, we will adjust the tax provision in the appropriate period.

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (the "Act") was signed into law, making significant changes to the Internal Revenue Code. Changes include, but are not limited to, a federal corporate tax rate decrease from 35% to 21% for tax years beginning after December 31, 2017, the transition of U.S. international taxation from a worldwide tax system to a territorial system, and a one-time transition tax on the mandatory deemed repatriation of foreign earnings. We have estimated our provision for income taxes in accordance with the Act and guidance available as of the date of this filing and as a result have recorded \$22.9 million net tax benefit in the fourth quarter of 2017, the period in which the legislation was enacted. The provisional amount consisted of \$22.3 million, net of the valuation allowance impact, related to the remeasurement of certain deferred tax assets and liabilities, based on the rates at which they are expected to reverse in the future, a \$1.9 million benefit from the reversal of a liability associated with the prior year earnings and profits, a \$0.8 million one-time transition tax on the mandatory deemed repatriation of foreign earnings based on cumulative foreign earnings of \$5.1 million and a \$0.5 million tax expense related to writing off certain deferred tax assets associated with the deductibility of certain compensation amounts.

On December 22, 2017, Staff Accounting Bulletin No. 118 ("SAB 118") was issued to address the application of U.S. GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in reasonable detail to complete the accounting for certain income tax effects of the Act. In accordance with SAB 118, we have determined that \$22.9 million was the estimated benefit from the implementation of the Act was a provisional amount and a reasonable estimate at December 31, 2017. Additional work is necessary for a more detailed analysis of our deferred tax assets and liabilities and our historical foreign earnings as well as potential correlative adjustments. No additional income taxes have been provided for any remaining undistributed foreign earnings not subject to the transition tax and any additional outside basis difference inherent in these entities as these amounts continue to be indefinitely reinvested in foreign operations. Any subsequent adjustment to these amounts will be recorded to current tax expense in 2018 when the analysis is complete.

See Note 13, *Income Taxes*, for more information

Results of Operations

Management's Discussion and Analysis includes the results of operations and cash flows of Yodle from March 9, 2016 through December 31, 2016, DonWeb from January 31, 2017 through December 31, 2017 and Acquisio from November 1, 2017 through December 31, 2017. See Note 5, *Business Combinations*, for additional information surrounding the acquisition.

We commence integrating acquisitions into our operations immediately following the closing of the acquisition, as such our results of operations, including revenue and ARPU, are not specifically segregated subsequent to the acquisition, nor would it be indicative of each of the standalone entities.

Comparison of the results for the year ended December 31, 2017 to the results for the year ended December 31, 2016

The following table sets forth our key business metrics for the years ended December 31:

	For the year ended December 31,	
	2017	2016
Ending subscribers as of December 31,	3,410,989	3,457,572
Net subscriber changes *	(46,583)	105,018
Customer retention rate	84.5%	85.4%
Average revenue per user (monthly)	\$ 17.98	\$ 17.67

* The metrics for the year ended December 31, 2017 include the operating results and approximately 68,000 customers of DonWeb and Acquisio from the respective acquisition dates and the metrics for the year ended December 31, 2016 include the operating results and approximately 53,000 customers of Yodle from the March 9, 2016 acquisition.

Net subscribers decreased 46,583 during the year ended December 31, 2017 compared to an increase of 105,018 during the year ended December 31, 2016. The net subscriber additions during the year ended December 31, 2017 include the customers acquired in the DonWeb and Acquisio acquisitions and the subscriber additions during the year ended December 31, 2016 include the customers acquired in the March 2016 acquisition of Yodle, Inc. Excluding the the acquired customers, net

subscribers decreased during the year ended December 31, 2017, when compared to the same prior year period due to our strategic focus on higher ARPU products. Our rolling twelve month customer retention rate as of December 31, 2017 was 84.5% compared to 85.4% during the same prior year period. While retention rates remain stable, the overall retention rate declined slightly in 2017.

The average revenue per user was \$17.98 for the year ended December 31, 2017 as compared to \$17.67 during the same period ended December 31, 2016. The increase in average revenue per subscriber is primarily due to a shift in the mix of sales of our vertically integrated solutions.

Revenue

For the year ended December 31,	
2017	2016
(in thousands)	
Revenue:	
Subscription	\$ 741,655
Professional services and other	7,606
Total revenue	<u>\$ 749,261</u>

Total revenue increased to \$749.3 million in the year ended December 31, 2017, from \$710.5 million in the year ended December 31, 2016. Total revenue during the year ended December 31, 2017 and 2016, includes the impact of amortizing into revenue the deferred revenue recorded at fair value from acquisitions of approximately \$6.5 million and \$18.4 million, respectively. The unfavorable impact decreased \$11.9 million during the year ended December 31, 2017 compared to the same prior period principally due to the Yodle deferred revenue acquired in March 2016 and subsequently amortized. The remaining \$26.9 million increase in revenue during the year ended December 31, 2017 is principally due to recognizing a full year of revenue from the March 2016 acquisition of Yodle, the January 2017 acquisition of DonWeb and the May 2016 acquisition of TORCHx. In addition, we realized increased revenue from our Leadstream product, Lighthouse website revenues, online marketing and email services. The increases were partially offset by decreases in domain-related revenues, hosting, and DIY website revenues due to a shift in investing resources away from DIY products.

Subscription Revenue. Subscription revenue increased during the year ended December 31, 2017, to \$741.7 million from \$703.6 million during the year ended December 31, 2016. The increase was primarily due to the drivers discussed above.

Professional Services and Other Revenue. Professional services revenue increased 10% to \$7.6 million in the year ended December 31, 2017 from \$6.9 million in the year ended December 31, 2016 due to a higher volume of eCommerce design revenue.

Cost of Revenue and Operating Expenses

For the year ended December 31,	
2017	2016
(in thousands)	
Cost of Revenue and Operating Expenses:	
Cost of revenue (excluding depreciation and amortization)	\$ 236,530
Sales and marketing	201,543
Technology and development	69,984
General and administrative	79,494
Restructuring charges	1,260
Asset impairments	291
Depreciation and amortization	71,544
Total cost of revenue and operating expenses	<u>\$ 660,646</u>

Cost of Revenue. Cost of revenue increased 6% or \$12.5 million during the year ended December 31, 2017 compared to the year ended December 31, 2016 to \$236.5 million. The increase was primarily driven from March 2016 acquisition of Yodle and the 2017 acquisition of DonWeb. Excluding the acquisitions, partner-related commissions decreased \$4.2 million and hosting costs decreased \$1.6 million during the year ended December 31, 2017 compared to the same prior year period.

Sales and Marketing Expenses. Sales and marketing expenses decreased 4% to \$201.5 million, or 27% of total revenue during the year ended December 31, 2017 from \$210.3 million, or 30% of revenue during the year ended December 31, 2016. Excluding the impact of acquisitions, sales and marketing expenses declined \$15.6 million primarily due to lower marketing expenses, as we strategically focused efforts on reducing certain online, television and affiliate marketing expense, partially offset by higher compensation and benefit costs.

Technology and Development Expenses. Technology and development expenses increased 6% to \$70.0 million, or 9% of total revenue, during the year ended December 31, 2017, up from \$65.8 million, or 9% of total revenue during the year ended December 31, 2016. The increase in technology and development expense is principally driven by \$3.4 million of higher salaries and benefits, as well as an increase of \$1.5 million in software and security costs during year ended December 31, 2017 compared to the same prior year period. These additional costs were partially offset by lower facilities costs from exiting two floors of Yodle's New York City leased office space.

General and Administrative Expenses. General and administrative expenses increased 6% to \$79.5 million, or 11% of total revenue, during the year ended December 31, 2017, up from \$74.9 million, or 11% of total revenue during the year ended December 31, 2016. Excluding the additional expenses from the Yodle acquisition, the increase was due to higher incentive-based compensation of \$3.8 million, \$1.2 million of higher software maintenance costs, \$1.8 million of increased legal costs and \$0.7 million of additional accounting and tax related fees due to the increased cost of regulatory compliance in foreign jurisdictions. These increases were partially offset by \$3.2 million of lower corporate development costs as a result of the complexity of the Yodle acquisition in 2016.

Restructuring Charges. Restructuring charges of \$1.3 million and \$3.6 million were incurred during the years ended December 31, 2017 and 2016, respectively. The restructuring expense for the year ended December 31, 2017 included \$0.5 million of lease restructuring costs from adjusting the estimated real estate taxes on a portion of our New York, New York office lease space, which was exited in December 2016, and severance expense associated with the elimination of certain Yodle positions. An additional \$0.5 million of expense resulted from an early lease termination payment for an office in Herndon, Virginia. The lease restructuring costs and severance expense from terminating certain positions associated with Yodle for the year ended December 31, 2016 were \$1.4 million and \$2.2 million, respectively.

Asset Impairment. The Company recorded \$0.3 million in asset impairment charges during the year ended December 31, 2017. The charges included \$0.2 million for the impairment of certain technology and \$0.1 million of asset impairment charges related to domain name inventory. During the year ended December 31, 2016, asset impairment charges of \$9.1 million resulted from a \$7.1 million charge for the impairment of leasehold improvements, furniture and fixtures, and office equipment due to exiting a portion of the Yodle offices leased in New York and a \$2.0 million charge related to domain name inventory.

Depreciation and Amortization Expense. Depreciation and amortization expense declined from \$78.0 million during the year ended December 31, 2016 to \$71.5 million during the year ended December 31, 2017. Amortization declined by \$7.5 million during the year ended December 31, 2017 as certain Network Solutions' intangible assets became fully amortized. Depreciation expense increased \$1.0 million principally from the Yodle and DonWeb acquisitions, partially offset by certain fixed assets becoming fully depreciated.

Interest Expense, net. Net interest expense totaled \$33.1 million and \$30.5 million for the year ended December 31, 2017 and 2016, respectively. Included in the interest expense for the year ended December 31, 2017 and 2016, is approximately \$15.3 million and \$14.0 million, respectively, principally from amortizing deferred financing fees and loan origination discounts. Excluding amortization expense, interest expense increased \$1.3 million during the year ended December 31, 2017, which is driven from the additional debt financed to acquire Yodle in March of 2016 and 2017 stock repurchases, as well as a slightly higher interest rate. See Note 4, *Long-term Debt*, for additional information.

Income Tax Benefit/Expense. We recorded a net income tax expense of \$1.9 million and \$10.3 million during the year ended December 31, 2017 and 2016, respectively. The Company's income tax expense for the year ended December 31, 2017, includes a \$22.9 million net deferred tax benefit of adopting the Tax Cuts and Jobs Act of 2017 (the "Act") in the fourth quarter of 2017, partially offset by increases in our valuation allowance related to additional book losses attributable to certain foreign and state jurisdictions in which a full valuation allowance was still required. During the year ended December 31, 2017, the valuation allowance increased by \$8.1 million. The net increase attributable to the Company's state valuation allowance was \$6.6 million, mainly related to increase in state deferred tax assets due to the federal tax rate change. The net increase attributable to the Company's foreign valuation allowance was \$1.5 million driven by current year foreign losses in

jurisdictions in which a full valuation allowance was still required and foreign currency translation adjustments associated with the underlying foreign net deferred tax assets for which a full valuation allowance was required. See Note 13, *Income Taxes*, for additional information.

Outlook. For 2018, we will continue to shift resources and further invest in our online marketing services and shift resources away from our DIY offerings to drive revenue growth, as well as focus on improving the retention rate of our Lead Stream customers by integrating the Acquisio technology, continuing to drive productivity gains in our telesales organization and on leveraging the existing base of customers through upsell and cross sell opportunities. Additionally, we continue to expect consistent growth driven by our multi-locations/franchise sales channel. We are targeting modest year over year growth in future quarters with acceleration in the back half of the year driven by our value-added services revenue offset by declines in DIY and domains. We expect declines in operating costs as we continue to rationalize our infrastructure and consolidate processes across the Company to better develop and more efficiently deliver solutions to our customers. Overall, we expect declines in depreciation and amortization as certain assets fully depreciate. We expect to generate stable to moderate growth in non-GAAP free cash flow which will be used to further invest in the business, pay down debt and repurchase common shares.

Comparison of the results for the year ended December 31, 2016 to the results for the year ended December 31, 2015

The following table sets forth our key business metrics for the year ended December 31:

	For the year ended December 31,	
	2016	2015
Ending subscribers as of December 31,	3,457,572	3,352,554
Net subscriber additions *	105,018	76,337
Customer retention rate	85.4%	87.5%
Average revenue per user (monthly)	\$ 17.67	\$ 13.87

*The metrics for the year ended December 31, 2016 include the operating results and approximately 53,000 customers of Yodle from the March 9, 2016 acquisition.

Net subscribers increased by 105,018 customers during the year ended December 31, 2016, as compared to an increase of 76,337 customers during the year ended December 31, 2015. The subscriber additions include the customers acquired in the March 2016 acquisition of Yodle. Excluding the acquired customers, the subscribers increased during the year ended December 31, 2016, when compared to the same prior year period due to continued improvements in our customer service and marketing efforts. Our rolling twelve month customer retention rate as of December 31, 2016, was 85.4% compared to 87.5% during the same prior year period. While retention rates remain stable, the overall retention rate declined from the prior period due principally to the inclusion of Yodle's lower retention.

The average revenue per user was \$17.67 during the year ended December 31, 2016, as compared to \$13.87 during the same period ended December 31, 2015. The increase in average revenue per subscriber is primarily due to the significantly higher revenue per subscriber from the Yodle acquisition customer base.

Revenue

	For the year ended December 31,	
	2016	2015
	(in thousands)	
Revenue:		
Subscription	\$ 703,562	\$ 535,706
Professional services and other	6,943	7,755
Total revenue	<u>\$ 710,505</u>	<u>\$ 543,461</u>

Total revenue increased to \$710.5 million in the year ended December 31, 2016, from \$543.5 million in the year ended December 31, 2015. Total revenue during the year ended December 31, 2016 and 2015, includes the unfavorable impact of \$18.4 million and \$15.9 million, respectively, from amortizing into revenue, deferred revenue that was recorded at fair value at

the acquisition date. The unfavorable impact increased \$2.5 million during the year ended December 31, 2016 compared to the same prior period principally due to the Yodle deferred revenue acquired in March 2016 and subsequently amortized. The remaining \$169.5 million increase in revenue during the year ended December 31, 2016 is also principally due to the March 2016 Yodle acquisition. In addition, we realized increased DIFM website and premium website revenues, as well as increases from online marketing and email revenues. The increases were offset, in part, by decreases in domain-related revenues, hosting, advertising and DIY website revenues.

Subscription Revenue. Subscription revenue increased during the year ended December 31, 2016, to \$703.6 million from \$535.7 million during the year ended December 31, 2015. The increase was primarily due to the drivers discussed above.

Professional Services and Other Revenue. Professional services revenue decreased 10% to \$6.9 million in the year ended December 31, 2016 from \$7.8 million in the year ended December 31, 2015 due to a lower volume of custom website and eCommerce design revenue.

Cost of Revenue and Operating Expenses

	For the year ended December 31,	
	2016	2015
	(in thousands)	
Cost of Revenue and Operating Expenses:		
Cost of revenue (excluding depreciation and amortization)	\$ 224,032	\$ 184,751
Sales and marketing	210,294	139,971
Technology and development	65,800	35,529
General and administrative	74,919	64,592
Restructuring charges	3,617	559
Asset impairments	9,091	—
Depreciation and amortization	78,048	56,345
Total cost of revenue and operating expenses	<u>\$ 665,801</u>	<u>\$ 481,747</u>

Cost of Revenue. Cost of revenue increased 21% or \$39.3 million during the year ended December 31, 2016 compared to the year ended December 31, 2015 to \$224.0 million. The increase was primarily driven from March 2016 acquisition of Yodle. Excluding the acquisition, domain registration costs decreased \$2.1 million, partner-related commissions decreased \$2.0 million and hosting costs were also down \$1.0 million during the year ended December 31, 2016 compared to the same prior year period. Partially offsetting these costs were \$1.8 million of higher online marketing expenses and \$1.6 million of additional software-related costs during the year ended December 31, 2016 when compared to the same prior year period.

Sales and Marketing Expenses. Sales and marketing expenses increased 50% to \$210.3 million and were 30% of total revenue during the year ended December 31, 2016, up from \$140.0 million or 26% of revenue during the year ended December 31, 2015. The \$70.3 million increase is primarily from the acquisition of Yodle. Excluding the acquisition-related costs, salaries and benefits increased \$9.9 million, while marketing expenses declined \$8.8 million and call center costs were down \$2.2 million during the year ended December 31, 2016 compared to the same prior year period.

Technology and Development Expenses. Technology and development expenses increased 85% to \$65.8 million, or 9% of total revenue, during the year ended December 31, 2016, up from \$35.5 million, or 7% of total revenue during the year ended December 31, 2015. The increase for the year ended December 31, 2016 was driven by the Yodle acquisition. In addition, salaries and benefits are up \$8.4 million and data storage, security and network costs have also risen \$1.7 million during the year ended December 31, 2016 compared to the same prior year period.

General and Administrative Expenses. General and administrative expenses increased 16% to \$74.9 million, or 11% of total revenue, during the year ended December 31, 2016, up from \$64.6 million or 12% of total revenue during the year ended December 31, 2015. Excluding the additional expenses from the Yodle acquisition, salaries and benefits declined \$5.1 million during the current year ended December 31, 2016 when compared to the same prior year period. In addition, bad debt expense is lower by \$1.7 million due primarily to lower DIY revenue during the year ended December 31, 2016. Corporate and development expenses increased by \$4.0 million due primarily to transaction-related costs from the Yodle acquisition.

Restructuring Charges. Restructuring charges of \$3.6 million and \$0.6 million during the years ended December 31, 2016 and 2015, respectively, were incurred. Included in the restructuring expense for the year ended December 31, 2016 was \$1.4 million of lease restructuring costs for a portion of the New York office of Yodle that was exited on December 31, 2016. The remaining \$2.2 million was principally severance expense from terminating certain Yodle positions.

Asset Impairment. The Company recorded \$9.1 million of impairment charges during the year ended December 31, 2016. Included was a \$7.1 million charge for leasehold improvements that were written off when we exited a portion of the leased space in Yodle's New York, New York headquarters. In addition, \$2.0 million of our domain name inventory was impaired during the third quarter ended September 30, 2016.

Depreciation and Amortization Expense. Depreciation and amortization expense increased from \$56.3 million during the year ended December 31, 2015 to \$78.0 million during the year ended December 31, 2016. Amortization expense increased by \$17.5 million during the year ended December 31, 2016, as we amortized intangible assets acquired with the March 2016 Yodle acquisition. Depreciation expense increased \$4.2 million, also from the additional assets acquired from the Yodle acquisition. In addition, depreciation increased from internally developed software projects placed into service in prior periods as well as during 2016.

Interest Expense, net. Net interest expense totaled \$30.5 million and \$20.0 million for the year ended December 31, 2016 and 2015, respectively. Included in the interest expense for the year ended December 31, 2016 and 2015, is approximately \$12.8 million and \$11.4 million, respectively, from amortizing deferred financing fees and loan origination discounts. Excluding this amortization expense, interest expense increased \$7.8 million during the year ended December 31, 2016, which is driven from the additional debt financed to acquire Yodle in March of 2016, as well as from a slightly higher interest rate. See Note 4, *Long-term Debt*, for additional information.

Income Tax Benefit/Expense. We recorded a net income tax expense of \$10.3 million and an income tax benefit of \$48.3 million during the year ended December 31, 2016 and December 31, 2015, respectively. The Company's income tax expense for the year ended December 31, 2016, includes the impact of higher stock-based compensation, acquisition-related transaction costs, and other non-deductible compensation costs, as well as a decrease in foreign deferred tax rates and foreign currency translation adjustments when compared to the year ended December 31, 2015. Also included in our income tax expense for the year ended December 31, 2016 is a \$2.4 million partial release of our beginning-of-the-year valuation allowance previously recorded against certain net state deferred tax assets that was recorded in the fourth quarter of 2016, after weighing all available evidence to reflect the amount more likely than not to be realized. The year ended December 31, 2015 includes the reversal of \$68.8 million of valuation allowance related to certain of our deferred tax assets, resulting in a net benefit for the year. See Note 13, *Income Taxes*, for additional information.

Liquidity and Capital Resources

The following table summarizes total cash flows for operating, investing and financing activities for the years ended December 31, (in thousands):

	<u>2017</u>	<u>2016</u>	<u>2015</u>
Net cash provided by operating activities	\$ 149,820	\$ 132,865	\$ 152,433
Net cash used in investing activities	(38,749)	(326,953)	(16,077)
Net cash (used in) provided by financing activities	(119,936)	200,917	(140,431)
Effect of exchange rate changes on cash	(22)	(63)	(2)
(Decrease) increase in cash and cash equivalents	<u>\$ (8,887)</u>	<u>\$ 6,766</u>	<u>\$ (4,077)</u>

Cash Flows Years Ended December 31, 2017 and 2016

As of December 31, 2017, we had \$12.0 million of cash and cash equivalents and \$219.9 million in negative working capital, as compared to \$20.4 million of cash and cash equivalents and \$209.3 million in negative working capital as of December 31, 2016. The majority of the negative working capital as of December 31, 2017 and 2016 is due to significant balances of deferred revenue, partially offset by deferred expenses, which are amortized to revenue and expense, respectively, rather than settled with cash. The Company expects cash generated from operating activities to be more than sufficient to meet future working capital and debt servicing requirements. We have included the majority of the 2018 Notes as long-term debt based upon our intent and ability to refinance these obligations.

Net cash provided by operations for the year ended December 31, 2017 increased \$17.0 million from the year ended December 31, 2016. Cash provided by operating activities during the year ended December 31, 2017 improved due to the operating cash

contributions of Yodle and DonWeb. Offsetting this improvement were higher cash interest payments of approximately \$1.8 million due to an increasing one month LIBOR rate during 2017 as well as increased debt for the financing of Yodle and stock repurchases. Included in the cash provided by operating activities during the year ended December 31, 2016 is \$3.9 million of acquisition-related transaction costs that were paid during the year, as well as \$1.6 million of restructuring-related severance payments that were made. Included in working capital changes for the year ended December 31, 2017 were payments of \$3.2 million related to the previously restructured New York office space. The working capital changes for the year ending December 31, 2016 reflect the requirement to fund \$5.3 million of letters of credit that are restricted by operating leases of Yodle. In addition, working capital changes were unfavorable during the year ended December 31, 2017, when compared to the same prior year periods, primarily resulting from increased deferred revenue and deferred consideration payments that are due within one year resulting from the Yodle acquisition.

Net cash used in investing activities in the year ended December 31, 2017 was \$38.7 million, as compared to \$327.0 million in the year ended December 31, 2016. The year ended December 31, 2017 included \$8.6 million paid for the acquisition of DonWeb, a hosting and domain registration company catering to the Spanish-speaking market located in Rosario, Argentina and \$8.7 million paid for certain assets and liabilities of Acquisio, Inc., a provider of online advertising management. The year ended December 31, 2016 included a \$300.3 million payment for the acquisition of 100% of the outstanding shares of Yodle, Inc., a leader in value added digital marketing solutions that further solidifies our position as a leading national provider in this space and we purchased the assets of TORCHx, Inc. a Florida corporation for \$4.4 million, of which \$3.0 million was paid at closing with the remaining \$1.5 million that was paid on November 30, 2017. See Note 5, *Business Combinations*, for additional information surrounding these acquisitions. Capital expenditures during the year ended December 31, 2017 remained relatively consistent when compared to the same prior year period. The year ended December 31, 2016 included internally developed software labor as certain billing systems were customized for centralization, which continued in 2017 and improvements in our DIY website builder. Also included in cash used in investing activities is \$1.5 million of payments for domain registrar credentials that were acquired during the year ended December 31, 2016.

Net cash used in financing activities of \$119.9 million during the year ended December 31, 2017 was driven by an aggressive debt repayment program on borrowings from financing the Yodle acquisition. Total debt repaid during the year ended December 31, 2017 was \$131.3 million, offset by \$99.0 million of borrowings utilized to primarily finance acquisitions and stock repurchases. Additionally, holdback consideration of \$20.4 million related to the Yodle and TORCHx acquisitions was paid during the year ended December 31, 2017. The year ended December 31, 2016 included an increase in borrowings of \$315.0 million to finance the Yodle acquisition, of which a total of \$80.5 million was subsequently repaid, resulting in a net increase of \$234.5 million. Proceeds received from the exercise of stock options increased from \$5.0 million to \$15.7 million in the year ended December 31, 2017 when compared to the same prior year period. Approximately \$4.6 million and \$4.3 million of cash was used to pay employee minimum tax withholding requirements in lieu of receiving common shares during the years ended December 31, 2017 and 2016, respectively. Debt issuance costs of \$1.9 million and \$5.7 million were paid during the years ended December 31, 2017 and 2016, respectively.

Included in financing activities during the year ended December 31, 2017 and 2016 are common stock repurchases of \$76.3 million and \$28.6 million, respectively. The repurchases were made in connection with our stock repurchase program that was originally announced on November 5, 2014, which initially authorized the repurchase of up to \$100 million of our outstanding shares of common stock. In October 2016, our Board of Directors approved an increase in our current stock repurchase plan by an additional \$100 million and extended the expiration date of the outstanding available shares to December 31, 2018. Repurchases under the programs may take place in the open market or in privately negotiated transactions, including derivative transactions, and may be made under a Rule 10b5-1 plan. As of December 31, 2017, \$33.8 million remains available for repurchase.

Cash Flows Years Ended December 31, 2016 and 2015

As of December 31, 2016, we had \$20.4 million of cash and cash equivalents and \$209.3 million in negative working capital, as compared to \$18.7 million of cash and cash equivalents and \$167.7 million in negative working capital as of December 31, 2015. The majority of the negative working capital, as of the years ended December 31, 2016 and 2015, is due to significant balances of deferred revenue, partially offset by deferred expenses, which are amortized to revenue and expense, respectively, rather than settled with cash.

Net cash provided by operations for the year ended December 31, 2016 decreased \$19.6 million from the year ended December 31, 2015. Included in the cash provided by operating activities during the year ended December 31, 2016 is \$3.9 million of acquisition-related transaction costs that were paid during the year, as well as \$1.6 million of restructuring-related severance payments that were made. In addition, cash paid for interest is \$7.0 million higher than in the year ended December 31, 2015, due to the increase in debt for financing the March 2016 Yodle acquisition. The working capital changes reflect the requirement to fund \$5.3 million of letters of credit that are restricted by operating leases of Yodle. During the year ended December 31,

2016, higher cash incentive compensation was paid out when compared to the same prior year period of 2015. In addition, working capital changes were unfavorable during the year ended December 31, 2016, when compared to the same prior year period, primarily resulting from accounts receivable and accrued compensation and benefits timing.

Net cash used in investing activities in the year ended December 31, 2016 was \$327.0 million, as compared to \$16.1 million in the year ended December 31, 2015. The quarter ended March 31, 2016 included a \$300.3 million payment for the acquisition of 100% of the outstanding shares of Yodle, Inc., a leader in value added digital marketing solutions that further solidifies our position as a leading national provider in this space. In addition, on May 31, 2016, we purchased the assets of TORCHx, Inc. a Florida corporation for \$4.4 million, of which \$3.0 million was paid at closing and the remaining \$1.5 million was paid on November 30, 2017. See Note 5, *Business Combinations*, for additional information surrounding these acquisitions. Holdback payments of \$1.3 million were made during the twelve months ended December 31, 2015 in connection with the 2014 acquisitions of Scoot and SnapNames. Capital expenditures during the year ended December 31, 2016 increased by \$7.4 million to \$22.1 million when compared to the same prior year period due to an increase in internally developed software labor as certain billing systems were customized for centralization and improvements in our DIY website builder were made. The year ended December 31, 2015 included costs incurred from building out two centralized data centers, as well as substantial efforts to improve internally developed software and websites. Also included in cash used in investing activities is \$1.5 million in payments for domain registrar credentials that were acquired during the year ended December 31, 2016.

Net cash used in financing activities of \$200.9 million during the year ended December 31, 2016 included an increase in borrowings of \$315.0 million to finance the Yodle acquisition, of which a total of \$80.5 million was subsequently repaid, resulting in a net increase of \$234.5 million. Proceeds received from the exercise of stock options decreased from \$8.0 million to \$5.0 million in the year ended December 31, 2016 when compared to the same prior year period. Approximately \$4.3 million and \$2.4 million of cash was used to pay employee minimum tax withholding requirements in lieu of receiving common shares during the years ended December 31, 2016 and 2015, respectively. Debt issuance costs of \$5.7 million were paid during the year ended December 31, 2016 in connection with the March 2016 debt increase and repricing.

Included in financing activities during the years ended December 31, 2016 and 2015, are common stock repurchases of \$28.6 million and \$50.6 million, respectively. The repurchases were made in connection with our stock repurchase program that was originally announced on November 5, 2014, which initially authorized the repurchase of up to \$100 million of our outstanding shares of common stock. In October 2016, our Board of Directors approved an increase in our current stock repurchase plan by an additional \$100 million and extended the expiration date of the outstanding available shares to December 31, 2018. Repurchases under the programs may take place in the open market or in privately negotiated transactions, including derivative transactions, and may be made under a Rule 10b5-1 plan.

Long-term Debt

Convertible Debt

During the third quarter of 2013, we issued \$258.8 million aggregate principal amount of 1.00% Senior Convertible Notes due August 15, 2018 ("2018 Notes"). The 2018 Notes bear interest at a rate of 1.00% per year, payable semiannually in arrears, on February 15 and August 15 of each year, beginning on February 15, 2014. The conversion price for the 2018 Notes is equivalent to an initial effective conversion price of approximately \$35.00 per share of common stock. At issuance, net proceeds of \$252.3 million were received, which are net of \$6.5 million of the original issuance discount. In addition, third-party debt issuances costs of \$0.5 million were incurred in connection with this transaction. The Company has included \$248.1 million of the 2018 Notes as long-term debt based upon our intent and ability to refinance these obligations.

Debt Covenants

On February 11, 2016, the Company entered into an amendment (the "Amendment") to that certain Credit Agreement, dated as of September 9, 2014 (the "Existing Credit Agreement" and as amended by the Amendment, the "Amended Credit Agreement"), by and among the Company, the several lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent. On March 9, 2016 (the "Closing Date"), the Amended Credit Agreement became effective following the completion of the acquisition of Yodle Inc. (the "Acquisition"). On May 18, 2017, the Company entered into a second amendment to the Credit Agreement ("Second Amendment").

The Amended Credit Agreement provides for (i) \$390.0 million of five-year secured term loans, replacing and refinancing \$190.0 million of secured term loans outstanding under the Existing Credit Agreement and providing for an additional \$200.0 million of secured term loans (the "Term Loan") and (ii) a five-year secured revolving credit facility that provides up to \$150.0 million of revolving loans (the "Revolving Credit Facility"), which replaces the revolving credit facility under the Existing Credit Agreement. On the Closing Date, the Company used the proceeds of the Term Loan and borrowed \$115.0 million of loans under the Revolving Credit Facility, together with cash on hand, to complete the Acquisition. The Second Amendment to

the Credit Agreement provided an incremental \$50.0 million of secured Term Loan and an incremental \$110.0 million of borrowing capacity on the Revolving Credit Facility with maturity dates that were commensurate with the Amended Credit Agreement. The Company used the proceeds from the incremental Term Loan to repay the then outstanding amount drawn on the Revolving Credit Facility at the date of closing.

The Second Amendment to the credit agreement entered into on May 18, 2017 continues to require that we not exceed a maximum first lien net leverage ratio and that we maintain a minimum consolidated cash interest expense to consolidated EBITDA coverage ratio as set forth in the table below. The first lien net leverage ratio is defined as the total of the outstanding consolidated first lien debt minus up to \$50.0 million of unrestricted cash and cash equivalents, divided by consolidated EBITDA. The consolidated interest coverage ratio is defined as consolidated EBITDA divided by consolidated cash interest expense. Consolidated EBITDA is defined as consolidated net income before (among other things) interest expense, income tax expense, depreciation and amortization, impairment charges, restructuring costs, changes in deferred revenue and deferred expenses, stock-based compensation expense, non-cash losses, acquisition-related costs and includes the benefit of annualized synergies due to the Yodle acquisition.

Outstanding debt as of December 31, 2017 for purposes of the First Lien Net Leverage Ratio is approximately \$387.8 million. The covenant ratios as of December 31, 2017 on a trailing 12-month basis are as follows:

Covenant Description	Covenant Requirement as of December 31, 2017	Ratio at December 31, 2017	Favorable
First Lien Net Debt to Consolidated EBITDA	Not greater than 3.65	2.16	1.49
Consolidated Interest Coverage Ratio	Greater than 2.00	9.20	7.20

In addition to the financial covenants listed above, the First Lien Credit Agreement includes customary covenants that limit (among other things) the incurrence of debt, the disposition of assets, and making of certain payments. Substantially all of our tangible and intangible assets collateralize the long-term debt as required by the Credit Agreement.

Contractual Obligations and Commitments

Our principal commitments consist of long-term debt and interest payments, obligations under operating leases for office space and other unconditional marketing and operational purchase obligations. The following table summarizes our contractual obligations as of December 31, 2017 (in thousands):

Contractual Obligations	Payment Due by Period						
	Total	2018	2019	2020	2021	2022	Thereafter
Long-term debt (1)	\$ 641,494	\$ —	\$ 41,370	\$ 44,128	\$ 555,996	\$ —	\$ —
Current maturities of long-term debt (1)	16,990	16,990	—	—	—	—	—
Interest payments on long-term debt (1)	75,382	21,448	25,064	23,391	5,479	—	—
Operating lease obligations (2)	142,047	15,431	17,271	17,056	16,638	14,364	61,287
Uncertain tax positions (3)	—	—	—	—	—	—	—
Purchase obligations (4)	69,851	20,388	18,263	14,790	15,695	715	—
Total	\$ 945,764	\$ 74,257	\$ 101,968	\$ 99,365	\$ 593,808	\$ 15,079	\$ 61,287

(1) The scheduled principal payment requirements for the Term Loan are presented. Projected interest payments for the revolving credit facility were calculated based on outstanding principal amounts using interest rates in effect as of December 31, 2017. The 2018 Senior Convertible Notes that are due August 15, 2018 have primarily been classified as non-current debt as the Company has the ability and intent to refinance this instrument using its revolving credit facility that matures in 2021. The 2021 debt obligations reflect the maturity of the Term Loan, revolving credit facility and the Senior Convertible Notes. The amounts reflected above are gross payments and do not reflect original issue discounts or debt issuance costs.

(2) Operating lease obligations are shown gross of sublease rentals for the amounts related to each period presented. The amounts presented above are presented gross of rental income of \$3.7 million in each of 2018 and 2019, \$3.8 million in 2020, \$4.0 million in 2021 and 2022, and \$5.4 million thereafter from subleasing a portion of the New York, New York office. Included in the amounts above are payments related to an office lease in Jacksonville, Florida for which the Company is contractually obligated; however, possession will revert to the Company in May 2019.

(3) The settlement date is unknown for approximately \$5.5 million of uncertain tax positions which have been excluded from the table above. See Note 13 - Income Taxes for additional information on uncertain tax positions.

(4) Purchase obligations include corporate sponsorships and long-term service contracts for data storage and other operating items.

As of December 31, 2017, we have \$248.1 million of available borrowings under the Revolving Credit Facility.

Off-Balance Sheet Obligations

As of December 31, 2017 and 2016, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Summary

Our future capital uses and requirements depend on numerous forward-looking factors. These factors include but are not limited to the following:

- the costs involved in the expansion of our customer base (including through acquisitions of other businesses or assets);
- the costs associated with the principal and interest payments of future debt service;
- the costs involved with investment in our servers, storage and network capacity;
- the costs associated with the expansion of our domestic and international activities;
- the costs involved with our technology and development activities to upgrade and expand our service offerings;
- the extent to which we acquire or invest in other technologies and businesses
- the extent to which we repurchase our common shares under stock repurchase programs; and
- the costs involved with the Yodle and DonWeb acquisitions.

We believe that our existing cash and cash equivalents at December 31, 2017 in addition to 2018 operating cash flows will be sufficient to meet our projected operating requirements for at least the next 12 months.

New Accounting Standards

See Note 2, *New Accounting Standards*, for a discussion of recently issued accounting pronouncements that may affect our financial results and disclosures in future periods.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Foreign Currency Exchange Risk

The majority of our subscription agreements and operating expenses are denominated in U.S. dollars. However, we have sales and customer support operations in Canada and Argentina, a technology administrative center in Argentina and an online business directory network in the United Kingdom. All of these operations are exposed to fluctuations in foreign currencies including, but not limited to, the British Pound, the Canadian Dollar and the Argentina Peso. Exchange rate fluctuations have had little impact on our operating results and cash flows, but we analyze our exposure to currency fluctuations and may engage in financial hedging techniques in the future. As of December 31, 2017 and 2016, there were no foreign currencies that were hedged.

Interest Rate Sensitivity

We had unrestricted cash and cash equivalents totaling \$12.0 million and \$20.4 million at December 31, 2017 and December 31, 2016, respectively. The unrestricted cash, cash equivalents and short-term marketable securities are held for working capital purposes. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of these investments, we do not anticipate that the interest rates will materially fluctuate; therefore, we believe we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. Declines in interest rates, however, will reduce future investment income.

As of December 31, 2017, we had \$658.5 million of total debt outstanding, excluding unamortized debt discounts. We have exposure to market risk for changes in interest rates related to \$399.7 million of these borrowings. Our variable rate debt is based on 1-month LIBOR plus 2.50% on the Term Loan and Revolving Credit Facility. A hypothetical 10% increase in the

current variable interest rates in effect would have resulted in additional interest expense of \$0.5 million during the year ended December 31, 2017, assuming the principal balances had remained unchanged.

Non-GAAP Financial Measures

In addition to our financial information presented in accordance with U.S. GAAP, management uses certain “non-GAAP financial measures” within the meaning of the SEC Regulation G. Generally, a non-GAAP financial measure is a numerical measure of a company's operating performance, financial position or cash flows that excludes or includes amounts that are included in or excluded from the most directly comparable measure calculated and presented in accordance with U.S. GAAP.

We believe presenting non-GAAP measures is useful to investors because it describes the operating performance of the company, excluding some recurring charges that are included in the most directly comparable measures calculated and presented in accordance with GAAP. Our management uses these non-GAAP measures as important indicators of the Company's past performance and in planning and forecasting performance in future periods. The non-GAAP financial information we present may not be comparable to similarly-titled financial measures used by other companies, and investors should not consider non-GAAP financial measures in isolation from, or in substitution for, financial information presented in compliance with GAAP. You are encouraged to review the reconciliation of non-GAAP financial measures to GAAP financial measures included in this Annual Report on Form 10-K.

Relative to each of the non-GAAP measures Web.com presents, management further sets forth its rationale as follows:

- *Non-GAAP Revenue.* Web.com excludes from non-GAAP revenue the impact of the fair value adjustment to amortized deferred revenue because management believes that excluding such measures helps management and investors better understand the company's revenue trends.

In respect of the foregoing, Web.com provides the following supplemental information to provide additional context for the use and consideration of the non-GAAP financial measures used elsewhere in this press release:

- *Fair value adjustment to deferred revenue.* Web.com has recorded a fair value adjustment to acquired deferred revenue in accordance with ASC 805-10-65. Web.com excludes the impact of these adjustments from its non-GAAP measures, because doing so results in non-GAAP revenue which are reflective of ongoing operating results and more comparable to historical operating results, since the majority of the company's revenue is recurring subscription revenue. Excluding the fair value adjustment to deferred revenue therefore facilitates management's internal comparisons to Web.com's historical operating results.
- *Monthly average revenue per user; or ARPU.* ARPU is a metric the company measures on a quarterly basis. The company defines ARPU as quarterly non-GAAP subscription revenue divided by the average of the number of subscribers at the beginning of the quarter and the number of subscribers at the end of the quarter, divided by three months. The company excludes from subscription revenue the impact of the fair value adjustments to deferred revenue resulting from acquisition-related write downs.

Web.com Group, Inc. Reconciliation of GAAP to Non-GAAP Results (in thousands, except for per share data) (unaudited)

	Twelve months ended December 31,		
	2017	2016	2015
Reconciliation of GAAP revenue to non-GAAP revenue			
GAAP revenue	\$ 749,261	\$ 710,505	\$ 543,461
Fair value adjustment to deferred revenue	6,529	18,363	15,909
Non-GAAP revenue	<u>\$ 755,790</u>	<u>\$ 728,868</u>	<u>\$ 559,370</u>
Revenue			
Subscription	\$ 741,655	\$ 703,562	\$ 535,706
Professional services and other	7,606	6,943	7,755
Total	<u>\$ 749,261</u>	<u>\$ 710,505</u>	<u>\$ 543,461</u>
Reconciliation of GAAP revenue to non-GAAP subscription revenue used in ARPU			
GAAP revenue	\$ 749,261	\$ 710,505	\$ 543,461
Fair value adjustment to deferred revenue	6,529	18,363	15,909
Non-GAAP revenue	\$ 755,790	\$ 728,868	\$ 559,370
Professional services and other revenue	(7,606)	(6,943)	(7,755)
Non-GAAP subscription revenue used in ARPU	\$ 748,184	\$ 721,925	\$ 551,615
Average subscribers (in thousands)	3,467	3,405	3,314
ARPU (Non-GAAP subscription revenue per subscriber over 12 month period)	<u>\$ 17.98</u>	<u>\$ 17.67</u>	<u>\$ 13.87</u>

Item 8. Financial Statements and Supplementary Data.

Quarterly Results of Operations

The following tables set forth selected unaudited quarterly consolidated statement of operations data for the eight most recent quarters. The information for each of these quarters has been prepared on the same basis as the audited consolidated financial statements, and in the opinion of management, includes all adjustments necessary for the fair presentation of the results of operations for such periods. This data should be read in conjunction with the audited consolidated financial statements and the related notes included in this annual report. These quarterly operating results are not necessarily indicative of our operating results for any future period.

	Three Months Ended							
	Mar 31, 2017(1)(2)	Jun 30, 2017	Sept 30, 2017	Dec 31, 2017 (3)(4)	Mar 31, 2016 (5)	Jun 30, 2016	Sept 30, 2016	Dec 31, 2016 (6)(7)
Total revenue	\$185,118	\$186,731	\$188,567	\$188,845	\$144,798	\$187,818	\$190,686	\$187,203
Income from operations	\$ 20,542	\$ 22,998	\$ 23,602	\$ 21,473	\$ 6,912	\$ 7,578	\$ 18,093	\$ 12,121
Net income (loss)	\$ 6,518	\$ 8,046	\$ 8,300	\$ 30,765	\$ 337	\$ (1,606)	\$ 3,346	\$ 1,913
Net income (loss) per common share:								
Basic	\$ 0.13	\$ 0.16	\$ 0.17	\$ 0.65	\$ 0.01	\$ (0.03)	\$ 0.07	\$ 0.04
Diluted	\$ 0.13	\$ 0.16	\$ 0.16	\$ 0.62	\$ 0.01	\$ (0.03)	\$ 0.07	\$ 0.04

- (1) On January 31, 2017, the Company acquired 100% of the outstanding shares of DonWeb.
- (2) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$0.1 million from writing down domain name inventory.
- (3) On November 1, 2017, the Company acquired certain assets and liabilities of Acquisio, Inc.
- (4) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$0.2 million from abandoning certain technology and restructuring charges of \$0.5 million for an early lease termination payment related to the Herndon, VA facility. In the fourth quarter ended December 31, 2017, the Company recorded a tax benefit of \$17.8 million primarily from adopting provisions of the Act.
- (5) On March 9, 2016, the Company acquired 100% of the outstanding shares of Yodle, Inc. and paid approximately \$300.3 million adjusted for, among other things, Yodle's cash and outstanding debt and transaction related expenses. The Company paid an additional \$18.9 million during the year ended December 31, 2017, with the final consideration payment of \$22.0 million being due in March 2018, subject to adjustments as described in the Merger Agreement. Finally, the Company converted out of the money stock options held by employees of Yodle to Web.com options, which resulted in additional consideration of \$2.3 million, for total consideration of \$341.3 million. In addition to the consideration, the Company incurred approximately \$3.9 million of acquisition-related transaction expenses which are reflected in the General and Administrative line item of the Consolidated Statement of Comprehensive Income.
- (6) Included in the fourth quarter ended December 31, 2016 is the reversal of \$2.4 million respectively, of valuation allowance for certain U.S. federal and state deferred tax assets, which contributed to the Company recording income tax expense of \$2.3 million.
- (7) Included in the operating expenses for the fourth quarter ended December 31, 2016 is a \$7.1 million asset impairment charge from writing off leasehold improvements in the New York, New York office that was exited on December 31, 2016. In addition, there is \$1.6 million of restructuring charges that were recorded during the fourth quarter ended December 31, 2016, which primarily consists of the estimated expense for lease obligations offset by sublease income expected.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures.

Based on their evaluation as of December 31, 2017, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) were effective at the reasonable assurance level to ensure that the information required to be disclosed by us in this annual report on Form 10-K was recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules, and that such information is accumulated and communicated to us to allow timely decisions regarding required disclosures.

Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives. Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected.

Management's Report on Internal Control over Financial Reporting

The management of Web.com Group, Inc. is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended. The Company's internal control over financial reporting is designed to provide reasonable assurance, based on an appropriate cost-benefit analysis, regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. The Company's internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2017. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) in *Internal Control-Integrated Framework*. Based on management's assessment and those criteria, management concluded that the Company maintained effective internal control over financial reporting as of December 31, 2017.

The Company's independent certified registered public accounting firm, Ernst & Young LLP, has issued an audit report on the effectiveness of the Company's internal control over financial reporting.

Changes in Internal Controls Over Financial Reporting.

There have been no changes in our internal controls over financial reporting during the three months ended December 31, 2017 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Web.com Group, Inc.

Opinion on Internal Control over Financial Reporting

We have audited Web.com Group, Inc.'s internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, Web.com Group, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2017, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the 2017 consolidated financial statements of the Company and our report dated February 23, 2018 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP
Certified Public Accountants

Jacksonville, Florida
February 23, 2018

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information required by this item, including such information regarding our directors and executive officers and compliance with Section 16(a) of the Securities Exchange Act of 1934, is incorporated herein by reference from the Proxy Statement. We have adopted a written code of conduct that applies to our principal executive officer, principal financial officer and principal accounting officer, or persons performing similar functions. The code of conduct is posted on our website at <http://ir.web.com/documents.cfm>. Amendments to, and waivers from, the code of conduct that applies to any of these officers, or persons performing similar functions, and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulation S-K, will be disclosed at the website address provided above and, to the extent required by applicable regulations, on a current report on Form 8-K.

Item 11. Executive Compensation.

The information required by this item is incorporated herein by reference from the section entitled "Executive Compensation Discussion and Analysis" in the Proxy Statement.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information required by this item is incorporated herein by reference from the sections entitled "Security Ownership of Certain Beneficial Owners and Management" and "Equity Compensation Plan Information" in the Proxy Statement.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item is incorporated herein by reference from the section entitled "Certain Relationships and Related Transactions" in the Proxy Statement.

Item 14. Principal Accounting Fees and Services.

The information required by this item is incorporated herein by reference from the section entitled "Ratification of Selection of Independent Registered Public Accounting Firm" in the Proxy Statement.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

The following documents are filed as part of this Form 10-K:

1. Financial Statements.

Web.com Group, Inc.

Report of Independent Registered Certified Public Accounting Firm

Consolidated Balance Sheets at December 31, 2017 and 2016

Consolidated Statements of Comprehensive Income for the years ended December 31, 2017, 2016, and 2015

Consolidated Statements of Stockholders' Equity for the years ended December 31, 2017, 2016, and 2015

Consolidated Statements of Cash Flows for the years ended December 31, 2017, 2016, and 2015

Notes to Consolidated Financial Statements

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Report of Independent Registered Public Accounting Firm

To the Shareholders and the Board of Directors of Web.com Group, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Web.com Group, Inc. (the Company) as of December 31, 2017 and 2016, the related consolidated statements of comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2017, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2017, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework), and our report dated February 23, 2018 expressed an unqualified opinion thereon.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP
Certified Public Accountants

We have served as the Company's auditor since 2003.

Jacksonville, Florida
February 23, 2018

Web.com Group, Inc.
Consolidated Balance Sheets
(in thousands, except share and per share amounts)

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 11,976	\$ 20,447
Accounts receivable, net of allowance of \$1,454 and \$1,695, respectively	25,424	20,567
Prepaid expenses	10,220	12,311
Deferred expenses	63,267	60,217
Other current assets	3,054	1,872
Total current assets	<u>113,941</u>	<u>115,414</u>
Property and equipment, net	57,188	53,132
Deferred expenses	46,316	49,127
Goodwill	885,662	871,751
Intangible assets, net	371,571	413,127
Other assets	21,565	11,282
Total assets	<u>\$ 1,496,243</u>	<u>\$ 1,513,833</u>
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 23,357	\$ 19,619
Accrued expenses	15,957	14,475
Accrued compensation and benefits	15,560	18,307
Deferred revenue	233,574	230,206
Current portion of debt	16,612	16,847
Deferred consideration from acquisitions	22,466	20,244
Other liabilities	6,321	5,034
Total current liabilities	<u>333,847</u>	<u>324,732</u>
Deferred revenue	185,886	195,859
Long-term debt	630,358	647,294
Deferred tax liabilities	51,042	80,135
Other long-term liabilities	20,474	30,361
Total liabilities	<u>1,221,607</u>	<u>1,278,381</u>
Stockholders' equity:		
Common stock, \$0.001 par value per share: 150,000,000 shares authorized, 48,845,352 and 50,278,137 shares issued and outstanding at December 31, 2017 and 2016, respectively	49	50
Additional paid-in capital	585,179	578,486
Treasury stock at cost, 4,305,221 and 3,146,012 shares at December 31, 2017 and 2016, respectively	(111,093)	(62,430)
Accumulated other comprehensive loss	(4,503)	(4,020)
Accumulated deficit	(194,996)	(276,634)
Total stockholders' equity	<u>274,636</u>	<u>235,452</u>
Total liabilities and stockholders' equity	<u>\$ 1,496,243</u>	<u>\$ 1,513,833</u>

See accompanying notes to consolidated financial statements

Web.com Group, Inc.
Consolidated Statements of Comprehensive Income
(in thousands, except per share amounts)

	<u>Year Ended December 31,</u>		
	<u>2017</u>	<u>2016</u>	<u>2015</u>
Revenue	\$ 749,261	\$ 710,505	\$ 543,461
Costs and operating expenses			
Cost of revenue (excluding depreciation and amortization)	236,530	224,032	184,751
Sales and marketing	201,543	210,294	139,971
Technology and development	69,984	65,800	35,529
General and administrative	79,494	74,919	64,592
Restructuring charges	1,260	3,617	559
Asset impairments	291	9,091	—
Depreciation and amortization	71,544	78,048	56,345
Total cost of revenue and operating expenses	<u>660,646</u>	<u>665,801</u>	<u>481,747</u>
Income from operations	88,615	44,704	61,714
Interest expense, net	(33,061)	(30,462)	(20,013)
Net income before income taxes	55,554	14,242	41,701
Income tax (expense) benefit	(1,925)	(10,252)	48,260
Net income	<u>53,629</u>	<u>3,990</u>	<u>89,961</u>
Other comprehensive income:			
Foreign currency translation adjustments	(484)	(1,900)	(724)
Unrealized gain (loss) on investments, net of tax	1	28	(31)
Total comprehensive income	<u>\$ 53,146</u>	<u>\$ 2,118</u>	<u>\$ 89,206</u>

See accompanying notes to consolidated financial statements

Web.com Group, Inc.

Consolidated Statements of Comprehensive Income
(in thousands, except per share amounts)
(continued)

	Year ended December 31,		
	2017	2016	2015
Basic earnings per share:			
Net income per common share	\$ 1.10	\$ 0.08	\$ 1.79
Diluted earnings per share:			
Net income per common share	\$ 1.06	\$ 0.08	\$ 1.72
Basic weighted average common shares	48,629	49,262	50,243
Diluted weighted average common shares	50,654	50,880	52,442

See accompanying notes to consolidated financial statements

Web.com Group, Inc.

Consolidated Statements of Stockholders' Equity
(In thousands, except share amounts)

	Common Stock		Treasury Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount	Shares	Amount				
Balance December 31, 2014	52,108,719	\$ 52	395,395	\$ (6,975)	\$ 552,991	\$ (1,393)	\$ (370,585)	\$ 174,090
Net income	—	—	—	—	—	—	89,961	89,961
Other comprehensive loss, net of tax	—	—	—	—	—	(31)	—	(31)
Foreign currency translation adjustment	—	—	—	—	—	(724)	—	(724)
Exercise of stock options	743,757	(1)	(743,757)	12,842	(4,206)	—	—	8,635
Common stock repurchased	(150,303)	—	—	—	(3,097)	—	—	(3,097)
Stock compensation expense	—	—	—	—	20,064	—	—	20,064
Issuance of restricted stock, net of cancellations	450,850	—	—	—	—	—	—	—
Stock issuance costs	—	—	—	—	(104)	—	—	(104)
Purchases under stock repurchase plan	(2,469,306)	—	2,469,306	(50,617)	—	—	—	(50,617)
Balance December 31, 2015	50,683,717	\$ 51	2,120,944	\$ (44,750)	\$ 565,648	\$ (2,148)	\$ (280,624)	\$ 238,177
Net income	—	—	—	—	—	—	3,990	3,990
Other comprehensive income, net of tax	—	—	—	—	—	28	—	28
Foreign currency translation adjustment	—	—	—	—	—	(1,900)	—	(1,900)
Exercise of stock options	607,153	(1)	(589,015)	10,885	(3,447)	—	—	7,437
Common stock repurchased	(219,279)	—	—	—	(6,728)	—	—	(6,728)
Stock compensation expense	—	—	—	—	20,714	—	—	20,714
Issuance of restricted stock net of cancellations	878,181	—	(57,552)	—	—	—	—	—
Stock issuance costs	—	—	—	—	(41)	—	—	(41)
Issuance of common stock options for acquisition	—	—	—	—	2,340	—	—	2,340
Purchases under stock repurchase plan	(1,671,635)	—	1,671,635	(28,565)	—	—	—	(28,565)
Balance December 31, 2016	50,278,137	\$ 50	3,146,012	\$ (62,430)	\$ 578,486	\$ (4,020)	\$ (276,634)	\$ 235,452
Net income	—	—	—	—	—	—	53,629	53,629
Other comprehensive income, net of tax	—	—	—	—	—	1	—	1
Foreign currency translation adjustment	—	—	—	—	—	(484)	—	(484)
Exercise of stock options	1,180,905	(1)	(1,180,905)	23,661	(6,584)	—	—	17,076
Common stock repurchased	(278,272)	—	96,360	—	(5,948)	—	—	(5,948)
Stock compensation expense	—	—	—	—	23,201	—	—	23,201
Issuance of restricted stock net of cancellations	771,910	—	(863,574)	3,954	(3,954)	—	—	—
Stock issuance costs	—	—	—	—	(22)	—	—	(22)
Impact of ASU 2016-09 Adoption	—	—	—	—	—	—	28,009	28,009
Purchases under stock repurchase plan	(3,107,328)	—	3,107,328	(76,278)	—	—	—	(76,278)
Balance December 31, 2017	48,845,352	\$ 49	4,305,221	\$ (111,093)	\$ 585,179	\$ (4,503)	\$ (194,996)	\$ 274,636

See accompanying notes to consolidated financial statements

Web.com Group, Inc.
Consolidated Statement of Cash Flows
(in thousands)

	Year Ended December 31,		
	2017	2016	2015
Cash flows from operating activities			
Net income	\$ 53,629	\$ 3,990	\$ 89,961
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	71,544	78,048	56,345
Stock compensation expense	23,201	20,714	20,064
Deferred income taxes	(2,287)	7,714	(50,242)
Amortization of debt issuance costs and other	15,321	14,015	11,392
Asset impairment	291	9,091	—
Changes in operating assets and liabilities:			
Accounts receivable, net	(4,390)	(3,056)	4,000
Prepaid expenses and other assets	(1,574)	(2,515)	1,937
Deferred expenses	228	170	4,206
Accounts payable	2,690	(1,388)	(489)
Accrued expenses and other liabilities	2,574	(1,473)	(792)
Accrued compensation and benefits	(3,415)	(406)	8,065
Deferred revenue	(7,992)	7,961	7,986
Net cash provided by operating activities	<u>149,820</u>	<u>132,865</u>	<u>152,433</u>
Cash flows from investing activities			
Business acquisitions, net of cash acquired	(17,275)	(303,262)	(1,330)
Capital expenditures	(21,474)	(22,140)	(14,747)
Other	—	(1,551)	—
Net cash used in investing activities	<u>(38,749)</u>	<u>(326,953)</u>	<u>(16,077)</u>
Cash flows from financing activities			
Stock issuance costs	(22)	(27)	(104)
Common stock repurchased	(4,573)	(4,261)	(2,412)
Payments of long-term debt	(42,954)	(9,813)	(6,250)
Payments of revolving credit facility	(88,313)	(70,687)	(89,000)
Proceeds from exercise of stock options	15,701	4,970	7,952
Deferred consideration payment	(20,433)	—	—
Proceeds from long-term debt issued	50,000	200,000	—
Proceeds from borrowings on revolving credit facility	49,000	115,000	—
Debt issuance costs	(1,935)	(5,700)	—
Common stock purchases under repurchase plan	(76,278)	(28,565)	(50,617)
Other	(129)	—	—
Net cash (used in) provided by financing activities	<u>(119,936)</u>	<u>200,917</u>	<u>(140,431)</u>
Effect of exchange rate changes on cash	(22)	(63)	(2)
Net (decrease) increase in cash, cash equivalents, and restricted cash	(8,887)	6,766	(4,077)
Cash, cash equivalents and restricted cash, beginning of period	25,773	19,007	23,084
Cash, cash equivalents and restricted cash, end of year	<u>\$ 16,886</u>	<u>\$ 25,773</u>	<u>\$ 19,007</u>
Supplemental cash flow information			
Interest paid	\$ 17,562	\$ 15,764	\$ 8,761
Income taxes paid	\$ 4,406	\$ 3,590	\$ 2,076

Web.com Group, Inc.
Consolidated Statement of Cash Flows
(in thousands)

	Year Ended December 31,		
	2017	2016	2015
Supplemental disclosure of non-cash transactions			
Common stock options issued for acquisitions	\$ —	\$ 2,340	\$ —
Capital expenditures, tenant improvements funded by lessor	\$ 1,984	\$ —	\$ —
Deferred consideration from acquisitions	\$ 2,333	\$ 40,017	\$ —

See accompanying notes to consolidated financial statements

Certain reclassifications have been made to the previously presented financial statements to conform with the current year presentation

Web.com Group, Inc.
Notes to Consolidated Financial Statements
(in thousands of dollars)

1. The Company and Summary of Significant Accounting Policies

Description of Company

Web.com Group, Inc. ("Web.com" or "the Company") provides a full range of Internet services to small businesses to help them compete and succeed online. Web.com meets the needs of small businesses anywhere along their lifecycle with affordable, subscription-based solutions including domains, hosting, website design and management, search engine optimization, online marketing campaigns, local sales leads, social media, mobile products and eCommerce solutions.

The Company has reviewed the criteria of Accounting Standards Codification ("ASC") 280-10, *Segment Reporting*, and has determined that the Company is comprised of only one segment, web services and products.

Use of Estimates

The preparation of the consolidated financial statements in conformity with generally accepted accounting principles ("GAAP") in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Foreign Currency Translation

The functional currency of the Company's United Kingdom-based operations acquired in July 2014 is the British Pound and the functional currency of the Company's Argentine-based sales operations acquired in January 2017 is the Argentine Peso. The Company translates the financial statements of these subsidiaries to U.S. dollars using month-end rates of exchange for assets and liabilities, historical rates of exchange for equity and average rates of exchange for revenues, costs, and expenses. Translation gains and losses are recorded in accumulated other comprehensive income as a component of stockholders' equity.

In addition, the Company's foreign operations include a customer service center, technology center and an outbound sales center in Canada and a technology center in Argentina. The Company records foreign currency transaction gains and losses, and remeasurement of local currencies of these foreign subsidiaries where the functional currency is different from the local foreign currency in the consolidated statements of income. During the years ended December 31, 2017, 2016 and 2015, the Company recorded expense of approximately \$0.1 million, \$0.3 million and \$0.4 million, respectively.

Principles of Consolidation

The Company's consolidated financial statements include the assets, liabilities and the operating results of the Company and its wholly owned subsidiaries. All intercompany accounts and transactions have been eliminated.

Revenue Recognition and Deferred Revenue

The Company recognizes revenue in accordance with ASC 605, *Revenue Recognition*. The Company recognizes revenue when all of the following conditions are satisfied: (1) there is persuasive evidence of an arrangement; (2) the service has been provided to the customer; (3) the amount of fees to be paid by the customer is fixed or determinable; and (4) the collection of our fees is reasonably assured.

Thus, the Company recognizes subscription revenue on a daily basis, as services are provided. Customers are billed for the subscription on a monthly, quarterly, semi-annual, annual or on a multi-year basis, at the customer's option. For all of the Company's customers, regardless of the method the Company uses to bill them, subscription revenue is recorded as deferred revenue in the accompanying consolidated balance sheets. As services are performed, the Company recognizes subscription revenue on a daily basis over the applicable service period. When the Company provides a free trial period, the Company does not begin to recognize subscription revenue until the trial period has ended and the customer has been billed for the services.

The Company offers certain integrated online marketing services where the fee charged to the customer includes a media budget ("Pay-Per-Click" or "PPC"). Revenue for PPC services are recognized ratably over the period of service.

The Company accounts for our multi-element arrangements in accordance with ASC 605-25, *Revenue Recognition: Multiple-Element Arrangement*. The Company may sell multiple products or services to customers at the same time. For example, we may design a customer website and separately offer other services such as hosting and marketing or a customer may combine a

domain registration with other services such as private registration or e-mail. In accordance with ASC 605-25, each element is accounted for as a separate unit of accounting provided the following criteria is met: the delivered products or services have value to the customer on a standalone basis; and for an arrangement that includes a general right of return relative to the delivered products or services, delivery or performance of the undelivered product or service is considered probable and is substantially controlled by the Company. The Company considers a deliverable to have standalone value if the product or service is sold separately by us or another vendor or could be resold by the customer. Our products and services do not include a general right of return relative to the delivered products. In cases where the delivered products or services do not meet the separate unit of accounting criteria, the deliverables are combined and treated as one single unit of accounting for revenue recognition. The Company assigns value to the separate units of accounting in multiple-element arrangements using the relative selling price method which is calculated by taking the standalone selling price of each unit to the total selling price of the arrangement, multiplied by the total sales price. Typically, the deliverables within multiple-element arrangements are provided over the same service period, and therefore revenue is recognized over the same period.

To determine the selling price in multiple-element arrangements, the Company establishes vendor-specific objective evidence of the selling price using the price of the deliverable when sold separately. If we are unable to determine the selling price because vendor-specific objective evidence does not exist, the Company will first look to third party evidence, and if that is not sufficient, it will determine an estimated sales price through consultation with and approval by the Company's management, taking into consideration the Company's relative costs, target profit margins, and any other information gathered during this process.

Generally, compensation related sales costs are expensed as incurred.

Cost of Revenue and Operating Expenses

Cost of Revenue

Cost of revenue consists of expenses related to compensation of our web page development staff, domain name registration costs, directory listing fees, eCommerce store design, online marketing costs for services provided, billing costs, hosting expenses, and allocated occupancy overhead costs. The Company allocates occupancy overhead costs such as rent and utilities to all departments based on headcount. Accordingly, general overhead expenses are reflected in each cost of revenue and operating expense category.

Sales and Marketing Expense

The Company's direct marketing expenses include the costs associated with the online marketing channels used to promote our services and acquire customers. These channels include search marketing, affiliate marketing and partnerships. Sales and marketing costs consist primarily of compensation and related expenses for our sales and marketing staff as well as our customer support staff and allocated occupancy overhead costs. Sales and marketing expenses also include marketing programs, such as advertising, corporate sponsorships and other corporate events and communications.

Technology and development

Technology and development represents costs associated with creation, development and distribution of our products and websites. Technology and development expenses primarily consist of headcount-related costs associated with the design, development, deployment, testing, operation, enhancement of our products and costs associated with the data centers and all systems infrastructure costs supporting those products as well as all administrative platforms and allocated occupancy overhead costs.

General and Administrative Expense

General and administrative expenses consist of compensation and related expenses for executive, finance, and administration, as well as professional fees, corporate development costs, other corporate expenses, and allocated occupancy overhead costs.

Depreciation and Amortization Expense

Depreciation and amortization expenses relate primarily to our intangible assets recorded due to the acquisitions we have completed, as well as depreciation expense from computer and other equipment, internally developed software, furniture and fixtures, and building and improvement expenditures.

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand and bank demand deposit accounts. For purposes of presentation in the Consolidated Balance Sheets, the Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. Short term restricted cash of \$0.3 million and \$0.5 million as of December 31, 2017 and 2016, respectively is included in other current assets. Long term restricted cash of \$4.6 million and \$4.9 million as of December 31, 2017 and 2016, respectively is included in other long-term assets. The restricted cash is primarily to collateralize letters of credit in support of leases.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash and cash equivalents and trade receivables. The Company invests its cash in cash and credit instruments of highly rated financial institutions; four institutions hold 97% of the Company's total cash and cash equivalents.

Concentrations of credit risk with respect to trade accounts receivable are limited due to the large number of customers comprising the Company's customer base and their geographic dispersion. The Company has not incurred any significant credit related losses.

Accounts Receivable

Accounts receivable are recorded on the balance sheet at net realizable value. The Company uses historical collection percentages and customer-specific information, when available, to estimate the amount of trade receivables that are uncollectible and establishes reserves for uncollectible balances based on this information. Generally, receivables are classified as past due after 60 days. Trade receivables are written off once collection efforts are exhausted. The Company does not generally require deposits or other collateral from customers. Bad debt expense reported in operating expenses excludes provisions made to the allowance for doubtful accounts for anticipated refunds and automated clearinghouse returns that are recorded as adjustments to revenue.

Deferred Expenses

Deferred expenses primarily consist of prepaid domain name registry fees that are paid in full at the time a domain name is registered. The registry fees are recognized on a straight-line basis over the term of the domain registration period.

Goodwill and Other Intangible Assets

The Company continued to perform the quantitative tests to determine if the carrying value of our goodwill and indefinite-lived intangible assets are impaired for our annual test at December 31, 2017. The Company tests goodwill and intangible assets for impairment using one reporting unit. A market approach is used to test goodwill for impairment, while our intangible asset test uses the income approach. The following is not a complete discussion of the Company's calculations, but outlines the general assumptions and steps for testing goodwill and intangible assets for impairment:

Goodwill

The first step involves comparing the fair value of our reporting unit to its carrying value, including goodwill. The Company uses a market capitalization approach after considering an estimated control premium.

If the carrying value exceeds its fair value, the second step of the test is performed by comparing the carrying value of goodwill to its implied fair value. An impairment charge is recognized for the excess of the carrying value over its implied fair value.

Intangible Assets

The Company estimates the fair value of indefinite-lived intangibles using the relief-from-royalty method, a form of the income approach. It is based on the principle that ownership of the intangible asset relieves the owner of the need to pay a royalty to another party in exchange for rights to use the asset. Key assumptions in estimating the fair value include, among other items, forecasted revenue, royalty rates, tax rates, and the benefit of tax amortization. The Company employs a weighted-average cost of capital approach to determine the discount rate used in our projections. The determination of the discount rate includes certain factors such as, but not limited to, the risk-free rate of return, market risk, size premium, and the overall level of inherent risk.

If the carrying value of the intangibles exceeds its fair value, an impairment charge is recognized.

The results of these analyses indicated that the Company's goodwill and indefinite-lived intangible assets were not impaired at December 31, 2017.

Technology and Development Costs

The Company expenses technology and development costs as incurred.

Property and Equipment

Property and equipment, including software, are stated at cost less accumulated depreciation and amortization. Depreciation and amortization are provided over the estimated useful lives of the assets using the straight-line method.

The asset lives used are presented in the table below:

	<u>Estimated Useful Life in Years</u>
Computer equipment	3 - 5
Software	2 - 3
Furniture and fixtures	5
Other equipment	5 - 6
Buildings	30
Building improvements	15
Leasehold improvements	Shorter of asset's life or life of the lease

Advertising

Advertising costs are expensed as incurred. Included in advertising are general marketing, corporate sponsorships as well as online marketing and banner advertisements. Total advertising expense was \$30.6 million, \$46.4 million and \$50.1 million for the years ending December 31, 2017, 2016 and 2015, respectively.

Income Taxes

The Company accounts for income taxes using the liability method under the provisions of ASC 740, *Income Taxes*. ASC 740 requires recognition of deferred tax liabilities and assets for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax liabilities and assets are determined based on the difference between the financial statement and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the difference is expected to reverse.

Further, deferred tax assets are recognized for the expected realization of available deductible temporary differences and net operating loss and tax credit carry forwards. ASC 740 requires companies to assess whether a valuation allowance should be established against deferred tax assets based on consideration of all available evidence using a "more likely than not" threshold. In making such assessments, the Company considers the expected reversals of our existing deferred tax liabilities within the applicable jurisdictions and carry forward periods, based on our existing Section 382 limitations. The Company does not consider deferred tax liabilities related to indefinite lived intangibles or tax deductible goodwill as a source of future taxable income. Additionally, the determination of the amount of deferred tax assets which are more likely than not to be realized is also dependent on projections of future earnings, which are subject to uncertainty and estimates that may change given economic conditions and other factors.

A valuation allowance is recorded to reduce our deferred tax assets to the amount that is "more likely than not" to be realized based on the above methodology. The Company reviews the adequacy of the valuation allowance on an ongoing basis and adjusts our valuation allowance in the appropriate period, if applicable.

The Company records liabilities for uncertain tax positions related to federal, state and foreign income taxes in accordance with ASC 740. These liabilities reflect the Company's best estimate of its ultimate income tax liability based on the tax code, regulations, and pronouncements of the jurisdictions in which we do business. Estimating our ultimate tax liability may involve significant judgments regarding the application of complex tax regulations across many jurisdictions. If the Company's actual results differ from estimated results, our effective tax rate and tax balances could be affected. As such,

these estimates may require adjustment in the future as additional facts become known or as circumstances change. If applicable, the Company will adjust the income tax provision in the appropriate period.

Stock-Based Employee Compensation

The Company grants to our employees and directors options to purchase common stock at exercise prices equal to the quoted market values of the underlying stock at the time of each grant. The fair value of each option award as of the grant date is determined using the Black-Scholes option pricing valuation model in accordance with ASC 718, *Compensation-Stock Compensation*.

In addition, the Company grants performance-based share equity awards that contain service, performance and market conditions. The performance conditions are assessed at each reporting period and compensation expense is recorded to reflect the probable attainment of each condition. The market conditions are valued using a Monte Carlo simulation model. The valuation is prepared with the assistance of a third-party specialist to estimate the grant date fair value of the award.

The fair value of all stock awards is recognized in compensation expense on a straight-line basis over the requisite service period for awards expected to vest.

2. New Accounting Standards

Recently Adopted Accounting Standards

In March 2016, the FASB issued Accounting Standards Update ("ASU") 2016-09, *Compensation-Stock Compensation: Improvements to Employee Share-Based Payment Accounting* and is effective for fiscal years beginning after December 15, 2016. The standard is intended to simplify several areas of accounting for share-based compensation arrangements, including the income tax impact, classification on the statement of cash flows, statutory withholding requirements and forfeitures. The Company adopted ASU 2016-09 in the first quarter of 2017 and recorded excess tax benefits (ETBs) as expense or benefit in the income statement prospectively as of the beginning of the year of adoption and the Company continued to record shortfalls as a component of income tax expense consistent with historical practices. For interim reporting purposes, the Company reports ETBs and shortfalls as discrete items in the period in which they occur. For the twelve months ended December 31, 2017, the Company recognized a tax benefit related to the adoption of \$1.8 million.

In addition, the guidance eliminates the requirement that ETBs be realized before companies can recognize them. The Company applied this part of the guidance using a modified retrospective transition method and recorded a cumulative-effect adjustment for previously unrecognized ETBs in opening retained earnings on January 1, 2017 upon adoption. The cumulative-effect adjustment for federal and state tax purposes was \$27.0 million and \$2.7 million, respectively. A valuation allowance was recorded on \$1.7 million of these deferred tax assets for a portion of the state adjustment to reflect the amount realized on a "more likely than not" basis.

Further, the Company presents ETBs and excess tax deficiencies as an operating activity on the statement of cash flows starting on January 1, 2017. The Company has prospectively adopted this change. The Company continues to record its stock compensation expense based on an estimate of the awards that are expected to vest, rather than recording forfeitures when they occur.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*, addressing eight specific cash flow issues in an effort to reduce diversity in practice. The amended guidance is effective for fiscal years beginning after December 31, 2017, and for interim periods within those years. The Company early adopted this standard with no impact.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*, which requires a statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. The amended guidance is effective for fiscal years beginning after December 31, 2017, and for interim periods within those years. The Company elected to early adopt this standard and has restated the statement of cash flows for the earliest period presented to conform with the retrospective application of the standard. The Company elected to early adopt this standard which increased net cash flows provided by operating activities for the year ending December 31, 2016 by approximately \$5.0 million and decreased net cash flows provided by operating activities for the year ending December 31, 2015 by approximately \$0.3 million from the previously filed amounts.

In January 2017, the FASB issued ASU 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business*. The new guidance clarifies the definition of a business with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. The new guidance is effective for the Company beginning after January 1, 2018, including interim periods within those periods. The Company elected to early adopt the standard and did so without material impact.

Accounting Standards Issued Not Yet Adopted

In May 2014, the FASB and International Accounting Standards Board ("IASB") issued ASU 2014-09 *Revenue from Contracts with Customers (Topic 606)*, a converged standard on revenue recognition which supersedes previous revenue recognition guidance. Some of the main areas of transition to the new standard include, among others, transfer of control (revenue is recognized when a customer obtains control of a good or service), allocation of transaction price is based on relative standalone selling price (entities that sell multiple goods or services in a single arrangement must allocate the consideration to each of those goods or services), contract costs (entities sometimes incur costs, such as sales commissions or mobilization activities, to obtain or fulfill a contract), and disclosures (extensive disclosures are required to provide greater insight into both revenue that has been recognized, and revenue that is expected to be recognized in the future from existing contracts). In August 2015, the FASB issued ASU 2015-14 *Revenue from Contracts with Customers (Topic 606), Deferral of the Effective Date*, which defers the effective date of the new standard by one year, resulting in the new standard being effective for fiscal years, and interim periods within those years, beginning after December 15, 2017 with early adoption as of the original effective date permitted. In March 2016, the FASB issued ASU 2016-08, *Revenue from Contracts with Customers: Principal versus Agent Considerations (Reporting Revenue Gross versus Net)* and in April 2016, the FASB issued ASU 2016-10, *Revenue from Contracts with Customers: Identifying Performance Obligations and Licensing*. Further in May 2016, the FASB issued ASU 2016-12, *Revenue from Contracts with Customers: Narrow-Scope Improvements and Practical Expedients*. These standards clarify the guidance in ASU 2014-09 and have the same effective date as the original standard. The Company will apply the standard using a modified retrospective approach with the cumulative effect of initially applying the standard recognized at the date of initial application inclusive of certain additional disclosures, as permitted under Topic 606. The Company has completed its initial evaluation of its customer contracts and related costs to acquire and fulfill contracts and designed necessary systematic changes to account for the ongoing impact of the new standard on its consolidated financial statements. Based upon the initial evaluation of customer contracts, the Company does not expect a material impact on revenue as a result of adopting the standard; however, the Company does expect to have an impact on total assets and expense recognition patterns resulting from provisions in the standard requiring the capitalization of and amortization of costs to acquire contracts. The Company is in process of completing the quantification of the impact upon adoption.

In January 2016, the FASB issued ASU 2016-01, *Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities*, which addresses certain aspects of the recognition, measurement, presentation and disclosure of financial instruments. The amendment will be effective for the Company beginning January 1, 2018 and the adoption of this standard is not expected to have a material impact on our consolidated financial statements or disclosures.

In February 2016, the FASB issued ASU 2016-02, *Leases*, which requires lessees to recognize on the balance sheet a right-of-use asset, representing their right to use the underlying asset for the lease term, and a lease liability for all leases with terms greater than 12 months. The guidance also requires qualitative and quantitative disclosures designed to assess the amount, timing and uncertainty of cash flows arising from leases. The standard requires the use of a modified retrospective transition approach, which includes a number of optional practical expedients that entities may elect to apply. ASU 2016-02 is effective for the Company beginning January 1, 2019 and we are currently evaluating the impact that ASU 2016-02 will have on our consolidated financial statements.

In October 2016, the FASB issued ASU 2016-16, which requires that entities recognize the income tax consequences of an intra-entity transfer of an asset, other than inventory, when the transfer occurs. The standard will be effective for the Company on January 1, 2018. The adoption is not expected to have a material impact on the consolidated financial statements.

In January 2017, the FASB issued ASU 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. The new guidance requires only a one-step quantitative impairment test, whereby a goodwill impairment loss will be measured as the excess of a reporting unit's carrying amount over its fair value (not to exceed the total goodwill allocated to that reporting unit). It eliminates Step 2 of the current two-step goodwill impairment test, under which a goodwill impairment loss is measured by comparing the implied fair value of a reporting unit's goodwill with the carrying amount of that goodwill. For public companies, the amended guidance is effective for the Company beginning after January 1, 2020. The adoption of this standard is not expected to have a material impact on its consolidated financial statements or disclosures.

In May 2017, the FASB issued ASU 2017-09, *Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting*. The new guidance amends the scope of modification accounting for share-based payment arrangements and provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity would be required to apply modification accounting under ASC 718. This standard is effective for the Company beginning January 1, 2018, including interim periods within those periods. Early adoption is permitted. The adoption of this standard is not expected to have a material impact on its consolidated financial statements or disclosures.

In July 2017, the FASB issued ASU 2017-11, *Earnings Per Share (Topic 260), Distinguishing Liabilities From Equity (Topic 480) And Derivatives And Hedging (Topic 815): Accounting For Certain Financial Instruments With Down Round Features*,

Replacement of the Indefinite Deferral For Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests With a Scope Exception. The new guidance changes the classification of certain equity-linked financial instruments (or embedded features) with down round features. The amendments also clarify existing disclosure requirements for equity-classified instruments. For freestanding equity-classified financial instruments, the amendments require entities that present earnings per share (EPS) in accordance with Topic 260, Earnings Per Share, to recognize the effect of the down round feature when it is triggered. That effect is treated as a dividend and as a reduction of income available to common shareholders in basic EPS. Convertible instruments with embedded conversion options that have down round features would be subject to the specialized guidance for contingent beneficial conversion features (in Subtopic 470-20, Debt—Debt with Conversion and Other Options), including related EPS guidance (in Topic 260). The amendments in Part II of this Update recharacterize the indefinite deferral of certain provisions of Topic 480, Distinguishing Liabilities from Equity, that now are presented as pending content in the Codification, to a scope exception. Those amendments do not have an accounting effect. Part I of the new guidance affects any entity that issues financial instruments that include down round features. The amendments in Part I of this Update that relate to the recognition, measurement, and earnings per share of certain freestanding equity-classified financial instruments that include down round features affect entities that present earnings per share in accordance with the guidance in Topic 260, Earnings Per Share. Part I is effective for the Company beginning January 1, 2019 and Part II did not require transition guidance as the amendment did not have an accounting effect. The adoption of this standard is not expected to have a material impact on its consolidated financial statements or disclosures.

In January 2018, the FASB released guidance on the accounting for tax on the global intangible low-taxed income ("GILTI") provisions of the Tax Cuts and Jobs Act (the "Act"). The GILTI provisions impose a tax on foreign income in excess of a deemed return on tangible assets of foreign corporations. The Act indicates that either accounting for deferred taxes related to GILTI inclusions or to treat any taxes on GILTI inclusions as period cost are both acceptable methods subject to an accounting policy election. The Company is in process of evaluating the impact of the GILTI provisions.

In February 2018, the FASB issued ASU 2018-02, *Income Statement — Reporting Comprehensive Income (Topic 220): Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income* that allows entities to reclassify from accumulated other comprehensive income to retained earnings stranded tax effects resulting from the Act. The Company is in the process of evaluating the impact of adoption.

3. Net Earnings Per Common Share

Basic net earnings per common share is calculated using net income and the weighted-average number of shares outstanding during the reporting period. Diluted net earnings per common share includes the effect from the potential issuance of common stock, such as common stock issued pursuant to the exercise of stock options or vesting of restricted shares.

During the first quarters of 2017, 2016 and 2015, the Company issued equity awards with performance, service, and market conditions. These awards are included in basic shares outstanding once all criteria have been met and the shares have vested. Prior to the end of the vesting period, the number of contingently issuable shares included in diluted EPS is based on the number of shares, if any, that would be issuable under the terms of the arrangement if the end of the reporting period were the end of the contingency period, using the treasury stock method and assuming the result would be dilutive. As of December 31, 2017 and 2016, the performance criteria for the first through third tranches of the 2015 grant, the first and second tranche of the 2016 grant and the first tranche of the 2017 grant were satisfied and the equity awards were included in the diluted share calculation. See Note 11, *Stock-Based Compensation and Stockholders' Equity*, for additional information on these awards.

During the years ended December 31, 2017, 2016 and 2015, 2.4 million, 3.4 million and 1.6 million share-based awards, respectively, have been excluded from the calculation of diluted common shares because including those securities would have been anti-dilutive.

The Company's potentially dilutive shares also include incremental shares issuable upon the conversion of the Senior Convertible Notes due August 15, 2018 ("2018 Notes"). Upon conversion or maturity of the 2018 Notes, the Company may settle the notes with either cash, shares of our common stock or a combination of cash and shares of our common stock, at our election. The Company has adopted a current policy to settle the principal amount in cash and any excess conversion value in shares of our common stock. Because the principal amount of the 2018 Notes will be settled in cash upon conversion, only the conversion spread relating to the 2018 Notes is included in our calculation of diluted earnings per common share. When the market price of our stock exceeds the conversion price, as applicable, we will include, in the diluted net income per common share calculation, the effect of the additional shares that may be issued upon conversion using the treasury stock method. There were no incremental common shares from the 2018 Notes that were included in the calculation of diluted shares because the

Company's average common stock price did not exceed the conversion price of approximately \$35.00 per common share during the years ended December 31, 2017, 2016 and 2015. See Note 4, *Long-term Debt*, for information on these notes.

The following table sets forth the computation of basic and diluted net earnings per common share (in thousands, except per share amounts):

	2017	2016	2015
Net income	\$ 53,629	\$ 3,990	\$ 89,961
Basic weighted average common shares	48,629	49,262	50,243
Dilutive effect of stock options	1,399	1,265	1,757
Dilutive effect of restricted shares	612	352	426
Dilutive effect of performance shares	14	1	16
Dilutive effect of the assumed conversion of the 2018 Notes	—	—	—
Diluted weighted average common shares	50,654	50,880	52,442
Basic earnings per share:			
Net income per common share	\$ 1.10	\$ 0.08	\$ 1.79
Diluted earnings per share:			
Net income per common share	\$ 1.06	\$ 0.08	\$ 1.72

4. Long-term Debt

1% Senior Convertible Notes due August 15, 2018

In August 2013, the Company issued \$258.8 million aggregate principal amount of 1.00% Senior Convertible Notes due August 15, 2018 ("2018 Notes"). The 2018 Notes bear interest at a rate of 1.00% per year, payable semiannually in arrears, on February 15 and August 15 of each year, beginning on February 15, 2014. The conversion price for the 2018 Notes is equivalent to an initial effective conversion price of approximately \$35.00 per share of common stock. Proceeds, net of original issuance discounts of \$252.3 million were received from the 2018 Notes. The net proceeds were used to pay down \$208.0 million of the First Lien Term Loan and \$43.0 million of the Revolving Credit Facility.

Beginning August 20, 2016, the Company may redeem for cash any or all of the 2018 Notes, at its option, if the last reported sale price of our common stock exceeds 130% of the applicable conversion price on each applicable trading day as defined by the indenture. The redemption price will equal 100% of the principal amount of the 2018 Notes to be redeemed, plus accrued and unpaid interest to, but not including, the redemption date. Holders of the 2018 Notes may also convert their notes at any time prior to May 15, 2018 if the sale price of our common stock exceeds 130% of the applicable conversion price on each applicable trading day as defined by the indenture.

In addition, holders may also convert their 2018 Notes any time prior to May 15, 2018, (i) if during the five business days after any five consecutive trading day period in which the trading price of the 2018 Notes was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate, (ii) if the Company calls the 2018 Notes for redemption; or (iii) upon the occurrence of specified corporate events.

The 2018 Notes are senior unsecured obligations and will be effectively junior to any of the Company's existing and future secured indebtedness. As of December 31, 2017, the Company has included \$248.1 million of the 2018 Notes as long-term debt based upon our intent and ability to refinance these obligations.

The Company determined that the embedded conversion option in the 2018 Notes is not required to be separately accounted for as a derivative under ASC 815, *Derivatives and Hedging*. The 2018 Notes are within the scope of ASC 470, Topic 20, *Debt with Conversion and Other Options*, which requires the Company to separate a liability component and an equity component from the proceeds received. The carrying amount of the liability component at the time of the transaction of \$204.4 million was calculated by measuring the fair value of a similar debt instrument that does not have an associated equity component. The fair value of the liability component was subtracted from the initial proceeds and the remaining amount of \$47.8 million was recorded as the equity component. The excess of the principal amount of the liability component over its carrying amount is being amortized to interest expense over the expected life of 5 years using the effective interest method.

Upon conversion or maturity of the 2018 Notes, the Company may settle the notes with either cash, shares of its common stock or a combination of cash and shares of its common stock, at its election. The Company has adopted a policy to settle the \$258.8 million of principal amount in cash and any excess conversion value in shares of our common stock. Because the principal amount of the 2018 Notes will be settled in cash upon conversion, only the conversion spread relating to the 2018 Notes may be included in the Company's calculation of diluted net earnings per common share. When the market price of the Company's stock exceeds the conversion price, it will include, in the diluted net earnings per common share calculation, the effect of the additional shares that may be issued upon conversion using the treasury stock method. As such, the 2018 Notes have no impact on diluted net earnings per common share until the price of the Company's common stock exceeds the conversion price (approximately \$35.00 per common share) of the 2018 Notes.

As of December 31, 2017 and 2016, the carrying value of the debt and equity component was \$251.0 million and \$47.8 million and \$239.2 million and \$47.8 million, respectively. The unamortized debt discount of \$7.7 million as of December 31, 2017 will be amortized over the remaining life of 0.6 years using the effective interest method.

Amended Credit Agreement

On February 11, 2016, the Company entered into an amendment (the "Amendment") to that certain Credit Agreement, dated as of September 9, 2014 (the "Existing Credit Agreement" and as amended by the Amendment, the "Amended Credit Agreement"), by and among the Company, the several lenders from time to time parties thereto, and JPMorgan Chase Bank, N.A., as administrative agent. On March 9, 2016 (the "Closing Date"), the Amended Credit Agreement became effective following the completion of the acquisition of Yodle Inc. (the "Acquisition"). On May 18, 2017, the Company entered into a second amendment to the Credit Agreement ("Second Amendment").

The Amended Credit Agreement provides for (i) \$390.0 million of five-year secured term loans, replacing and refinancing \$190.0 million of secured term loans outstanding under the Existing Credit Agreement and providing for an additional \$200.0 million of secured term loans (the "Term Loan") and (ii) a five-year secured revolving credit facility that provides up to \$150 million of revolving loans (the "Revolving Credit Facility"), which replaces the revolving credit facility under the Existing Credit Agreement. On the Closing Date, the Company used the proceeds of the Term Loan and borrowed \$115.0 million of loans under the Revolving Credit Facility, together with cash on hand, to complete the Acquisition. The Second Amendment to the Credit Agreement provided an incremental \$50.0 million of secured Term Loan and an incremental \$110.0 million of borrowing capacity on the Revolving Credit Facility with maturity dates that were commensurate with the Amended Credit Agreement. The Company used the proceeds from the incremental Term Loan to repay the then outstanding amount drawn on the Revolving Credit Facility at the date of closing.

The Term Loan and loans under the Revolving Credit Facility initially bore interest at a rate equal to either, at the Company's option, the LIBOR rate plus an applicable margin equal to 3.00% per annum, or the prime lending rate plus an applicable margin equal to 2.00% per annum. The applicable margins for the Term Loan and loans under the Revolving Credit Facility are subject to reduction or increase based upon the Company's consolidated first lien net leverage ratio as of the end of each fiscal quarter. Effective August 2016, the Company's interest rate on these loans was reduced to the LIBOR rate plus the applicable margin of 2.50% per annum as a result of reaching certain financial covenant ratios. The Company must also pay (i) a commitment fee of 0.45% per annum on the actual daily amount by which the revolving credit commitment exceeds then-outstanding usage under the Revolving Credit Facility, also subject to reduction or increase based upon the Company's consolidated first lien net leverage ratio, (ii) a letter of credit fee equal to the applicable margin that applies to LIBOR loans under the Revolving Credit Facility and (iii) a fronting fee of 0.125% per annum, calculated on the daily amount available to be drawn under each letter of credit issued under the Revolving Credit Facility.

The Company is permitted to make voluntary prepayments with respect to the Revolving Credit Facility and the Term Loan at any time without payment of a premium. The Company is required to make mandatory prepayments of the Term Loan with (i) net cash proceeds from certain asset sales (subject to reinvestment rights) and (ii) net cash proceeds from certain issuances of debt. The Company is also required to maintain certain financial ratios under the Credit Agreement and there are customary covenants that limit the incurrence of debt, the payment of dividends, the disposition of assets, and making of certain payments. Substantially all of the Company's and certain of its domestic subsidiaries' tangible and intangible assets are pledged as collateral under the Credit Agreement.

Both of the aforementioned amendments were accounted for as a modification of the credit agreement and as a result, \$1.9 million and \$5.7 million of additional loan origination discounts and bank lender fees were capitalized during the years ended December 31, 2017 and 2016, respectively.

Outstanding long-term debt and the effective interest rates at December 31, 2017 and 2016 consist of the following (in thousands):

	December 31, 2017	December 31, 2016
Revolving Credit Facility maturing 2021, 3.93%, based on LIBOR plus 2.50%	\$ 10,000	\$ 47,094
Term Loan due 2021, 3.98%, based on LIBOR plus 2.50%, less unamortized discount of \$3,800 at December 31, 2017, effective rate of 4.33%	385,934	377,851
Senior Convertible Notes, maturing 2018, 1.00%, less unamortized discount of \$7,714 at December 31, 2017, effective rate of 5.88%	251,036	239,196
Total Outstanding Debt, less unamortized discount of \$11,514 at December 31, 2017	646,970	664,141
Less: Current Portion of Long-Term Debt, less unamortized discount of \$379 at December 31, 2017	(16,612)	(16,847)
Long-Term Portion, less unamortized discount of \$11,135 at December 31, 2017	<u>\$ 630,358</u>	<u>\$ 647,294</u>

* The Company has \$248.1 million of available borrowings under the Revolving Credit Facility as of December 31, 2017.

Debt discount and issuance costs

The Company recorded \$14.2 million, \$12.8 million and \$11.4 million of interest expense from amortizing debt issuance costs and discounts during the years ended December 31, 2017, 2016 and 2015, respectively.

Total estimated principal payments due for the next five years as of December 31, 2017 are as follows (in thousands):

2018	\$ 16,990
2019	41,370
2020	44,128
2021	555,996
Total principal payments	<u>\$ 658,484</u>

Included in fiscal 2021 payments is \$248.1 million related to the 2018 Senior Convertible Notes, as the Company has the intent and ability to refinance these obligations.

5. Business Combinations

Acquisition of Acquisio, Inc.

On November 1, 2017, the Company acquired certain assets and liabilities of Acquisio, Inc., a provider of online advertising management. The Company paid approximately \$8.7 million from acquisition closing through December 31, 2017 and the Company may pay additional consideration of up to approximately \$0.6 million, subject to certain indemnification provisions. Transaction costs associated with the acquisition were not significant.

The Company has accounted for the acquisition using the acquisition method as required by ASC 805, *Business Combinations*. As such, preliminary fair values have been assigned to the assets acquired and liabilities assumed and the excess of the total purchase price over the fair value of the net assets acquired is recorded as goodwill. The Company, with the assistance of independent valuation professionals, has also performed preliminary estimates of the fair value of certain intangible assets. The goodwill recorded from this acquisition represents business benefits the Company anticipates realizing from acquiring the entity, and the amount is expected to be deductible for income tax purposes.

The following table summarizes the Company's preliminary purchase price allocation based on the fair values of the assets acquired and the liabilities assumed (in thousands):

	November 1, 2017
Tangible current assets	\$ 130
Property plant and equipment	376
Domain/Trade names	401
Developed Technology	2,698
Customer relationships	1,908
Goodwill	4,264
Current liabilities	(274)
Deferred revenue	(93)
Other long term liabilities	(129)
Purchase price consideration	<u>\$ 9,281</u>

The Company is still reviewing information surrounding intangible assets, certain assets and liabilities and income taxes. These items may result in changes to the Company's preliminary purchase price allocation. The preliminary customer relationships and developed technology will be amortized over four years and ten years, respectively. The domain and trade names are indefinite-lived intangible assets and are not amortized.

Acquisition of DonWeb

On January 31, 2017, the Company acquired 100% of the outstanding shares of DonWeb, a hosting and domain registration company catering to the Spanish-speaking market, located in Rosario, Argentina. The Company paid approximately \$8.6 million at closing. The Company may pay the seller additional consideration of up to \$2.0 million on January 31, 2021, present valued to \$1.7 million as of the acquisition date subject to certain indemnification provisions, for total consideration of \$10.3 million. In addition, the agreement includes a four-year earnout provision that entitles the seller up to \$3.0 million of consideration contingent upon the post-acquisition business performance and employment. Earnout amounts are recorded as compensation expense. Transaction costs associated with the acquisition were not significant.

The Company has accounted for the acquisition using the acquisition method as required by ASC 805, *Business Combinations*. As such, preliminary fair values have been assigned to the assets acquired and liabilities assumed and the excess of the total purchase price over the fair value of the net assets acquired is recorded as goodwill. The Company, with the assistance of independent valuation professionals, has also performed preliminary estimates of the fair value of certain intangible assets. The goodwill recorded from this acquisition represents business benefits the Company anticipates realizing from acquiring an entity in the Spanish-speaking market, and is not expected to be deductible for income tax purposes. In connection with the acquisition, the Company recorded approximately \$4.0 million of liabilities arising from pre-acquisition matters that are more likely than not to be sustained upon examination, inclusive of interest and penalties for which the Company is indemnified. The following table summarizes the Company's preliminary purchase price allocation based on the fair values of the assets acquired and the liabilities assumed (in thousands):

	As of January 31, 2017	Adjustments to Opening Balance Sheet	As of December 31, 2017
Tangible current assets	\$ 1,145	\$ (74)	\$ 1,071
Property plant and equipment	2,392	(48)	2,344
Domain/Trade names	—	990	990
Non-competes	—	236	236
Customer relationships	4,140	(2,420)	1,720
Other non current assets	2,849	(38)	2,811
Goodwill	9,519	1,049	10,568
Current liabilities	(837)	(901)	(1,738)
Deferred revenue	(2,860)	1,276	(1,584)
Other long term liabilities	(6,000)	(70)	(6,070)
Purchase price consideration	<u>\$ 10,348</u>	<u>\$ —</u>	<u>\$ 10,348</u>

The Company is still reviewing information surrounding intangible assets, certain assets and liabilities, income taxes and deferred revenue. These items may result in changes to the Company's preliminary purchase price allocation. The preliminary non-competes and customer relationships will be amortized over four years and three years, respectively. The domain and trade names are indefinite-lived intangible assets and are not amortized.

Acquisition of Yodle

On March 9, 2016, the Company executed an Agreement and Plan of Merger (the "Merger Agreement") with Yodle, Inc., a Delaware corporation ("Yodle"), and Shareholder Representative Services, LLC, a Colorado limited liability company. The Company acquired 100% of the outstanding shares of Yodle, Inc. and paid approximately \$300.3 million adjusted for, among other things, Yodle's cash and outstanding debt and transaction related expenses. The Company will pay an additional \$18.9 million and \$22.0 million on the first and second anniversary dates of the closing, respectively, subject to adjustments as described in the Merger Agreement. Finally, the Company converted out of the money stock options held by employees of Yodle to Web.com options, which resulted in additional consideration of \$2.3 million, for total consideration of \$341.3 million. In addition to the consideration, the Company incurred approximately \$3.9 million of acquisition-related transaction expenses which are reflected in the General and Administrative line item of the Consolidated Statement of Comprehensive Income for the year ended December 31, 2016.

The Company has accounted for the acquisition of Yodle using the acquisition method as required by ASC 805, *Business Combinations*. As such, fair values have been assigned to the assets acquired and liabilities assumed and the excess of the total purchase price over the fair value of the net assets acquired is recorded as goodwill. The Company, with the assistance of independent valuation professionals, has also performed valuation of the fair value of certain intangible assets. The goodwill recorded from this acquisition represents business benefits the Company anticipates realizing from acquiring a leader in value added digital marketing solutions that further solidifies our position as a leading national provider in this space. In addition, Yodle has vertically focused solutions that help small businesses attract new business and retain existing customers through cloud based marketing platforms. Finally, the Company also expects to benefit from synergies by eliminating duplicate operational and administrative expenditures, where feasible. The goodwill from the acquisition is not deductible for tax purposes.

The adjustments made to the purchase price allocation through December 31, 2016 were primarily due to refinement of inputs used to calculate the fair value of the customer relationship, developed technology and the domain/trade name intangible assets. As a result of these adjustments to the fair value of the definite-lived intangible assets, along with the related income tax impact, the amortization expense was reduced by \$2.1 million from acquisition date to year end 2016. The following table summarizes the Company's purchase price allocation based on the fair values of the assets acquired and liabilities assumed (in thousands):

	Opening Balance Sheet
Tangible current assets	\$ 7,455
Property plant and equipment	18,286
Developed technology	85,990
Domain/Trade names	27,990
Customer relationships	34,079
Other non current assets	277
Goodwill	231,612
Current liabilities	(22,609)
Deferred revenue	(7,791)
Deferred tax liability	(33,607)
Other long term liabilities	(411)
Purchase price consideration	<u>\$ 341,271</u>

The customer relationships and developed technology intangible assets will be amortized over 6.3 years and six years, respectively. The trademarks and trade names are indefinite-lived intangible assets and are not amortized.

The operations of Yodle have been incorporated with the existing Web.com Group Inc. operations subsequent to the transaction closing. As such, the determination of operating income and net income is not readily available nor would it be indicative of the standalone entity if presented.

The fair value and gross contractual amount of the acquired accounts receivable was \$4.8 million.

Pro Forma Condensed Consolidated Results of Operations

The Company has prepared the condensed pro forma financial information to reflect the consolidated results of operations as though the Yodle acquisition had occurred on January 1, 2015, for the twelve months ended December 31, 2016 and 2015. The Company has made adjustments to the historical Web.com and Yodle financial statements that are directly attributable to the acquisition, factually supportable and expected to have a continuing impact on the combined results. The pro forma presentation does not include any impact of transaction costs or expected synergies. The pro forma results are not necessarily indicative of our results of operations had the Company owned Yodle for the entire periods presented.

The Company has adjusted the results of operations to reflect the impact of amortizing into revenue, deferred revenue that was recorded at fair value. In addition, interest expense and amortization of intangible assets were adjusted to reflect the cost of the March 9, 2016 debt issued to finance the acquisition and the fair value of the intangible assets on the acquisition date, respectively.

The following summarizes pro forma total revenue and net (loss) income (in thousands, except per share amounts):

	Twelve months ended December 31, 2016
Revenue	\$ 750,474
Net loss	\$ (4,547)
Basic net loss per share	\$ (0.09)
Diluted net loss per share	\$ (0.09)
Basic weighted-average common shares outstanding	49,262
Diluted weighted-average common shares outstanding	49,262
	Twelve months ended December 31, 2015
Revenue	\$ 740,742
Net income	\$ 54,159
Basic net income per share	\$ 1.08
Diluted net income per share	\$ 1.03
Basic weighted-average common shares outstanding	50,243
Diluted weighted-average common shares outstanding	52,488

Acquisition of TORCHx

On May 31, 2016, the Company completed the acquisition of substantially all of the assets and certain liabilities of Brokerage Leader Inc. ("TORCHx"), a Florida corporation, which primarily consisted of customer relationships and developed technology intangible assets. TORCHx is a real estate platform built for agents and brokerages that features search engine optimization (SEO) and responsive design, customer relationship management (CRM) and other tools to help run successful online marketing campaigns. The Company paid \$4.4 million for this business during the second quarter of 2016, of which \$3.0 million was paid at closing and the remaining \$1.5 million was paid on November 30, 2017.

The Company has accounted for the acquisition of TORCHx using the acquisition method as required by ASC 805, *Business Combinations*. As such, fair values have been assigned to the assets acquired and liabilities assumed and the excess of the total purchase price over the fair value of the net assets acquired is recorded as goodwill. The Company has estimated the fair value of certain intangible assets. The goodwill recorded from this acquisition represents business benefits the Company anticipates realizing from optimizing resources and cross-sale opportunities. The goodwill from the acquisition is deductible for tax purposes.

Assets and liabilities acquired are as follows (in thousands):

Tangible current assets	\$ 17
Customer relationships	360
Developed technology	1,790
Goodwill	2,266
Deferred revenue	(42)
Purchase price consideration	<u>\$ 4,391</u>

The customer relationships and developed technology intangible assets will be amortized over four years and seven years, respectively.

6. Goodwill and Intangible Assets

In accordance with ASC 350, the Company reviews goodwill and other indefinite-lived intangible asset balances for impairment on an annual basis and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of goodwill or indefinite-lived intangible assets below their carrying amount. As of December 31, 2017 and December 31, 2016, the Company completed its annual impairment test of goodwill and other indefinite-lived intangible assets and determined these assets were not impaired.

During the year ended December 31, 2016, the Company paid \$1.6 million for registrar credentials. These credentials were recorded as other intangible assets of \$2.6 million and are being amortized over 24 months. The remaining \$1.0 million was recorded as a deferred tax liability.

The following table summarizes changes in the Company's goodwill balances as required by ASC 350-20 for the year ended December 31, 2017 and 2016, respectively (in thousands):

	December 31, 2017	December 31, 2016
Goodwill balance at beginning of period	\$ 974,045	\$ 741,439
Accumulated impaired goodwill at beginning of period	(102,294)	(102,294)
Goodwill balance at beginning of period, net	871,751	639,145
Goodwill acquired during the period - Yodle - Note 5, Business Combinations	—	231,612
Goodwill acquired during the period - TORCHx - Note 5, Business Combinations	—	2,266
Goodwill acquired during the period - DonWeb - Note 5, Business Combinations	10,568	—
Goodwill acquired during the period - Acquisio - Note 5, Business Combinations	4,264	—
Foreign currency translation adjustments	(921)	(1,272)
Goodwill balance at end of period, net *	<u>\$ 885,662</u>	<u>\$ 871,751</u>

* Gross goodwill balances were \$988.0 million and \$974.0 million as of December 31, 2017 and 2016, respectively. This includes accumulated impairment losses of \$102.3 million.

The Company's intangible assets are summarized as follows (in thousands):

	December 31, 2017			Weighted-average Amortization Period in Years
	Gross Carrying Amount	Accumulated Amortization	Net	
Indefinite-lived intangible assets:				
Domain/Trade names	\$ 161,251	\$ —	\$ 161,251	
Definite-lived intangible assets:				
Customer relationships	327,176	(185,353)	141,823	5.6
Developed technology	283,319	(215,545)	67,774	4.2
Other	8,673	(7,950)	723	1.0
Total *	<u>\$ 780,419</u>	<u>\$ (408,848)</u>	<u>\$ 371,571</u>	

*Cumulative foreign currency translation adjustments, reflecting the movement in currencies, decreased total intangible assets by approximately \$0.2 million as of December 31, 2017.

	December 31, 2016			Weighted-average Amortization Period in Years
	Gross Carrying Amount	Accumulated Amortization	Net	
Indefinite-lived intangible assets:				
Domain/Trade names	\$ 159,805	\$ —	\$ 159,805	
Definite-lived intangible assets:				
Customer relationships	324,327	(157,998)	166,329	6.5
Developed technology	280,455	(195,695)	84,760	4.8
Other	7,394	(5,161)	2,233	1.4
Total *	<u>\$ 771,981</u>	<u>\$ (358,854)</u>	<u>\$ 413,127</u>	

*Cumulative foreign currency translation adjustments, reflecting the movement in currencies, decreased total intangible assets by approximately \$1.0 million as of December 31, 2016.

The weighted-average amortization period for the amortizable intangible assets as of December 31, 2017, is approximately 5.1 years. Total amortization expense was \$49.3 million, \$56.8 million and \$39.3 million for the years ended December 31, 2017, 2016 and 2015, respectively.

As of December 31, 2017, the amortization expense for the next five years and thereafter is as follows (in thousands):

2018	\$ 45,677
2019	41,934
2020	39,277
2021	38,344
2022	26,703
Thereafter	18,385
Total	<u>\$ 210,320</u>

7. Property and Equipment

The Company's property and equipment are summarized as follows (in thousands):

	December 31,	
	2017	2016
Land	\$ 1,251	\$ 416
Depreciable assets:		
Software	74,048	58,381
Computer equipment	61,966	56,037
Other equipment	9,993	9,410
Furniture and fixtures	7,888	7,773
Building and improvements	3,319	2,351
Leasehold improvements	19,352	17,195
Total depreciable assets	<u>176,566</u>	<u>151,147</u>
Accumulated depreciation	(120,629)	(98,431)
Property and equipment, net	<u>\$ 57,188</u>	<u>\$ 53,132</u>

Depreciation expense relating to depreciable assets amounted to \$22.2 million, \$21.2 million, and \$17.1 million for the years ended December 31, 2017, 2016 and 2015, respectively.

As of December 31, 2017, 2016 and 2015, the Company had unamortized computer software costs of \$25.0 million, \$21.1 million and \$16.9 million, respectively. For the years ended December 31, 2017, 2016 and 2015, approximately \$11.5 million, \$9.8 million and \$8.5 million respectively of depreciation expense related to computer software was recorded.

8. Commitments

Operating Leases

The Company has lease obligations for its headquarters, technology administrative centers, sales and customer support centers and its eCommerce operations with varying renewal options on such locations.

Rental expense for leased facilities and equipment amounted to approximately \$16.7 million, \$16.0 million and \$7.5 million for the years ended December 31, 2017, 2016 and 2015, respectively. Accrued rent expense was \$1.9 million and \$1.8 million as of December 31, 2017 and 2016, respectively.

As of December 31, 2017, future minimum rental payments required under operating leases that have initial or remaining non-cancellable terms in excess of one year are as follows (in thousands):

	Minimum Rental Payments	Sublease Income Payments	Net Minimum Rental Payments
2018	\$ 15,431	\$ (3,736)	\$ 11,695
2019	17,271	(3,736)	13,535
2020	17,056	(3,829)	13,227
2021	16,638	(4,015)	12,623
2022	14,364	(4,015)	10,349
Thereafter	61,287	(5,353)	55,934
	<u>\$ 142,047</u>	<u>\$ (24,684)</u>	<u>\$ 117,363</u>

Included the minimum rental payments above are payments related to an office lease in Jacksonville, Florida for which the Company is contractually obligated; however, possession will revert to the Company in May 2019.

Purchase Obligations

Purchase obligations include corporate and marketing related sponsorships, general operating purchase obligations and long-term service contracts for data storage. As of December 31, 2017, the Company's unconditional purchase obligations are as follows (in thousands):

	Payment Due
2018	\$ 20,388
2019	18,263
2020	14,790
2021	15,695
2022	715
Thereafter	—
	<u>\$ 69,851</u>

Standby Letters of Credit

The Company utilizes letters of credit to back certain payment obligations relating to its facility operating leases and to meet certain vendor requirements. The Company had approximately \$6.8 million and \$7.3 million in standby letters of credit as of December 31, 2017 and 2016, respectively, \$1.9 million of which was drawn against the Company's revolving credit facility as of December 31, 2017 and 2016. The letters of credit are primarily to fulfill requirements under Yodle's facility operating leases. These letters of credit are funded by domestic money market accounts and are restricted for withdrawal based upon expiration dates required by the terms of the underlying lease agreements. The money market accounts are recorded as Other Assets in the consolidated balance sheets.

9. Valuation Accounts

The Company's valuation accounts are summarized as follows (in thousands):

Description	Balance at beginning of year	Additions		Deductions		Balance at end of year
		Charged to statement of comprehensive income		Uncollectible accounts written off, net of recoveries or refunds to customers		
Year Ended December 31, 2015:						
Allowance for doubtful accounts	\$ 1,705	\$ 2,906		\$ 2,796		\$ 1,815
Refund liability	1,356	10,606		10,276		1,686
Total	<u>\$ 3,061</u>	<u>\$ 13,512</u>		<u>\$ 13,072</u>		<u>\$ 3,501</u>
Year Ended December 31, 2016:						
Allowance for doubtful accounts	\$ 1,815	\$ 1,640		\$ 1,760		\$ 1,695
Refund liability	1,686	11,337		11,118		1,905
Total	<u>\$ 3,501</u>	<u>\$ 12,977</u>		<u>\$ 12,878</u>		<u>\$ 3,600</u>
Year Ended December 31, 2017:						
Allowance for doubtful accounts	\$ 1,695	\$ 65		\$ 306		\$ 1,454
Refund liability	1,905	9,316		9,797		1,424
Total	<u>\$ 3,600</u>	<u>\$ 9,381</u>		<u>\$ 10,103</u>		<u>\$ 2,878</u>

10. Fair Value

The Company defines fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The Company applies the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels as follows:

Level 1-Quoted prices in active markets for identical assets or liabilities.

Level 2-Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3-Inputs that are generally unobservable and typically reflect management's estimates of assumptions that market participants would use in pricing the asset or liability.

The Company has financial assets and liabilities that are not required to be remeasured to fair value on a recurring basis. The Company's cash and cash equivalents, accounts receivable, accounts payable, and accrued expenses approximate fair market value as of December 31, 2017 and December 31, 2016 due to the short maturity of these items. As of December 31, 2017, the fair value and carrying value of the Company's 2018 Notes totaled \$255.3 million and \$251.0 million, respectively. As of December 31, 2016, the fair value and carrying value of the Company's 2018 Notes totaled \$248.6 million and \$239.2 million, respectively. The fair value of the First Lien Term Loan and the 2018 Notes, including the equity component, was calculated by taking the quoted market price for the instruments multiplied by the principal amount. This is based on a Level 2 fair value hierarchy calculation obtained from quoted market prices for the Company's long-term debt instruments that may not be actively traded at each respective period end.

The Revolving Credit Facility and Term Loan are variable rate debt instruments indexed to a 1-Month LIBOR that resets monthly, and as such, the fair value of the Term Loan and Revolving Credit Facility approximates the carrying value as of December 31, 2017 and December 31, 2016. See Note 4, *Long-term Debt*, for additional information surrounding the Second Amendment.

11. Stock-Based Compensation and Stockholders' Equity

The Company records compensation expense for employee and director stock-based compensation plans based upon the fair value of the award in accordance with ASC 718, *Compensation-Stock Compensation*.

Equity Incentive Plans

At December 31, 2017, the Company has the 2014 Equity Incentive Plan for the issuance of stock-based compensation, including but not limited to, common stock options and restricted shares to employees. In addition, the Company's plan provides for grants of non-statutory stock options and restricted shares awards ("RSA's") to non-employee directors. The Company issues shares out of treasury stock, if available, otherwise new shares of common stock are issued upon the exercise of stock options and the granting of restricted shares. At December 31, 2017, approximately 3.6 million shares remain available for future issuance under this plan.

In addition, the Company has additional equity incentive plans that are established in conjunction with its acquisitions. These plans are considered one-time, inducement awards of incentive stock options, non-statutory stock options and restricted shares. Once the inducement awards are granted, no additional shares, including forfeitures and cancellations, are available for future grant under these plans.

Generally, incentive stock options and non-statutory stock options vest ratably over three to four years, are contingent upon continued employment and expire ten years from the grant date. Restricted share awards generally vest 25 percent each year over a four year period.

The Board of Directors or a committee thereof, administers all of the equity incentive plans and establishes the terms of options granted, including the exercise price, the number of shares subject to individual option awards and the vesting period of options, within the limits set forth in the plans. Options have a maximum term of 10 years and generally vest monthly over four years, as determined by the Board of Directors.

Yodle Equity Grants

In connection with the March 2016 Yodle acquisition, the Company granted 0.3 million restricted shares that vest annually over a four year period and 0.3 million stock options of which 25 percent vest one year from the date of grant and the remaining 75 percent

vest monthly over a three year period for a total of four years. In addition, the Company converted unvested and out-of-the-money vested Yodle stock options to 1.3 million stock options of the Company. The total value of the converted stock options is approximately \$8.3 million. Approximately \$2.3 million has been recorded as additional consideration related to the vested options at the time of the closing of the acquisition. The remaining expense, net of forfeitures, is being amortized to stock compensation expense over the remaining service period of approximately 2 years.

Performance Shares

During 2017, 2016 and 2015, the Compensation Committee of the Board of Directors approved performance share equity awards. The targeted number of shares granted under a 100 percent payout scenario for the awards, in total, is 0.5 million common shares over the 3 years vesting periods, with approximately one-third vesting each year. The actual number of shares that may be earned and issued, if any, may range from 0% - 200% of the target number of shares granted. The range is based upon (1) the number of shares earned based upon the over achievement or under achievement of the financial measures for the annual performance period and (2) the number of shares earned being adjusted higher or lower depending on the performance of the Company's total shareholder return, compared against the Company's peer group.

Compensation expense related to the performance shares for the years ended December 31, 2017, 2016 and 2015, was approximately \$3.5 million, \$1.2 million, and \$1.0 million, respectively. As of December 31, 2017, there was approximately \$0.5 million of unrecognized compensation expense related to the 2017 tranches of performance shares, which is expected to be recognized over a weighted average period of 0.1 years. The 2017 performance share period resulted in a payout of 71% of the underlying target shares, or approximately 0.1 million shares for the 2017, 2016 and 2015 tranches combined.

Stock Options

Compensation expense related to the Company's stock option plans was \$7.8 million, \$9.6 million and \$10.4 million for the years ended December 31, 2017, 2016 and 2015, respectively. As of December 31, 2017, the Company had \$10.5 million of unrecognized compensation expense related to stock options, which is expected to be recognized over a weighted average period of 2.6 years. During the years ended December 31, 2017, 2016 and 2015, 1.2 million, 0.7 million and 0.7 million common shares were issued from options exercised, respectively.

The total intrinsic value of options exercised during the years ended December 31, 2017, 2016, and 2015 was \$9.4 million, \$5.4 million, and \$7.4 million, respectively. The fair value of options vested during the years ended December 31, 2017, 2016, and 2015 was \$9.1 million, \$10.8 million, and \$11.3 million, respectively. The weighted-average grant-date fair value of an option granted during the years ended December 31, 2017, 2016, and 2015 was \$8.64, \$8.01, and \$9.36, respectively.

The fair value of each option award is estimated on the grant date using the Black-Scholes option valuation model and the assumptions noted in the following table. Expected volatility rates are based on the Company's historical volatility on the grant date. The Company estimates the expected term based on the historical exercise experience of our employees, which we believe is representative of future behavior.

The risk-free rate is based on the U.S. Treasury yield curve in effect at the time of grant. Below are the assumption ranges used in calculating the fair value of options granted during the following periods:

	Year Ended December 31,					
	2017		2016		2015	
Risk-free interest rate	1.84 - 2.06	%	1.11 - 1.39	%	1.52 - 1.60	%
Dividend yield	—	%	—	%	—	%
Expected life (in years)	4.99 - 5.07		4.97 - 5.19		4.96 - 4.99	
Volatility	42 - 45	%	47 - 54	%	55 - 57	%

The following table summarizes option activity for all of the Company's stock options:

	Shares Covered by Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Balance, December 31, 2016	5,815,297	\$ 16.06		
Granted	1,211,925	\$ 21.07		
Exercised	(1,173,494)	\$ 14.45		
Forfeited	(499,248)	\$ 19.27		
Expired	(88,447)	\$ 22.12		
Balance, December 31, 2017	5,266,033	\$ 17.20	5.81	\$ 31,096
Exercisable at December 31, 2017	3,820,834	\$ 16.17	4.73	\$ 28,014

Price ranges of outstanding and exercisable options as of December 31, 2017 are summarized below:

Exercise Price	Outstanding Options			Exercisable Options	
	Number of Options	Weighted-Average Remaining Life (Years)	Weighted-Average Exercise Price	Number of Options	Weighted-Average Exercise Price
\$3.55 - \$9.97	1,059,960	2.15	\$ 7.32	1,059,960	\$ 7.32
\$10.95 - \$15.96	1,392,729	4.61	\$ 14.22	1,359,968	\$ 14.22
\$16.97 - \$19.24	1,129,540	7.54	\$ 17.92	577,059	\$ 18.06
\$19.48 - \$24.88	1,053,615	9.07	\$ 21.20	214,811	\$ 21.16
\$26.69 - \$36.45	630,189	6.07	\$ 32.37	609,036	\$ 32.36
	5,266,033			3,820,834	

Restricted Stock Awards

The fair value of each restricted stock award grant is based on the closing price of the Company's stock on the date of grant and is amortized to compensation expense over its vesting period, which generally ranges between one and four years. Restricted stock is not transferable until vested.

Compensation expense related to restricted stock plans for the years ended December 31, 2017, 2016 and 2015 was approximately \$11.9 million, \$9.9 million and \$8.7 million, respectively. As of December 31, 2017, there was approximately \$20.4 million of unrecognized compensation cost related to restricted stock outstanding, which is expected to be recognized over a weighted average period of 2.4 years. During the years ended December 31, 2017, 2016 and 2015, approximately 0.2 million, 0.2 million and 0.1 million shares totaling approximately \$4.6 million, \$4.3 million and \$2.4 million, respectively, were withheld by the Company for minimum income tax withholding requirements, primarily for restricted shares that vested. During the years ended December 31, 2017, 2016 and 2015, 0.9 million, 1.2 million and 0.5 million restricted common shares were granted, respectively.

The following restricted stock activity occurred under the Company's equity incentive plans during the year ended December 31, 2017:

	Shares	Weighted-Average Grant-Date Fair Value
Restricted stock awards outstanding at December 31, 2016	1,552,723	\$ 17.87
Granted	1,067,959	\$ 20.46
Forfeited	(205,889)	\$ 19.34
Lapse of restriction (released)	(543,596)	\$ 18.95
Restricted stock awards outstanding at December 31, 2017	1,871,197	\$ 18.87

Stock Repurchases

On November 5, 2014, the Company's Board of Directors authorized a share repurchase program of up to \$100.0 million of the Company's common stock expiring on December 31, 2016. In October 2016, the Company's Board of Directors authorized that the

share repurchase program of the Company's outstanding securities be extended through December 31, 2018 and be increased by an additional \$100.0 million.

The aggregate amount of available shares available for repurchase under this program was \$33.8 million at December 31, 2017. Repurchases under the repurchase programs may take place in the open market or in privately negotiated transactions, including structured and derivative transactions such as accelerated share repurchase transactions, and may be made under a Rule 10b5-1 plan. During the years ended December 31, 2017 and 2016, the Company repurchased common shares totaling \$76.3 million and \$28.6 million, respectively.

12. Common Shares Reserved

The Company had reserved the following number of shares of common stock for future issuance:

	December 31,		
	2017	2016	2015
Outstanding stock options, performance share units and restricted stock units	5,955,837	6,239,847	5,674,405
Options available for future grants and other awards	3,567,989	5,513,027	3,738,466
Total common shares reserved	<u>9,523,826</u>	<u>11,752,874</u>	<u>9,412,871</u>

13. Income Taxes

The domestic and foreign components of net income before income taxes for the years ended December 31, were as follows:

	2017	2016	2015
Income before income taxes			
U.S. income	\$ 57,227	\$ 15,510	\$ 43,544
Foreign loss	(1,673)	(1,268)	(1,843)
Net income before income taxes	<u>\$ 55,554</u>	<u>\$ 14,242</u>	<u>\$ 41,701</u>

The provision (benefit) for income taxes consisted of the following for the years ended December 31,:

	2017	2016	2015
Current expense:			
Federal	\$ 1,112	\$ 944	\$ 1,000
State	1,721	1,044	835
Foreign	1,379	550	147
Total current tax expense	<u>4,212</u>	<u>2,538</u>	<u>1,982</u>
Deferred expense (benefit):			
Federal	(6,302)	9,096	(49,301)
State	4,700	(1,289)	(820)
Foreign	(685)	(93)	(121)
Total deferred tax (benefit) expense	<u>(2,287)</u>	<u>7,714</u>	<u>(50,242)</u>
Total income tax expense (benefit)	<u>\$ 1,925</u>	<u>\$ 10,252</u>	<u>\$ (48,260)</u>

As of December 31, 2017 and 2016, the Company had federal net operating loss carry forwards ("NOLs") at December 31, 2017 and 2016 of \$182.2 million and \$159.8 million. These NOLs expire in varying amounts beginning in 2020 through 2036 and are included in the schedule of deferred tax assets in the table below. See Note 2 for additional information related to the adoption of ASU 2016-09.

As of December 31, 2017, the Company had state NOLs of \$378.6 million, which substantially expire in varying amounts beginning in 2020 through 2037. As of December 31, 2016, the Company had state NOLs of \$324.6 million.

As of December 31, 2017 and December 31, 2016, the Company had foreign NOLs in the United Kingdom of \$57.5 million and \$51.5 million, respectively, which do not expire.

As of December 31, 2017 and 2016, the Company had Foreign Tax Credit ("FTC") carry forwards of \$1.2 million which expire 2018 through 2020. As of December 31, 2017 and 2016, the Company had Research & Development ("R&D") Tax Credit carry forwards of \$0.5 million. The R&D credits begin to expire in 2028. As of December 31, 2017 and 2016, the Company had Alternative Minimum Tax ("AMT") Credit carry forwards of approximately \$5.2 million and \$4.1 million, respectively which are included in the noncurrent deferred income tax accounts. The Act provides for the refund of AMT Credits in tax years 2018 through 2021.

On December 22, 2017, the Act was signed into law making significant changes to the Internal Revenue Code. Changes include, but are not limited to, a federal corporate tax rate decrease from 35% to 21% for tax years beginning after December 31, 2017, the transition of U.S international taxation from a worldwide tax system to a territorial system, and a one-time transition tax on the mandatory deemed repatriation of foreign earnings. We have estimated our provision for income taxes in accordance with the Act and guidance available as of the date of this filing and as a result have recorded \$22.9 million net tax benefit in the fourth quarter of 2017, the period in which the legislation was enacted. The provisional amount consisted of \$26.1 million related to the remeasurement of certain deferred tax assets and liabilities, based on the rates at which they are expected to reverse in the future, offset by a \$3.8 million increase in valuation allowance for certain state deferred tax assets in jurisdictions in which a valuation allowance was required to reflect the amount more likely than not be realized, a \$1.9 million benefit from the reversal of a liability associated with the prior year earnings and profits, a \$0.8 million deferred tax expense associated with the one-time transition tax on the mandatory deemed repatriation of foreign earnings based on cumulative foreign earnings of \$5.1 million and a \$0.5 million tax expense related to writing off certain deferred tax assets associated with the deductibility of certain compensation amounts.

On December 22, 2017, Staff Accounting Bulletin No. 118 ("SAB 118") was issued to address the application of U.S. GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in reasonable detail to complete the accounting for certain income tax effects of the Act. In accordance with SAB 118, the Company has determined that \$22.9 million was the estimated benefit from the implementation of the Act was a provisional amount and a reasonable estimate at December 31, 2017. Additional work is necessary for a more detailed analysis of our deferred tax assets and liabilities and our historical foreign earnings as well as potential correlative adjustments. No additional income taxes have been provided for any remaining undistributed foreign earnings not subject to the transition tax and any additional outside basis difference inherent in these entities as these amounts continue to be indefinitely reinvested in foreign operations. Any subsequent adjustment to these amounts will be recorded to tax expense in 2018 when the analysis is complete.

In establishing its deferred tax assets and liabilities, the Company makes judgments and interpretations based on the enacted tax laws and published tax guidance that are applicable to its operations. Deferred tax assets and liabilities are measured and recorded using currently enacted tax rates, which the Company expects will apply to taxable income in the years in which those temporary differences are recovered or settled.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's

deferred tax assets and liabilities are as follows at December 31 (in thousands):

	<u>2017</u>	<u>2016</u>
Noncurrent deferred tax assets:		
Deferred revenue	\$ 51,087	\$ 76,887
NOLs	68,952	79,338
Stock compensation	6,548	9,509
Other deferred tax assets	15,986	20,243
	<u>142,573</u>	<u>185,977</u>
Less: valuation allowance	(30,364)	(22,289)
Total noncurrent deferred tax assets	<u>112,209</u>	<u>163,688</u>
Noncurrent deferred tax liabilities:		
Intangible basis	149,328	218,582
Discount on 2018 Notes	1,874	7,005
Other liabilities	11,816	18,004
Total noncurrent deferred tax liabilities	<u>163,018</u>	<u>243,591</u>
Net noncurrent deferred tax asset	233	232
Net noncurrent deferred tax liability	(51,042)	(80,135)
Net deferred tax liability	<u>\$ (50,809)</u>	<u>\$ (79,903)</u>

In 2017, we remeasured certain deferred tax assets and liabilities based on the rates at which they are expected to reverse in the future, which is generally 21% in accordance with the Act. However, we are still analyzing certain aspects of the Act and refining our calculations, which could potentially affect the measurement of these balances or potentially give rise to new deferred tax amounts. The largest driver for the decrease in the net noncurrent deferred tax liabilities of \$29.1 million was related to the adoption of ASU 2016-09 (See *Note 2, New Accounting Standards*) partially offset by deferred tax liabilities associated with the DonWeb acquisition of \$1.2 million.

Net noncurrent deferred tax assets of \$0.2 million above as of December 31, 2017 and 2016 are included in Other Assets in the consolidated balance sheets.

The valuation allowance at December 31, 2017 of \$30.4 million includes \$19.0 million and \$10.2 million related to certain state and foreign net deferred tax assets, respectively, and \$1.2 million related to FTC carry forwards, that are not more likely than not to be realized.

During the year ended December 31, 2017, the valuation allowance increased by \$8.1 million. The net increase attributable to the Company's state valuation allowance was \$6.6 million, mainly related to the increase in state deferred tax assets due to the federal tax rate change. The net increase attributable to the Company's foreign valuation allowance was \$1.5 million, driven by current year foreign losses in jurisdictions in which a full valuation allowance was still required and foreign currency translation adjustments associated with the underlying foreign net deferred tax assets for which a full valuation allowance was required.

During the year ended December 31, 2016, the valuation allowance decreased by \$4.3 million. The net decrease attributable to the Company's state valuation allowance was \$0.9 million, which included a \$1.5 million increase related to current year book losses attributable to state jurisdictions in which a full valuation allowance was still required, offset by a \$2.4 million decrease in our beginning-of-the-year valuation allowance to reflect the amount more likely than not to be realized. The \$2.4 million decrease related to a state jurisdiction in which the applicable combined legal entities no longer operated on a 3-year cumulative pre-tax book loss position as of the fourth quarter of 2016. In addition to this positive evidence, the Company also determined that positive evidence associated with forecasted 2017 and future estimated taxable income for this state jurisdiction outweighed the negative evidence in the assessment of the portion of the valuation allowance release in the fourth quarter of 2016. The net decrease attributable to the Company's foreign valuation allowance was \$3.4 million, which included a \$0.6 million increase related to current year foreign losses for which a full valuation allowance was still required, offset by a \$1.8 million decrease related to the decrease in foreign net deferred tax assets attributable to a UK tax rate change and a \$2.2 million decrease related to foreign currency translation adjustments associated with the underlying foreign deferred tax assets for which a full valuation allowance was required. The net impact of this foreign currency translation adjustment included in Accumulated Other Comprehensive Loss is zero.

During the year ended December 31, 2015, the valuation allowance decreased by \$66.9 million. In December 2015, after weighing all evidence available, the Company determined that it was more likely than not that the Company would be able to realize substantially all its net U.S. Federal deferred tax assets and a portion of its net U.S. state deferred tax assets. As a result, the Company reversed \$68.8 million of its beginning-of-the-year valuation allowance related to these deferred tax assets, which was partially offset by current year increases of \$1.9 million related to certain foreign and state deferred tax assets for which it was determined that a valuation allowance was still required.

The positive evidence that outweighed the negative evidence used in the Company's assessment of the portion of the valuation allowance released in the fourth quarter of 2015 included, but was not limited to, the following:

- The Company was no longer in a 3-year cumulative pre-tax book loss position as of the fourth quarter of 2015;
- Strong positive trend in financial performance over the last two fiscal years, including each of the previous four quarters; and
- Forecasted 2016 and future period taxable income.

The Company will continue to evaluate its ability to realize our deferred tax assets. If future evidence suggests that any changes are required to reflect the amount of our deferred tax asset that is more likely than not to be realized, the Company will adjust its valuation allowance, as needed in the appropriate period.

The provision (benefit) for income taxes differs from the amount computed by applying the statutory U.S. federal income tax rates as a result of the following for the years ended December 31:

	<u>2017</u>	<u>2016</u>	<u>2015</u>
U.S. statutory rate	35.0 %	35.0 %	35.0 %
State income taxes (net of federal tax benefit)	3.0	2.6	2.8
Stock-based compensation	0.6	24.1	4.7
Change in valuation allowance	4.7	(30.2)	(160.5)
Foreign rate differential	1.3	5.2	2.0
Non-deductible compensation costs	1.3	5.2	2.0
Change in tax rates	(1.0)	13.6	(0.6)
Foreign currency translation adjustment	(1.4)	15.3	—
Unremitted foreign earnings and profits	—	(0.8)	0.7
Transaction costs	0.5	4.9	—
Tax impacts of the Act	(41.2)	—	—
Other	0.7	(2.9)	(1.9)
Income tax expense (benefit)	<u>3.5 %</u>	<u>72.0 %</u>	<u>(115.8) %</u>

The Company applies ASC 740, *Income Taxes*, which clarifies the accounting for uncertainty in income tax positions recognized in financial statements. The Company has filed income tax returns for years through 2016. These returns are subject to examination by the taxing authorities in the respective jurisdictions generally for three or four years after they are filed. NOLs and certain tax credits generated in these periods, as well as any carry forwards from prior periods, remain subject to adjustment by taxing authorities generally for three or four years after the years in which such NOLs and credit carry forwards are utilized.

The Company's policy is that it recognizes interest and penalties accrued on any unrecognized tax benefits as a component of income tax expense.

The Company's unrecognized tax benefits are summarized as follows (in thousands):

Balance at December 31, 2014	\$ 3,431
Additions in unrecognized tax benefits – prior year tax positions	73
Additions in unrecognized tax benefits – current year tax positions	300
Reductions in unrecognized tax benefits – current year tax positions	(62)
Lapse of statute of limitations	(248)
Balance at December 31, 2015	\$ 3,494
Additions in unrecognized tax benefits – prior year tax positions	50
Additions in unrecognized tax benefits – current year tax positions	540
Lapse of statute of limitations	(225)
Balance at December 31, 2016	\$ 3,859
Additions in unrecognized tax benefits – prior year tax positions	1,565
Additions in unrecognized tax benefits – current year tax positions	656
Reductions in unrecognized tax benefits – prior year tax positions	(546)
Lapse of statute of limitations	(42)
Balance at December 31, 2017	\$ 5,492

As of December 31, 2017 and 2016, the Company had \$4.5 million and \$3.2 million, respectively, of total unrecognized tax benefits, which could favorably affect the effective rate. The Company recorded a net expense/(benefit) related to interest and penalties of \$2.5 million, \$0.0 million, and \$(0.2) million million, during 2017, 2016, and 2015, respectively. The total accrued interest and penalties as of December 31, 2017 and December 31, 2016, was \$2.6 million and \$0.1 million, respectively. Refer to footnote 5, *Business Combinations* for further information on current year additions to unrecognized tax benefits in connection with our DonWeb acquisition.

14. Employee Savings Plans

The Company has a qualifying defined contribution 401(k) plan under the Internal Revenue Code. All employees at the date of hire are eligible to participate in the plan. Each participant may contribute to the plan up to the maximum allowable amount as determined by the Federal Government. Employee 401(k) deferrals are 100% vested. Company contributions are subject to a vesting schedule based on years of service. The Company recorded contribution expense of \$2.4 million, \$1.8 million and \$1.1 million during the years ended December 31, 2017, 2016, and 2015, respectively.

Effective July 1, 2012, the Company established an unfunded deferred compensation defined contribution plan for key management and highly compensated employees. The purpose of the plan is to provide a select group of employees who contribute significantly to the future business success of the Company with supplemental retirement income benefits through the deferral of base salary and other compensation and through additional discretionary company matching contributions. Deferral elections are made at the discretion of the employee and would be an amount or percentage of the employee's compensation. Each plan year, the Company may, but is not required to, make a matching contribution to the plan on behalf of the participant. In addition, matching contributions need not be uniform among participants. The Company recorded contribution expense of \$0.1 million for each of the years ended December 31, 2017, 2016, and 2015.

Also effective July 1, 2012, the Company established an unfunded supplemental retirement defined contribution plan for key management. The purpose of the plan is to provide a select group of management or highly compensated employees who contribute significantly to the future business of the company with supplemental retirement income through discretionary company contributions. Each plan year, the Company may, but is not required to, make a discretionary contribution to the plan on behalf of a participant. The Company is under no obligation to make a contribution for the plan year and contributions need not be uniform among participants. The Company recorded contribution expense of \$0.6 million and \$0.8 million for the years ended December 31, 2016, and 2015, respectively. No contribution was made for the year ended December 31, 2017.

15. Contingencies

On July 13, 2017, the Company was named as a defendant in a lawsuit filed in the United States District Court for the Middle District of Florida. The plaintiff in the case alleges that the Company infringed upon certain copyrights, misappropriated trade secrets, breached contracts, and violated the Florida Deceptive and Unfair Trade Practices Act in connection with the Company's Ignite products. The plaintiff seeks damages in an unspecified amount, plus the recovery of its costs and attorneys'

fees incurred in the suit. The Company believes that it has meritorious defenses against the asserted claims and is no longer offering the afore mentioned products for sale. A preliminary injunction against the Company was entered and the appeal is pending. The Company has reserved an immaterial amount which it determined to be commensurate with the liability, damage and coverage issues presented by the subject claims at this early stage of the pending lawsuit. It is also not currently possible to reasonably estimate the amount or range of any amounts that the Company may be required to pay as damages in the event that liability is found against the Company in excess of the amount reserved without plaintiff providing more detail on its claims and without expert discovery on the damage and apportionment issues presented by the claims.

From time to time, the Company and its subsidiaries receive inquiries from foreign, federal, state and local regulatory authorities or are named as defendants in various legal actions that are incidental to our business and arise out of or are related to claims made in connection with our marketing practices, customer and vendor contracts and employment related disputes. We believe that the resolution of these investigations, inquiries or legal actions will not have a material adverse effect on our financial position, marketing practices or results of operations. There were no material legal matters for which a loss was reasonably possible or probable and estimable at December 31, 2017 other than the item noted above.

16. Quarterly Results for 2017 and 2016 (UNAUDITED)

	Quarter Ended				
	<i>(in thousands, except per share amounts)</i>				
	March 31,	June 30,	September 30,	December 31,	Total Year
2017					
Revenue	\$185,118	\$186,731	\$188,567	\$188,845	\$ 749,261
Income from operations	\$20,542 (1)	\$22,998	\$23,602	\$21,473 (2)	\$ 88,615
Net income	\$6,518 (3)	\$8,046 (4)	\$8,300	\$30,765 (5)	\$ 53,629
Basic EPS	\$0.13	\$0.16	\$0.17	\$0.65	\$ 1.10
Diluted EPS	\$0.13	\$0.16	\$0.16	\$0.62	\$ 1.06
2016					
Revenue	\$144,798	\$187,818	\$190,686	\$187,203	\$ 710,505
Income from operations	\$6,912 (6)	\$7,578	\$18,093 (7)	\$12,121 (8)	\$ 44,704
Net income (loss)	\$337	\$(1,606)	\$3,346	\$1,913 (9)	\$ 3,990
Basic EPS (loss)	\$0.01	\$(0.03)	\$0.07	\$0.04	\$ 0.08
Diluted EPS (loss)	\$0.01	\$(0.03)	\$0.07	\$0.04	\$ 0.08

- (1) On January 31, 2017, the Company acquired 100% of the outstanding shares of DonWeb. The Company paid approximately \$8.6 million at closing. The Company may pay the seller additional consideration of up to \$2.0 million on January 31, 2021, present valued to \$1.7 million as of the acquisition date, for total consideration of \$10.3 million. Transaction costs associated with the acquisition were not significant.
- (2) On November 1, 2017, the Company acquired certain assets and liabilities of Acquisio, Inc., a provider of online advertising management. The Company paid approximately \$8.7 million from acquisition closing through December 31, 2017. Additionally, the Company may pay additional consideration of up to approximately \$0.6 million. Transaction costs associated with the acquisition were not significant.
- (3) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$0.1 million from writing down domain name inventory.
- (4) The Consolidated Statement of Comprehensive Income includes restructuring charges of \$0.4 million associated with adjusting the estimated real estate taxes on a portion of our New York, New York office lease space that was previously vacated which was exited in December 2016.
- (5) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$0.2 million from abandoning certain technology and restructuring charges of approximately \$0.5 million for an early lease termination payment related to the Herndon, VA facility. In the fourth quarter ended December 31, 2017, the Company recorded a tax benefit of \$17.8 million primarily from adopting provisions of the Act.
- (6) On March 9, 2016, the Company acquired 100% of the outstanding shares of Yodle, Inc. and paid approximately \$300.3 million adjusted for, among other things, Yodle's cash and outstanding debt and transaction related expenses. In addition to the consideration, the Company incurred approximately \$3.9 million of acquisition-related transaction expenses which are reflected in the General and Administrative line item of the Consolidated Statement of Comprehensive Income.
- (7) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$2.0 million from writing down domain name inventory.
- (8) The Consolidated Statement of Comprehensive Income includes an asset impairment charge of \$7.1 million for leasehold improvements that were abandoned as part of exiting the operating lease acquired in the March 2016 Yodle acquisition. In addition, there is \$1.6 million of restructuring charges that were recorded during the fourth quarter ended December 31, 2016, which primarily consists of the estimated expense for lease obligations offset by sublease income expected.
- (9) Included in the fourth quarter ended December 31, 2016 is the reversal of \$2.4 million respectively, of valuation allowance for certain U.S. federal and state deferred tax assets, which contributed to the Company recording income tax expense of \$2.3 million.

17. Accumulated Other Comprehensive Loss

The components of accumulated other comprehensive loss are as follows (in thousands):

	<u>December 31, 2017</u>	<u>December 31, 2016</u>
Foreign currency translation adjustments	\$ (4,503)	\$ (4,019)
Unrealized gains on investments	—	(1)
Total accumulated other comprehensive loss	<u>\$ (4,503)</u>	<u>\$ (4,020)</u>

18. Related Party Transactions

Effective February 6, 2015, the Company elected Mr. John A. Giuliani to serve on its Board of Directors. Mr. Giuliani serves as President, Chief Executive Officer and Director of Conversant, a personalized digital marketing platform, which was sold to AllianceData in December 2014. Mr. Giuliani joined Conversant after the acquisition of Dotomi, a dynamic display ad optimization company, where he had served as Chief Executive Officer. The Company incurred \$0.6 million, \$0.7 million and \$0.9 million of expense related to services provided by Conversant during the years ended December 31, 2017, 2016 and 2015, respectively.

19. Restructuring

Restructuring charges of \$1.3 million and \$3.6 million and \$0.6 million were incurred during the years ended December 31, 2017, 2016 and 2015, respectively. The restructuring expense for the year ended December 31, 2017 included \$0.8 million of primarily lease restructuring costs from adjusting the estimated real estate taxes on a portion of our New York, New York office lease space that was previously vacated which was exited in December 2016 and severance expense associated with the elimination of certain Yodle positions. An additional \$0.5 million in expense resulted from an early lease termination payment for an office in Herndon, Virginia. The lease restructuring costs and severance expense from terminating certain positions associated with Yodle for the year ended December 31, 2016 were \$1.4 million and \$2.2 million, respectively.

20. Asset Impairments

The Company recorded \$0.3 million in asset impairment charges during the year ended December 31, 2017. The charges included \$0.2 million for the impairment of certain technology and \$0.1 million of asset impairment charges related to domain name inventory. During the year ended December 31, 2016, asset impairment charges of \$9.1 million resulted from a \$7.1 million charge for the impairment of leasehold improvements, furniture and fixtures, and office equipment due to exiting a portion of the Yodle offices leased in New York and a \$2.0 million charge related to domain name inventory.

2. Financial Statement Schedules

The information required by Schedule II, Valuation and Qualifying Accounts, is included in the Consolidated Financial Statements. All other financial statement schedules are not applicable.

3. Exhibits.

INDEX OF EXHIBITS

Exhibit No.	Description of Document
2.1	Agreement and Plan of Merger and Reorganization dated June 26, 2007 by and among the Company, Augusta Acquisition Sub, Inc., and Web.com, Inc. (1)
2.2	Purchase Agreement among the Company, Register.com GP (Cayman) Ltd, each seller named therein and Register.com (Cayman) Limited Partnership, dated June 17, 2010. (2)
2.3	Purchase Agreement among Web.com Group, Inc., Net Sol Holdings LLC and GA-Net Sol Parent, LLC, dated August 3, 2011. (3)
2.4	Agreement and Plan of Merger dated February 11, 2016 by and among the Company, Barton Creek Web.com, LLC and Yodle, Inc. (22)
2.5	Amendment No. 1, dated as of March 9, 2016, by and among Yodle, Inc., a Delaware corporation Web.com Group Inc., a Delaware corporation, Barton Creek Web.com, LLC, a Delaware corporation and wholly owned subsidiary of Parent, and Shareholder Representative Services LLC, a Colorado limited liability company. (24)
3.1	Amended and Restated Certificate of Incorporation of the Web.com Group, Inc. (4)
3.2	Amended and Restated Bylaws of Web.com, Group, Inc. (5)
3.3	Certificate of Ownership and Merger of Registration (6)
4.1	Reference is made to Exhibits 3.1 and 3.2
4.2	Specimen Stock Certificate. (6)
4.3	Indenture dated August 14, 2013 between the Company and Wells Fargo Bank, National Association, as Trustee. (7)
4.4	First Supplemental Indenture, dated August 14, 2013, between the Company and Wells Fargo Bank, National Association, as Trustee (including the form of 1.00% Senior Convertible Notes due 2018). (7)
10.2	2005 Equity Incentive Plan and forms of related agreements. (4)†
10.3	2005 Non-Employee Directors' Stock Option Plan and forms of related agreements. (4)†
10.4	2005 Employee Stock Purchase Plan. (4)†
10.5	Form of Indemnity Agreement entered into between the Company and certain of its officers and directors. (4)
10.6	Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under Web.com Group, Inc. 2008 Equity Incentive Plan. (5)†
10.7	Executive Severance Benefit Plan (8)†
10.8	2008 Equity Incentive Plan. (9)†
10.9	2008 Equity Incentive Plan forms of related agreements. (10) †
10.10	2009 Inducement Award Plan and form of related Option Grant Notice. (11)†
10.11	2010 Inducement Award Plan and related agreements. (12)†
10.12	2011 Inducement Award Plan. (13)†
10.13	Company Supplemental Executive Retirement Plan. (14)†
10.14	Company Non-Qualified Deferred Compensation Plan. (14)†
10.15	Trust Agreement between the Company and Reliance Trust Company. (14)†
10.16	Amended and Restated Employment Agreement between the Company and David L. Brown. (15)†
10.17	Amended and Restated Employment Agreement between the Company and Kevin M. Carney. (15)†
10.18	Amendment to Employment Arrangement with Jason Teichman. (16)†
10.19	Compensatory Arrangements of certain officers. (17)†
10.20	Lease agreement dated December 4, 2007 between the Company and FDG Flagler Center I, LLC (18)
10.21	Amended and Restated First Lien Credit Agreement, dated March 6, 2013. (19)
10.22	Web.com Group, Inc. 2014 Equity Incentive Plan. (20)

10.23	Credit Agreement, dated as of September 9, 2014, by and among Web.com Group, Inc., the several banks and other financial institutions or entities from time to time parties thereto, JPMorgan Chase Bank, N.A. and SunTrust Bank., as co-syndication agents, Regions Bank, Fifth Third Bank, Bank of America, N.A., Barclays Bank plc, Wells Fargo Bank, National Association, Royal Bank of Canada, Deutsche Bank Securities Inc. and Compass Bank, as co-documentation agents, and JPMorgan Chase Bank, N.A., as administrative agent. (21)
10.24	Amendment to Credit Agreement, dated as of February 17, 2016, by and among the Company, the guarantors party thereto, JPMorgan Chase Bank, N.A., as administrative agent and the lenders party thereto. (22)
10.25	Web.com Group, Inc. 2017 Acquisio Inducement Award Plan (25)
10.26	Web.com Group, Inc. 2017 DonWeb Inducement Award Plan (26)
10.27	Web.com Group, Inc. 2016 Inducement Award Plan (27)
10.28	Yodle, Inc. 2007 Equity Incentive Plan (28)
21.1	Subsidiaries of the Company.
23.1	Consent of Ernst & Young, LLP, Independent Registered Certified Public Accounting Firm.
24.1	Power of Attorney (included in the signature page hereto).
31.1	Chief Executive Officer Certification required by Rule 13a-14(a) or Rule 15d-14(a).
31.2	Chief Financial Officer Certification required by Rule 13a-14(a) or Rule 15d-14(a).
32.1	Certifications of Chief Executive Officer and Chief Financial Officer required by Rule 13a-14(b) or Rule 15d-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350). (23)
EX-101.INS	XBRL Instance Document.*
EX-101.SCH	XBRL Taxonomy Extension Schema Document.*
EX-101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.*
EX-101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.*
EX-101.LAB	XBRL Taxonomy Extension Label Linkbase Document.*
EX-101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.*

- (1) Filed as an Exhibit to the Company's current report on Form 8-K (000-51595), filed with the SEC on June 27, 2007, and incorporated herein by reference.
- (2) Filed as an Exhibit to the Company's quarterly report on Form 10-Q (000-51595), filed with the SEC on August 4, 2010, and incorporated herein by reference.
- (3) Filed as Annex A to the Company's definitive proxy statement on Schedule 14A, filed with the SEC on September 22, 2011, and incorporated herein by reference.
- (4) Filed as an Exhibit to the Company's registration statement on Form S-1 (333-124349), filed with the SEC on April 27, 2005, as amended, and incorporated herein by reference.
- (5) Filed as an Exhibit to the Company's current report on Form 8-K (000-51595), filed with the SEC on February 10, 2009, and incorporated herein by reference.
- (6) Filed as an Exhibit to the Company's current report on Form 8-K (000-51595), filed with the SEC on October 30, 2008, and incorporated herein by reference.
- (7) Filed as an Exhibit to the Registrant's current report on Form 8-K (000-51595), filed with the SEC on August 14, 2013, and incorporated herein by reference.
- (8) Filed as an Exhibit to the Company's registration statement report on Form S-1 (333-124349), filed with the SEC on June 8, 2005.
- (9) Filed as Appendix B to the Company's proxy statement on Schedule 14A, filed with the SEC on April 14, 2008, and incorporated herein by reference.
- (10) Filed as an Exhibit to the Company's annual report on Form 10-K (000-51595), filed with the SEC on March 6, 2013, and incorporated herein by reference.

- (11) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-158819), filed with the SEC on April 27, 2009, and incorporated herein by reference.
- (12) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-168641), filed with the SEC on August 9, 2010, and incorporated herein by reference.
- (13) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-177610), filed with the SEC on October 31, 2011, and incorporated herein by reference.
- (14) Filed as an Exhibit to the Company's quarterly report on Form 8-K (000-51595), filed with the SEC on June 19, 2012.
- (15) Filed as an Exhibit to the Company's current report on Form 8-K (000-51595), filed with the SEC on March 11, 2011, and incorporated herein by reference.
- (16) Incorporated by reference to Item 5.02 of the Current Report on Form 8-K, filed with the SEC on September 30, 2013, with respect to salary increase for Mr. Teichman (SEC File No. 000-51595).
- (17) Filed as Item 5.02 to the Company's current report on Form 8-K (000-51595), filed with the SEC on February 7, 2018.
- (18) Filed as an exhibit to the Company's quarterly report on Form 10-Q (000-51595), filed with the SEC on May 12, 2008, and incorporated herein by reference.
- (19) Filed as an exhibit to the Company's current report on Form 8-K (000-51595), filed with the SEC on March 6, 2013.
- (20) Filed as Appendix A to the Registrant's Proxy Statement on Schedule 14A, filed with the SEC on March 28, 2014, and incorporated by reference.
- (21) Filed as an Exhibit to the Registrant's current report on Form 8-K (000-51595), filed with the SEC on September 10, 2014, and incorporated herein by reference.
- (22) Filed as an Exhibit to the Registrant's current report on Form 8-K (000-51595), filed with the SEC on February 11, 2016, and incorporated herein by reference.
- (23) The certification attached as Exhibit 32.1 accompanying this Annual Report on Form 10-K, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Web.com Group, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.
- (24) Filed as an Exhibit to the Registrant's current report on Form 8-K (000-51595), filed with the SEC on March 11, 2016, and incorporated herein by reference.
- (25) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-221383), filed with the SEC on November 7, 2017, and incorporated herein by reference.
- (26) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-215843), filed with the SEC on January 31, 2017, and incorporated herein by reference.
- (27) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-210047), filed with the SEC on March 9, 2016, and incorporated herein by reference.
- (28) Filed as an Exhibit to the Company's registration statement on Form S-8 (333-210047), filed with the SEC on March 9, 2016, and incorporated herein by reference.
- (29) Incorporated by reference to Exhibit 10.2 to Interland, Inc.'s current report on Form 8-K (No. 000-17932), filed with the SEC on November 7, 2005.
- (30) Incorporated by reference to Exhibit 10.136 to Web.com's current report on Form 8-K (No. 000-17932), filed with the SEC on April 3, 2006.

†
*

Management contract or compensatory plan or arrangement.
The XBRL information is being furnished with this Form 10-K, not filed.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Web.com Group, Inc.
(Registrant)

February 23, 2018

Date

/s/ Kevin M. Carney

Kevin M. Carney
Chief Financial Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David L. Brown and Kevin M. Carney, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution for him, and in his name in any and all capacities, to sign any and all amendments to this Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1934, this report has been signed by the following persons on behalf of the Registrant in the capacities indicated on February 23, 2018:

<u>Name</u>	<u>Title</u>
<u>/s/ David L. Brown</u> David L. Brown	Chairman, President, Chief Executive Officer (Principal Executive Officer)
<u>/s/ Kevin M. Carney</u> Kevin M. Carney	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ Timothy I. Maudlin</u> Timothy I. Maudlin	Lead Director
<u>/s/ Timothy P. Cost</u> Timothy P. Cost	Director
<u>/s/ Hugh M. Durden</u> Hugh M. Durden	Director
<u>/s/ Philip J. Facchina</u> Philip J. Facchina	Director
<u>/s/ John Giuliani</u> John Giuliani	Director
<u>/s/ Robert S. McCoy, Jr.</u> Robert S. McCoy, Jr.	Director
<u>/s/ Deborah H. Quazzo</u> Deborah H. Quazzo	Director

<u>Subsidiaries of the Registrant</u>	<u>State (or jurisdiction) incorporated</u>
Acquisio Web.com, ULC	Canada
Dattatec.com SRL	Argentina
Enable Media Limited	United Kingdom
Franchise Website Solutions, LP	Delaware
Monster Commerce, LLC	California
NameJet, LLC	Delaware
NameSecure, LLC	Delaware
NCIT S.R.L	Argentina
Network Solutions, LLC	Delaware
New Ventures Services, Corp.	British Virgin Islands
Register.com, Inc.	Delaware
RPI, Inc.	Delaware
SnapNames Web.com, LLC	Oregon
TLDS, LLC	Delaware
Touch Local Limited	United Kingdom
Web.com Canada, Inc.	Canada
Web.com Group, Inc.	Delaware
Web.com Holding Company, Inc.	Delaware
Yodle Web.com, Inc.	Delaware

Consent of Independent Registered Certified Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements:

- 1) Registration Statement (Form S-8 No. 333-135101) pertaining to the 2005 Equity Incentive Plan, 2005 Non-Employee Directors' Stock Option Plan, and 2005 Employee Stock Purchase Plan of Web.com Group, Inc.,
- 2) Registration Statement (Form S-8 No. 333-150872) pertaining to the 2008 Equity Incentive Plan of Web.com Group, Inc.,
- 3) Registration Statement (Form S-8 No. 333-186271) pertaining to the 2008 Equity Incentive Plan of Web.com Group, Inc.,
- 4) Registration Statement (Form S-3 No. 333-179553) of Web.com Group, Inc. and in the related Prospectus,
- 5) Registration Statement (Form S-8 No. 333-177610) pertaining to the 2011 Inducement Award Plan of Web.com Group, Inc.,
- 6) Registration Statement (Form S-8 No. 333-168641) pertaining to the 2010 Inducement Award Plan of Web.com Group, Inc.,
- 7) Registration Statement (Form S-8 No. 333-158819) pertaining to the 2009 Inducement Award Plan of Web.com Group, Inc.,
- 8) Registration Statement (Form S-8 No. 333-148848) pertaining to the Website Pros, Inc. 2005 Equity Incentive Plan, Website Pros, Inc. 2005 Non-Employee Directors' Stock Option Plan and Website Pros, Inc. 2005 Employee Stock Purchase Plan,
- 9) Registration Statement (Form S-8 No. 333-129406) pertaining to the 2005 Equity Incentive Plan, 2005 Non-Employee Directors' Stock Option Plan, and 2005 Employee Stock Purchase Plan of Web.com Group, Inc.,
- 10) Registration Statement (Form S-8 No. 333-188223) pertaining to the 2005 Equity Incentive Plan and 2005 Non-Employee Directors' Stock Option Plan of Web.com Group, Inc.,
- 11) Registration Statement (Form S-3 No. 333-190479) of Web.com Group, Inc. and in the related Prospectus,
- 12) Registration Statement (Form S-8 No. 333-196205) pertaining to the Web.com Group, Inc. 2014 Equity Incentive Plan,
- 13) Registration Statement (Form S-3 No. 333-198308) of Web.com Group, Inc. and in the related Prospectus,
- 14) Registration Statement (Form S-8 No. 333-210047) pertaining to the Web.com Group, Inc. 2016 Inducement Award Plan and the Yodle, Inc. 2007 Equity Incentive Plan,
- 15) Registration Statement (Form S-8 No. 333-215843) pertaining to the Web.com Group, Inc. 2017 DonWeb Inducement Award Plan, and
- 16) Registration Statement (Form S-8 No. 333-221383) pertaining to the Web.com Group, Inc. 2017 Acquisio Inducement Award Plan;

of our reports dated February 23, 2018, with respect to the consolidated financial statements of Web.com Group, Inc. and the effectiveness of internal control over financial reporting of Web.com Group, Inc. included in this Annual Report (Form 10-K) of Web.com Group, Inc. for the year ended December 31, 2017.

/s/ Ernst & Young LLP

Jacksonville, Florida
February 23, 2018

CERTIFICATION

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. Section 1350), David L. Brown, Chief Executive Officer of Web.com Group, Inc., a Delaware corporation (the "Company") and Kevin M. Carney, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's annual report on Form 10-K for the period ended December 31, 2017, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Exchange Act, and
2. The information contained in the Period Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

IN WITNESS WHEREOF, the undersigned has set his hand hereto as of February 23, 2018.

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By: /s/ David L. Brown
David L. Brown
Chief Executive Officer and Chairman of the
Board
(Principal Executive Officer)

By: /s/ Kevin M. Carney
Kevin M. Carney
Chief Financial Officer
(Principal Financial and Accounting Officer)

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Web.com Group, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.

CORPORATE INFORMATION

BOARD OF DIRECTORS

David L. Brown
Chairman of the Board

Timothy P. Cost
President, Jacksonville University

Hugh M. Durden
Chair of the Board of Trustees
The Alfred I. DuPont Testamentary Trust

Philip J. Facchina
Partner, SurgCenter Development

John Giuliani
Chief Executive Officer, Conversant

Timothy I. Maudlin
Director, Alteryx, Inc.

Robert S. McCoy, Jr.
Former Vice Chairman and Chief Financial Officer
of Wachovia Corporation

Deborah H. Quazzo
Managing Partner, GSV Acceleration, LLC

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CORPORATE OFFICERS

David L. Brown
Chief Executive Officer and
President

Kevin M. Carney
Executive Vice President and
Chief Financial Officer

Roseann Duran
Executive Vice President
Chief People Officer

Faisal Chughtai
Executive Vice President
Retail and International

Jane Landon
Chief Technology Officer

Denise Lynch
Executive Vice President
Web Brand Networks

Matthew P. McClure
Chief Legal Officer and
Secretary

Vikas Rijsinghani
Executive Vice President
Premium Services

Gregory Wong
Senior Vice President
Corporate Development

INVESTOR'S INFORMATION

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www.web.com

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Vice President
Investor Relations
Ira.Berger@web.com

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Jacksonville, FL 32258
www.ey.com

Legal Counsel
Cooley LLP
1114 Avenue of the Americas
New York, NY 10036
www.cooley.com

Stock Transfer Agent and Registrar
Computershare
250 Royal Street
Canton, MA 02021
www.computershare.com

Stock Exchange
NASDAQ
Symbol: WEB
www.nasdaq.com

***2018 Annual Meeting
of Stockholders***
Wednesday, May 9, 2018
10:30 a.m. (EST)
Corporate Headquarters

EXHIBIT RM-10

Web.com acquires Network Solutions for \$405M plus stock

J. O'DELL AUGUST 3, 2011 1:37 PM



Web.com is buying Network Solutions, a domain registration company dating back to the 1970s and the origins of the Internet.

The terms of the deal include \$405 million in cash plus 18 million shares of Web.com stock.

At current share prices, that puts the total value of the deal at \$560.8 million. Web.com, a publicly traded company focusing on website-building and online

marketing tools for small and medium-size businesses, will also be taking on Network Solutions' existing debt.

Network Solutions CEO Tim Kelly spoke to VentureBeat today, saying that the companies would operate jointly after the deal closes, which would bring the combined entities to greater scale and help them compete against powerful relative newcomers such as GoDaddy.

"We realized there was a huge opportunity to put the companies together to create scale as more and more small businesses are getting online," said Kelly. "Those adoption curves are increasing dramatically, and by putting our companies together, we can increase our competitiveness."



Network Solutions CEO Tim Kelly

The deal is expected to close in the fall. At that time, current Network Solutions shareholders will own around 37 percent of Web.com. The combined companies will serve around 3 million customers, manage in excess of 9 million domains and employ close to 2,000 professionals around the world.

With specific regard to GoDaddy, the current leading registrar that controls around 45 million domains, Kelly said, "We will have an ability to recreate our brand with a higher degree of marketing support; that's one of the reasons we're so excited about this opportunity."

As far as regulatory approval is concerned, “We’re obviously prepared to go through all the regulatory procedures, but we’re not expecting anything out of the ordinary,” Kelly said.

In a statement, Web.com and Network Solutions said they expected to be on track for \$450 million in pro forma, combined, non-GAAP revenues for 2011. The companies also say the specific market they’re targeting — web services for SMBs — is a \$19 billion market.

One month ago, GoDaddy — the company to beat in domain registration — was acquired by private equity firms for \$2.25 billion. GoDaddy CEO Bob Parsons said at the time the registrar planned to use the cash infusion to expand internationally, grow its partnerships, make some acquisitions and hire more talent.

With large amounts of cash and marketing power behind both Network Solutions and GoDaddy, it will be interesting to watch the battle of the domain registrars as it continues.

EXHIBIT RM-11

RADIX IN THE NEWS

.FUN has just begun!

Radix Asia's largest new gTLD applicant to ICANN with a portfolio of over 9 new domain extensions has announced the launch of .FUN which is now available on 100+ registrar websites for \$12 - \$20 per domain name. It is the 2nd domain extension launched by Radix in the last one year. Radix had launched .STORE in June 2016.

Various brands and celebs have already reserved their .FUN domain name during the Sunrise phase including sillyputty.fun by Crayola swift.fun by Apple beyonce.fun by BGK Trademark Holdings and jackdaniels.fun by Brown-Forman Corporation. Fantastic generic domains available at standard prices like letshave.fun thisis.fun themepark.fun and swipe.fun were also booked in the Early Access Phase (EAP) along with premium priced names like adrenaline.fun. Brands such as Lamborghini and Rolls Royce too reserved lamborghini.fun and rollsroyce.fun domain names respectively in this phase.

.FUN is the first and only 3-letter domain extension owned by Radix. In October 2016 Radix acquired the rights to .FUN from Oriental Trading Company a party supplies brand owned by Warren Buffet's Berkshire Hathaway. Radix invested in acquiring .FUN owing to its broad potential in the media and entertainment (M&E) industry

comprising of filmed entertainment (motion pictures television & videos) music publishing and video games. The U.S. M&E market which represents a third of the global industry and is the largest M&E market worldwide is expected to reach \$771 billion by 2019 up from \$632 billion in 2015 as per a report by PwC. The UK sector on the other hand is expected to be worth £68.2 billion by 2020 overtaking Germany in 2017 to become the largest market in Europe Middle East and Africa (EMEA). Thus .FUN has great opportunity across geographies given the promising growth trends of the industry.

Speaking about the launch Sandeep Ramchandani VP & Business Head Radix said “After the success of .ONLINE .TECH .STORE .PRESS and .SPACE we decided to add .FUN to our portfolio. Our market research indicated that a short brandable and relevant domain extension like .FUN would be in demand by celebrities standup comics bloggers media companies TV shows & movies authors & books games and any and every brand working towards creating memorable content or experiences for end-consumer.” .FUN is expected to be a preferred domain extension for corporate brands looking to showcase their fun side thus opening up a casual and more free channel of communication with its customer-base added Ramchandani.

About Radix:

Started in 2012 Radix is world s 3rd largest domain portfolio registry and Asia s largest gTLD applicant to ICANN. Radix is part of the Directi Group which is currently valued at \$1.4 billion. Radix has been an active participant in ICANN s process to expand the internet naming system and has obtained the rights to operate over 10 new gTLDs (generic Top Level Domains) including .ONLINE .STORE .TECH .WEBSITE .SPACE .PRESS .SITE .HOST and .FUN.

For more details, please get in touch:

Swati Maheshwari PR & Communication Radix Registry Cell: +91 90046 93309
swatim@radix.email (mailto:swatim@radix.email)

PRESS CONTACT

press@radix.email

EXHIBIT RM-12

The logo for Donuts Inc. features the word "donuts" in a bold, lowercase, blue sans-serif font, followed by "inc" in a smaller, lowercase, grey sans-serif font.

Select from Hundreds of Choices

Our fresh, relevant new domain names provide variety and choice to easily manage and amplify your digital identity.

Featured TLDs

.life

.social

.games

.today

.solutions

.LIVE

.agency

All TLDs

Business

.limited .ltd .management .network .partners .sarl .services

.solutions .ventures .support .associates .business .careers .center

.company .enterprises .gmbh .group .industries .international

🏢 Enterprise (xn--vhquv)

EXHIBIT RM-13



Annual Report
2017

United Internet AG

Elgendorfer Straße 57
56410 Montabaur
Germany

www.united-internet.com

Annual Report 2017

HIGHLIGHTS 2017



02 / 17

Strato takeover approved
The German Federal Cartel Office ("Bundeskartellamt") approves the planned takeover of Strato by United Internet. The transaction goes ahead as planned and Strato is included in the consolidated accounts as of April 1, 2017.

03 / 17

Minority shareholding in rankingCoach
In the course of a capital increase, United Internet acquires a stake of around 30% in rankingCoach, a leading provider of cloud-based online marketing solutions.



05 / 17

United Internet and Drillisch announce strong fourth player in the German TC market
United Internet and Drillisch enter into a business combination agreement governing the step-by-step acquisition of 1&1 Telecommunication by Drillisch under the umbrella of United Internet.



07 / 17

Complete takeover of ProfitBricks
United Internet acquires the cloud hosting specialist ProfitBricks. As a result, United Internet expands its leading position in Europe for cloud hosting and adds an innovative enterprise cloud platform to its product range.

08 / 17

United Internet and Axel Springer create leading affiliate network in Europe
As part of the transaction, United Internet contributes its affiliate marketing business operated by affilinet to AWIN in return for 20% of AWIN shares. The merger enables United Internet and Axel Springer to significantly strengthen their competitive standing in affiliate marketing.

09 / 17

United Internet and Drillisch successfully complete overall transaction
1&1 Telecommunication is now a wholly-owned subsidiary of Drillisch. At the same time, United Internet's stake in Drillisch rises to over 73% after receiving new Drillisch shares.

10 / 17

New partners for 1&1 Open Access platform
The 1&1 platform links the fiber-optic networks of regional providers with 1&1's fiber-optic network to create a shared infrastructure. After wilhelm.tel, M-net and NetCologne, a new partner is added with R-KOM.

11 / 17

Best TecDAX annual report
The Annual Report 2016 of United Internet AG is once again honored as the best report of a TecDAX-listed company in a rating conducted by business magazine "Bilanz".



MULTI-PERIOD OVERVIEW OF GROUP'S KEY FIGURES

Earnings position in € million	2013	2014	2015	2016 ⁽¹⁾	2017 ⁽¹⁾
Sales	2,655.7	3,065.0	3,715.7	3,808.1	4,206.3
EBITDA	406.9	551.5 ⁽²⁾	757.2 ⁽³⁾	835.4	979.6 ⁽⁴⁾
EBITDA margin	15.3 %	18.0 %	20.4 %	21.9 %	23.3 %
EBIT	312.2	430.6 ⁽²⁾	541.7 ⁽³⁾	642.7	705.9 ⁽⁴⁾
EBIT margin	11.8 %	14.0 %	14.6 %	16.9 %	16.8 %

- (1) After deconsolidation of affilinet in 2017; prior-year figures adjusted
(2) Without one-off income from Versatel acquisition and portfolio optimization (EBITDA and EBIT effect: € +186.1 million)
(3) Without one-off income from sale of Goldbach shares and part of stake in virtual minds (EBITDA and EBIT effect: € +14.0 million)
(4) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million) and without M&A transaction costs (EBITDA and EBIT effect: € -17.1 million), without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million), and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Financial position in € million	2013	2014	2015	2016	2017
Operative cash flow	280.1	380.6	554.5	644.2	656.4
Cash flow from operating activities	268.3	454.0 ⁽²⁾	533.2 ⁽³⁾	587.0 ⁽⁴⁾	655.7 ⁽⁵⁾
Cash flow from investing activities	-207.8	-1,349.8	-766.0	-422.7	-897.7
Free cash flow ⁽¹⁾	211.6	386.6 ⁽²⁾	300.5 ⁽³⁾	423.0 ⁽⁴⁾	424.4 ⁽⁵⁾
Cash flow from financing activities	-59.2	1,240.9	23.1	-43.2	312.2
Cash and cash equivalents on December 31	42.8	50.8	84.3	101.7	238.5

- (1) Free cash flow is defined as net cash inflows from operating activities, less capital expenditures, plus payments from disposals of intangible assets and property, plant and equipment
(2) 2014 without consideration of a capital gains tax payment due to closing-date effects of € 335.7 million
(3) 2015 without consideration of a capital gains tax refund (net) of € 242.7 million and including an income tax payment (originally planned for the fourth quarter of 2015) of around € 100.0 million;
(4) 2016 without consideration of the aforementioned income tax payment (originally planned for the fourth quarter of 2015) of around € 100.0 million
(5) 2017 without consideration of the aforementioned capital gains tax refund (originally planned for the fourth quarter of 2016) of € 70.3 million

Asset position in € million	2013	2014	2015	2016	2017
Total assets	1,270.3	3,673.4	3,885.4	4,073.7	7,605.8
Cash and cash equivalents	42.8	50.8	84.3	101.7	238.5
Shares in associated companies	115.3	34.9 ⁽¹⁾	468.4 ⁽¹⁾	755.5 ⁽¹⁾	418.0
Other financial assets	47.6	695.3 ⁽²⁾	449.0 ⁽²⁾	287.7 ⁽²⁾	333.7 ⁽²⁾
Property, plant and equipment	116.2	689.3 ⁽³⁾	665.2	655.0	747.4 ⁽³⁾
Intangible assets	165.1	385.5 ⁽³⁾	389.5	369.5	1,393.3 ⁽³⁾
Goodwill	452.8	977.0 ⁽⁴⁾	1,100.1 ⁽⁴⁾	1,087.7	3,579.8 ⁽⁴⁾
Liabilities due to banks	340.0	1,374.0 ⁽⁵⁾	1,536.5 ⁽⁵⁾	1,760.7 ⁽⁵⁾	1,955.8 ⁽⁵⁾
Capital stock	194.0	205.0 ⁽⁶⁾	205.0	205.0	205.0
Treasury stock	5.2	35.3	26.3	122.5	189.4
Equity	307.9	1,204.7 ⁽⁶⁾	1,149.8	1,197.8	4,050.6 ⁽⁶⁾
Equity ratio	24.2 %	32.8 %	29.6 %	29.4 %	53.3 %

- (1) Decrease due to contribution of the GFC and EFF funds to Rocket and complete takeover of Versatel (2014); increase due to investment in Drillisch (2015); increase due to investment in Tele Columbus (2016); decrease due to takeover and consolidation of ProfitBricks and Drillisch
(2) Increase due to investment in Rocket (2014), decrease due to sale of Goldbach shares and subsequent valuation of shares in listed companies (2015); decrease due to subsequent valuation of shares in listed companies (2016); increase due to subsequent valuation of shares in listed companies (2017)
(3) Increase due to complete takeover of Versatel (2014); increase due to takeover of Strato, ProfitBricks and Drillisch (2017)
(4) Increase due to complete takeover of Versatel (2014); increase due to takeover of home.pl (2015); increase due to takeover of Strato, ProfitBricks and Drillisch (2017)
(5) Increase due to Rocket investment and takeover of Versatel (2014); increase due to increased stake in Rocket, Drillisch investment, and acquisition of home.pl (2015); increase due to investment in Tele Columbus (2016); increase due to takeover of Strato and increased stake in Drillisch and Tele Columbus (2017)
(6) Increase due to capital increase (2014); increase due to consolidation effects in connection with the Warburg Pincus investment in the Business Applications division and takeover of Strato (2017)

	2017 ⁽¹⁾	2016 ⁽¹⁾
NET INCOME (in € million)		
Sales	4,206.3	3,808.1
EBITDA ⁽²⁾	979.6	835.4
EBIT ⁽²⁾	705.9	642.7
EBT ⁽²⁾	662.1	617.5
BALANCE SHEET (in € million)		
Current assets	823.9	631.4
Non-current assets	6,781.9	3,442.3
Shareholders' equity	4,050.6	1,197.8
Total assets	7,605.8	4,073.7
CASH FLOW (in € million)		
Operative cash flow	656.4	644.2
Cash flow from operating activities ⁽³⁾	655.7	587.0
Cash flow from investing activities	- 897.7	- 422.7
Free cash flow ⁽⁴⁾	424.4	423.0
EMPLOYEES		
Germany	9,414	7,897
Abroad	7,890	6,322
Total	1,524	1,575
Personnel expenses (in € million)	489.0	433.8
SHARE (in €)		
Share price at year-end (Xetra)	57.34	37.10
EPS continued operations	3.06	0.86
EPS continued operations (before PPA) ⁽²⁾	2.34	2.27

Customer contracts in current product lines (in million)	31.12.2017	31.12.2016
Access contracts, total	12.64	8.54
thereof Mobile Internet	8.30	4.31
thereof DSL complete packages (ULL)	4.34	4.23
Business Applications contracts, total	8.02	6.05
thereof "domestic"	4.01	2.34
thereof "foreign"	4.01	3.71
Consumer Applications contracts, total	37.65	36.49
thereof with Premium Mail subscription (contracts)	1.67	1.72
thereof with Value Added subscription (contracts)	0.56	0.48
thereof free accounts	35.42	34.29

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted

(2) Key earnings figures 2017 without revaluation of Drillisch shares/ Profit-Bricks shares (EBITDA/EBIT/EBT effect: € +319.1 million; EPS effect: € +1.59), M&A transaction costs (EBITDA/EBIT/EBT effect: € -17.1 million; EPS effect: € -0.06), restructuring costs offline sales (EBITDA/EBIT/EBT effect: € -28.3 million; EPS effect: € -0.10), trademark write-downs (EBIT/EBT effect: € -20.7 million; EPS effect: € -0.07), financing costs Drillisch (EBT effect: € -4.3 million; EPS effect: € -0.01), writedowns on financial assets, especially Rocket impairment (EBT effect: € -19.8 million; EPS effect: € -0.10), one-off tax effects from Warburg Pincus investment and Drillisch investment (EPS effect: € -0.21); Key earnings figures 2016 without special items from writedowns on financial assets, especially Rocket impairment (EBT effect = € -254.9 million; EPS effect = € -1.25)

(3) Cash flow from operating activities 2017 without capital gains tax refund (originally planned for the fourth quarter of 2016) of € 70.3 million; Cash flow from operating activities 2016 without income tax payment (originally planned for the fourth quarter of 2015) of around € 100.0 million

(4) Free cash flow 2017 adjusted for capital gains tax refund (originally planned for the fourth quarter of 2016) of € 70.3 million; free cash flow 2016 adjusted for income tax payment (originally due in fourth quarter of 2015) of around € 100.0 million

QUARTERLY DEVELOPMENT

in € million	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q4 2016
Sales	952.7	1,001.4	1,054.1	1,198.1	980.0
Cost of sales	-611.2	-661.7	-651.6	-764.6	-614.8
Gross profit	341.5	339.7	402.6	433.4	365.2
Selling expenses	-135.7	-135.3	-162.9	-204.5	-128.7
General and administrative expenses	-42.8	-42.4	-46.7	-53.3	-47.1
Other operating income / expense	2.9	-2.6	296.7	-31.8	-12.8
Operating result	165.9	159.4	489.8	143.9	176.6
Financial result	-7.4	-8.0	-12.3	-13.2	-5.6
Amortization of financial assets	-19.8	0.0	0.0	0.0	0.0
Result from associated companies	0.7	0.5	-5.6	-3.0	0.2
Pre-tax result	139.4	151.9	471.9	127.8	171.2
Income taxes	-48.5	-60.8	-56.1	-77.1	-52.2
Net income	90.9	91.1	415.8	50.7	119.0
Net income after taxes from discontinued operations	1.8	0.8	-0.3	36.3	1.6
Net income (after discontinued operations)	92.7	91.9	415.5	87.0	120.6
Attributable to					
non-controlling interests	1.6	7.9	12.5	14.7	0.1
shareholders of United Internet AG	91.2	84.1	403.0	72.2	120.5
Result per share of shareholders of United Internet AG (in €)					
- undiluted	0.46	0.42	2.02	0.36	0.59
- diluted	0.45	0.42	2.01	0.36	0.59
thereof result per share (in €) - from continued operations					
- undiluted	0.45	0.42	2.02	0.18	0.59
- diluted	0.44	0.42	2.01	0.18	0.58
thereof result per share (in €) - from discontinued operations					
- undiluted	0.01	0.00	0.00	0.18	0.01
- diluted	0.01	0.00	0.00	0.18	0.01

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8.30 million

Mobile internet contracts

Mobility

Success
over 8 million contracts in Business Applications

approx. 23 Mio. customer contracts

90,000 Servers in Europe and USA

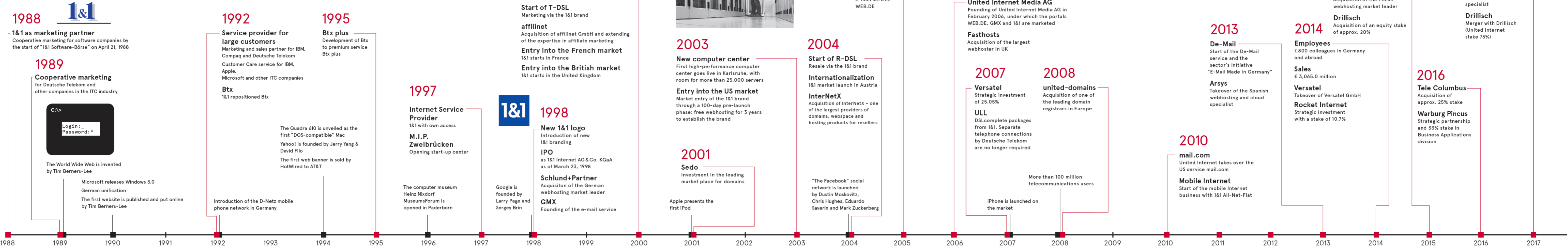
approx. 58 million customer accounts in 12 countries
Internationality

Trust
DSL connections

37.7 million consumer accounts

4.4 million approx.

30 YEARS OF OUR COMPANY'S HISTORY



■ Events United Internet AG
 ■ Events in the world

LETTER TO THE SHAREHOLDERS

Dear shareholders, employees and friends of United Internet,

United Internet AG is looking back on a very successful fiscal year 2017. Once again, we achieved significant growth in customer contract figures, sales, and earnings – in line with guidance.

In addition to this success in our operating business, we successfully concluded the investment of Warburg Pincus in our Business Applications division (February 2017), the complete takeovers of Strato (April 2017) and ProfitBricks (August 2017), and the merger with Drillisch (September 2017) in the past year. In addition, we contributed our subsidiary affilinet GmbH to AWIN AG – controlled by Axel Springer – in exchange for 20% of AWIN shares.

Once again, we invested heavily in new customer relationships, and thus in sustainable growth, in fiscal year 2017. Organic growth in fee-based customer contracts of our current product lines amounted to 0.88 million in 2017. In addition, there were a further 5.22 million customer contracts from the initial consolidation of Drillisch and Strato.

Consolidated sales grew by 10.5% to € 4.206 billion in the fiscal year 2017 (comparable prior-year figure: € 3.808 billion). Revenue contributions from Strato and ProfitBricks (€ 104.0 million), as well as from Drillisch (€ 223.0 million), were offset in part by burdens on sales from regulation effects (€ - 44.5 million) and negative currency effects (€ - 8.2 million).

Operating earnings before interest, taxes, depreciation and amortization (EBITDA) rose by 17.3% to € 979.6 million (comparable prior-year figure: € 835.4 million). This figure was impacted by new earnings contributions from Strato and ProfitBricks (€ 39.7 million), as well as Drillisch (€ 56.8 million), and – with an opposing effect – by regulation effects and costs for the Telefónica DSL migration (€ - 17.1 million), and negative currency effects (€ - 3.5 million).

In addition, EBITDA was influenced by a positive net extraordinary result of € 273.7 million. This figure results from one-off, non-cash-effective extraordinary income from the Drillisch acquisition (due to the revaluation of Drillisch shares acquired before the complete transaction was closed) and the complete takeover of ProfitBricks (due to the revaluation of previously held ProfitBricks shares), as well as opposing transaction and restructuring costs.

Operating earnings before interest and taxes (EBIT) rose by 9.8% to € 705.9 million (comparable prior-year figure: € 642.7 million). The lower percentage growth compared to EBITDA results from increased purchase price allocation (PPA) amortization from the takeovers of Strato and Drillisch.

Letter to shareholders

CEO Interview

Report of the
Supervisory Board

EBIT was also improved by the above mentioned extraordinary result of € 273.7 million in total. There was an opposing effect for this item from the trademark writedowns of a Group subsidiary totaling € 20.7 million.

Including all above mentioned extraordinary effects, EBITDA rose to € 1,253.3 million and EBIT to € 958.9 million.

Operating earnings per share (EPS) before PPA amortization, resulting in particular from the Versatel, Strato and Drillisch takeovers, amounted to € 2.34 (comparable prior-year figure without Rocket impairments: € 2.27). In addition, there was a net positive impact on EPS in the reporting period from the above mentioned extraordinary result (EPS effect: € 1.43) and – with an opposing effect – from trademark writedowns (EPS effect: € -0.07), financing costs in connection with the total Drillisch transaction (EPS effect: € -0.01), Rocket impairments (EPS effect: € -0.10), as well as one-off tax effects from the Warburg Pincus investment in the Business Applications division and the Drillisch takeover (EPS effect: € -0.21). All in all, EPS from continued operations rose from € 2.27 in the previous year to € 3.38.

We would also like our shareholders to participate in this strong operating result and will therefore propose an increase in the dividend to € 0.85 per share (prior year: € 0.80) at the Annual Shareholders' Meeting in May. Based on 199.9 million shares with dividend entitlement (as of December 31, 2017), this would result in a dividend payout of € 169.9 million for the fiscal year 2017.

We will continue to pursue our business policy geared toward sustainable growth also in the future. For example, we expect to add approximately 1.2 million DSL and mobile internet contracts in our Consumer Access business in 2018. The key growth drivers will be coordinated branding, an increased marketing budget, and much stronger use of subsidized smartphones (mostly without initial additional payment), also when sold via GMX and WEB.DE, as well as the discount brands of 1&1 Drillisch (smartmobil.de, yourfone, winSIM etc.). This affects both new and existing customers. Further growth is also expected in the Business Access and Business Applications segments in 2018.

In May 2014, the International Accounting Standards Board (IASB) published the standard IFRS 15 "Revenue from Contracts with Customers". Application is mandatory in reporting periods beginning on or after January 1, 2018.

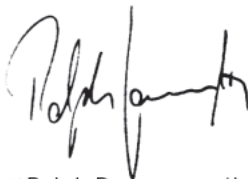
Sales according to IFRS 15 are expected to rise to approx. € 5.2 billion in fiscal year 2018 (prior year: € 4.206 billion). In addition to planned organic growth and the full-year consolidation of Strato, ProfitBricks and Drillisch, this revenue growth will result from the above mentioned increased use of subsidized smartphones in connection with earlier recognition of hardware sales according to IFRS 15 (sales effect: approx. € 200 million).

Consolidated EBITDA of approx. € 1.2 billion is anticipated (prior year: € 979.6 million). This figure includes a burden on earnings of approx. € 300 million from additional smartphone subsidies (refinanced via higher tariff prices) and – with an opposing positive effect – approx. € 300 million from accounting according to IFRS 15. EBITDA will also include approx. € 50 million in synergy effects from the merger with Drillisch, especially via savings from the joint procurement of wholesale network services and smartphones. These savings will be offset by approx. € 50 million for the increased marketing budget and changes in the ad space monetization of GMX and WEB.DE. In addition, the EBITDA forecast includes approx. € 50 million one-off expenses for integration projects.

We are well prepared for the next steps in our company's development and are upbeat about our future prospects. In view of the past year and the challenges that lie ahead, we would like to express our particular gratitude to all employees for their dedicated efforts as well as to our shareholders and customers for the trust they continue to place in United Internet AG.

Montabaur, March 2018

Der Vorstand



Ralph Dommermuth



Frank Krause



Jan Oetjen

„Our key performance figures for customer contracts, sales and earnings all made good progress in the past year. In addition to organic growth, our transactions also had a positive impact – especially the takeover of Strato and merger with Drillisch. We have become significantly stronger and sharpened our competitive edge.“

RALPH DOMMERMUTH

Letter to shareholders

 CEO Interview

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 Supervisory Board

MANAGEMENT

RALPH DOMMERMUTH

Vorstandsvorsitzender (seit 1988)

Ralph Dommermuth (born in 1963) laid the foundation for today's United Internet AG with the formation of 1&1 EDV Marketing GmbH in 1988. He originally offered systemized marketing services for smaller software suppliers. He later developed additional marketing services for major clients, such as IBM, Compaq and Deutsche Telekom. With the advent of the internet, Ralph Dommermuth subsequently phased out these marketing services for third parties and began developing the company's own internet services and direct customer relationships. In 1998 the qualified banker took 1&1 to the stock exchange. It was the first IPO of an internet company in Germany. In 2000, Ralph Dommermuth restructured 1&1 as United Internet AG and built the company into a leading European internet specialist.



FRANK KRAUSE

CFO since 2015

Frank Krause (born in 1965) has been a member of the Management Board of United Internet AG since June 1, 2015 and is responsible as CFO for Finance, Corporate Controlling & Accounting, Tax, Investment Management, Investor Relations, Legal, Corporate Governance, Compliance, Risk Management, Corporate Audit, Procurement and Human Resources. In his role as CFO, Frank Krause implemented the new group-wide employee stock ownership plan (ESOP) and managed the M&A processes for the investment of Warburg Pincus in the Business Applications division, the takeover of competitor Strato, and the merger with Drillisch.



JAN OETJEN

Management Board member responsible for
 "Consumer Applications" since 2014

With effect from October 1, 2014, the Supervisory Board appointed Mr. Jan Oetjen to the Management Board of United Internet. In this position, Jan Oetjen is responsible for the company's Consumer Applications business. In addition to his role as member of the Management Board of United Internet AG, Jan Oetjen is CEO of the sub-group 1&1 Mail & Media Applications SE with responsibility for Product Management. Born in 1972, Jan Oetjen joined the United Internet Group in October 2008 and has since headed the E-Mail and Portal businesses of the GMX and WEB.DE brands. Under his leadership, United Internet acquired the international e-mail portal mail.com in 2010. He also headed the Group's launch of De-Mail services in 2013 as well as the security initiative "E-mail made in Germany".



MANAGEMENT BOARD INTERVIEW

Mr. Dommermuth, how do you see the past fiscal year?

All in all, I'm very satisfied with the past year. Our key performance figures for customer contracts, sales and earnings all made good progress once again in the past year. In addition to this organic growth, our major transactions also had a positive impact – especially the takeover of Strato and merger with Drillisch. We've become much stronger and sharpened our competitive edge. These are important prerequisites for the future success of our Group.

The merger of 1&1 Telecommunication SE and Drillisch AG has created a new strong force in the German telecommunications market. What do you believe are the benefits for United Internet?

This transaction has created a powerful full-service telecommunications provider under the umbrella of United Internet. With our strong 1&1 brand, we were already one of Germany's leading DSL and mobile providers. And together with the discount brands of Drillisch, such as smartmobil.de, yourfone and winSIM, we can now offer our customers a full range of products – high-speed DSL, mobile internet and the corresponding services – from a single source, based on current and future network technologies. We'll also benefit from economies of scale, for instance from the joint procurement of wholesale network services and smartphones. And last but not least, we can now also utilize the network capacities and future technologies from the contract between Drillisch and Telefónica for 1&1.

The merger of 1&1 Telecommunication and Drillisch offers extensive synergies and growth opportunities, which will naturally also deliver sustainable benefits for our shareholders in the form of dividends and value growth.

How will United Internet's shareholders benefit from the acquisition of a majority stake in Drillisch?

The merger of 1&1 Telecommunication and Drillisch offers extensive synergies and growth opportunities, which will naturally also deliver sustainable benefits for our shareholders in the form of dividends and value growth. Combined business operations are expected to produce annual synergy effects of € 150 million as early as 2020, rising to around € 250 million annually by 2025. These synergies will result in particular from joint purchasing of hardware and pre-services, more efficient use of network capacity available to Drillisch, and the expansion of 1&1's product portfolio to include future technologies.

The need to expand Germany's fiber-optic network was a topic that dominated political and media discussions in the past year. With 1&1 Versatel, United Internet has its own fiber-optic network. How do you expect this topic to develop in the coming years?

1&1 Versatel has the second-largest fiber-optic network in Germany with a current length of around 45,000 km. And every year, another few thousand kilometers are added – either by expanding the network ourselves, or by taking over smaller networks, or by signing long-term rental agreements for certain stretches. Providing companies and consumers with fiber-optic connections is probably the most important task for the German economy over the coming years. However, the government needs to create the right framework conditions so that rural areas are not left behind and that "real" fiber-optic connections are laid right into the building.

Letter to shareholders

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In the Business Applications division, the takeover of Strato was concluded and the cloud services provider ProfitBricks was acquired. What are your plans for these two companies?

Together with our partner Warburg Pincus, which holds 33.3% of our Business Applications division, we want to expand our leading market position in the European hosting and cloud application business and benefit more strongly from global growth in cloud solutions. The digitization of corporate business processes offers tremendous potential that we aim to exploit. We're still in the early stages of this development. The acquisitions of Strato and ProfitBricks were therefore important elements of our strategy. And with our combined and thus even greater resources, such as in product development and product management, we'll be able to offer our customers even more powerful products and services in the future. As of October 1, 2017, we also have a new CEO at the helm of the Business Applications division in Eric Tholomé. His most important task is to form a powerful unit from the division's various sub-groups. With his experience at Google and other companies, I'm confident he'll bring a great deal of fresh impetus to this division.

The fiscal year 2017 was dominated by numerous M&A activities. Can we expect to see this trend continue at the same pace in 2018?

With regard to the size of the transactions and their impact on the structure of our company, 2017 was certainly a special year. After all, we merged a core area of our Access business with Drillisch and acquired our long-standing main competitor Strato in the Applications business. This is a challenge for the entire organization and for all employees – whom I would like to thank once again for their outstanding commitment and loyalty. In the coming years, the focus will be on successfully integrating these acquisitions and investments, and examining in each individual case what kind of collaboration is the best for the Group as a whole. Having said that, we live in a fast-moving industry where nothing can be ruled out.

The digitization of corporate business processes offers tremendous potential that we aim to exploit. We're still in the early stages of this development.

What do you expect from the fiscal year 2018?

2018 marks a major milestone for us: United Internet is celebrating its 20th year as a listed company. Over the past two decades, we've written a beautiful success story for our customers, our shareholders and our employees. We want to continue the story in 2018 and enjoy a successful anniversary year. Specifically, that means we plan to raise sales to around € 5.2 billion and improve our EBITDA to around € 1.2 billion.

REPORT OF THE SUPERVISORY BOARD

The members of the Supervisory Board are:

- **Kurt Dobitsch, Markt Schwaben**
Chairman of the Supervisory Board of United Internet AG
- **Kai-Uwe Ricke, Stallikon / Switzerland**
Member of the Board of Directors of Delta Partners / Dubai
- **Michael Scheeren, Frankfurt**
Chairman of the Supervisory Board of 1&1 Drillisch AG

In fiscal year 2017, the Supervisory Board of United Internet AG fulfilled its legal and statutory duties to regularly advise the Management Board and monitor its management of the Company. The Supervisory Board was directly involved in all decisions of fundamental significance for the Company. The Management Board provided the Supervisory Board with regular and comprehensive reports, both written and oral, and also between meetings, about all relevant questions concerning corporate strategy and planning, as well as the associated risks and opportunities, the development and progress of business, planned and current investments, the status of the Company, its exposure to risk, the risk management system, and issues of compliance. The Management Board discussed the Company's strategic alignment with the Supervisory Board and presented it with a comprehensive report every quarter about the state of business, the development of sales and earnings, and the position of the Company and its business policy. This also included information about deviations between planned and actual figures. With regard to both content and scope, these reports met all statutory requirements, the standards of good corporate governance, and the criteria set by the Supervisory Board. The Management Board's reports were made available to all members of the Supervisory Board. The Chairman of the Supervisory Board was also kept regularly informed by the Management Board on all business activities, also between the meetings, and gave advice on questions of business policy. The Supervisory Board examined the plausibility of the reports provided by the Management Board, discussed their content in detail and gave a critical assessment.

 > Risk management

 > Corporate governance

The Supervisory Board comprises three members and has formed no committees.

The Supervisory Board was regularly informed by the Management Board about the internal control system, the group-wide risk management system and the Internal Audit system which it had introduced. On the basis of its own reviews, the Supervisory Board came to the conclusion that the internal control system, the group-wide risk management system and the internal audit system are fully functional and effective.

None of the Supervisory Board members holds any executive body or advisory positions with major competitors of the Company. There was no indication of any conflicts of interest involving Supervisory Board members.

Letter to shareholders

CEO Interview

**Report of the
Supervisory Board**

In addition to the regular statutory reports, the Supervisory Board discussed and reviewed the following issues in greater detail:

- The annual financial statements and consolidated financial statements for fiscal year 2016
- The Report of the Supervisory Board to the Annual Shareholders' Meeting for fiscal year 2016 and the updated Declaration of Conformity with the German Corporate Governance Code
- Determining the Management Board's target achievement for fiscal year 2016 and approving the payment of variable compensation components, as well as agreeing new targets for the Management Board for fiscal year 2017
- The invitation to the Annual Shareholders' Meeting 2017, as well as the agenda and motions for resolutions
- The dividend proposal for the Annual Shareholders' Meeting
- Audit planning and the quarterly reports of the Internal Audit department
- The Compliance Report 2016
- The quarterly reports on risk management and the risk management strategy
- Sustainability reporting within the Group
- The setting of dates for the Supervisory Board's meetings and the financial calendar for fiscal year 2018
- The development of the proportion of women and the setting of new targets
- The regular examination of efficiency in the Supervisory Board
- The conclusion of important rental agreements
- The extension of the Management Board mandates of Mr. Ralph Dommermuth and Mr. Jan Oetjen
- The assumption of Management Board mandates for Drillisch AG by Mr. Ralph Dommermuth and Mr. Martin Witt
- The development of the company during the year
- The placing of a promissory note loan with a total amount of € 500 million for general company funding and the structuring of the company's funding as a whole
- The adoption of a resolution regarding the approval of the overall transaction with Drillisch AG, especially the contribution of 1&1 Telecommunication SE to Drillisch AG and the voluntary public tender offer to the shareholders of Drillisch AG
- The conclusion of a loan agreement to finance the purchase of shares tendered in the course of the voluntary public tender offer to the shareholders of Drillisch AG
- The acquisition of a further share package in Tele Columbus

Meetings and participation:

The Supervisory Board held four meetings during fiscal year 2017 during which the Management Board presented detailed information about the business situation and the development of the Company and Group, as well as about significant business events. The meetings were each attended by all members. In addition to the meetings, further resolutions on current topics were adopted by means of circular written consent.

Corporate Governance

The Supervisory Board once again discussed in detail the standards of good corporate governance in fiscal year 2017, and in this connection also the German Corporate Governance Code. The Management Board and Supervisory Board issued an updated Declaration of Conformity pursuant to Sec. 161 AktG on February 20, 2018 which is permanently available on the corporate website and in the Federal Newsletter (Bundesanzeiger). Declarations of previous years can also be viewed [here](#).

Discussion of the annual financial statements 2017 for the Company and the Group

The Annual Shareholders' Meeting of United Internet AG on May 18, 2017 elected Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, based in Eschborn/Frankfurt am Main, as auditors for the fiscal year 2017. Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft audited the accounting system, the annual financial statements of United Internet AG, the consolidated financial statements according to IFRS and the combined management report for United Internet AG and the Group for the fiscal year 2017. As part of its audit of the annual financial statements, Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft also audited and analyzed the Company's risk management system. The auditor did not detect any major weaknesses in the internal control system, Group-wide risk management system or Internal Audit system. The auditor awarded an unqualified certificate in each case.

The Supervisory Board satisfied itself as to the independence of the auditors and received a written declaration to this end.

The aforementioned annual financial statement documents, the proposal for the appropriation of profit and the auditor's report were presented to all members of the Supervisory Board in due time. The chief auditor attended the relevant meeting of the Supervisory Board on March 21, 2018, where he reported on his audits and their results, elaborated on the audit report, and answered the Supervisory Board's questions. Following its own inspection, the Supervisory Board came to the conclusion that the annual financial statements, the combined management report, the consolidated financial statements and the auditor's report gave no cause for objections. The Supervisory Board concurs with the auditor that there are no major weaknesses in the internal control and risk management system, especially with regard to the accounting process. With a resolution on March 21, 2018, the Supervisory Board approved the annual financial statements of United Internet AG, as prepared by the Company on March 21, 2018 and the consolidated annual financial statements according to IFRS for fiscal 2017, also prepared by the Company on March 21, 2018. The annual financial statements are therefore adopted pursuant to Sec. 172 AktG. The Supervisory Board supports the proposal of the Management Board concerning the allocation of retained earnings.

Audit of the Management Board's report on relations with affiliated companies

The Management Board presented its report on relations with affiliated companies (Dependent Company Report) for fiscal year 2017 to the Supervisory Board in good time.

Letter to shareholders

CEO Interview

**Report of the
Supervisory Board**

The report prepared by the Management Board about relations with affiliated companies was also audited by the external auditors. The following certificate was awarded in this respect:

“On the basis of our statutory examination and evaluation, we can confirm that

1. the details made in the report are accurate,
2. the Company was compensated adequately for each transaction mentioned in the report,
3. in the case of those measures mentioned in the report, there is no evidence to suggest a significantly different assessment to that provided by the Management Board.”

The external auditors submitted the audit report to the Supervisory Board. The Dependent Company Report and Audit Report were made available to the Supervisory Board in good time. The Supervisory Board reviewed the Management Board’s Dependent Company Report and the Audit Report. The Supervisory Board performed the final review at its meeting on March 21, 2018. The external auditors attended this meeting and reported on their audit of the Dependent Company Report and their main audit results, explained their Audit Report, and answered questions from members of the Supervisory Board. On the basis of our final examination, we concur with the Management Board’s Dependent Company Report and the Audit Report and have no objections to raise regarding the Management Board’s declaration at the end of the Dependent Company Report.

Reporting for the Sustainability Report

United Internet AG has submitted its first non-financial statement for fiscal year 2017, which will be published as part of a separate non-financial report (Sustainability Report).

The Supervisory Board of United Internet already discussed the Sustainability Report during the course of the year. As part of its own final review, the Supervisory Board dealt in detail with the non-financial statement in its entirety. The Supervisory Board scrutinized the contents of the non-financial statement and discussed it at length with the Management Board, whose members were on hand to answer additional questions and provide further information. Following its own review, the Supervisory Board came to the conclusion that the non-financial statement did not give rise to any objections.

The Supervisory Board thanks the Management Board and all employees for their outstanding commitment to the Company in fiscal year 2017.

Montabaur, March 21, 2018



For the Supervisory Board
Kurt Dobitsch

UNITED INTERNET AT A GLANCE

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UNITED INTERNET AT A GLANCE

The internet has firmly established itself with private users and companies as a universal medium for information, entertainment, communication, organization and e-business. This development is being driven by broadband internet access.

Our vision

Thanks to its permanent availability from any location and the relentless rise in access speeds, the internet has become the universal infrastructure that serves our information and entertainment needs, while also providing us with private and corporate applications – via mobile or landline networks.



> Portal

At the same time, the internet opens up new kinds of sales and marketing channels. E-business is becoming an integral element of corporate strategy. Portals represent a universal home base and are increasingly becoming a central hub for news as well as the communication, information and identity management needs of users.

This is exactly our vision: to supply private and commercial users with market-oriented information and communication products, as well as cloud and e-business applications, from our "Internet Factories" via increasingly powerful broadband mobile or landline internet connections.

Our business model



> Free accounts

With 22.89 million fee-based customer contracts (prior year: 16.79 million) and 35.42 million ad-financed free accounts (prior year: 34.29 million), United Internet is a leading European internet specialist.

Our operating business is divided into the reporting segments "Access" and "Applications".



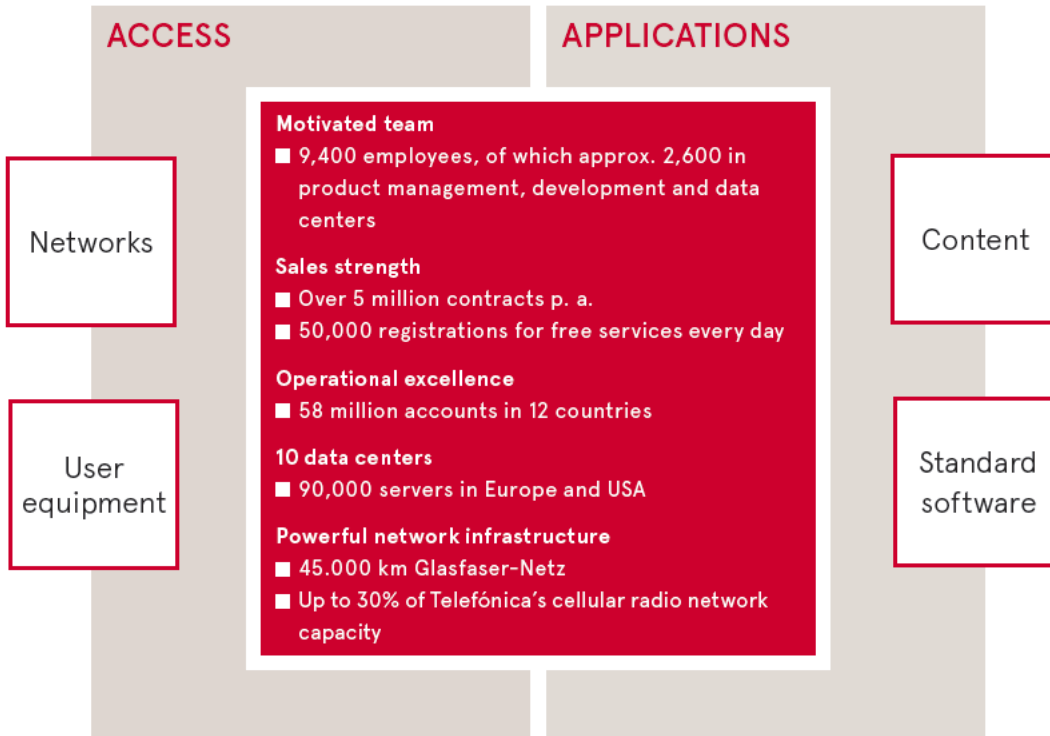
> Video-on-Demand

The **Access segment** comprises our fee-based access products for consumer and business customers. In our consumer business, these include our DSL and mobile internet products with the respective applications (such as home networks, online storage, telephony, video-on-demand or IPTV), while in the business segment these include data and network solutions for SMEs, as well as infrastructure services for large corporations.

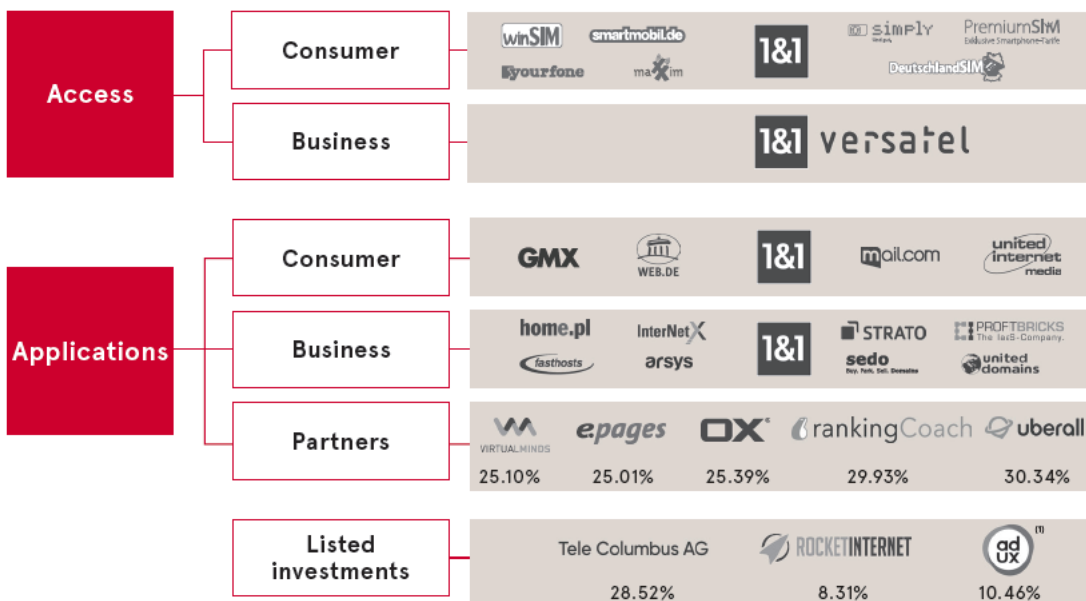
With a current length of 44,889 km (prior year: 41,644 km), we own Germany's second-largest fiber-optic network. Moreover, we are the only MBA MVNO in Germany – indirectly via Drillisch AG acquired in 2017 (now 1&1 Drillisch AG) – with long-term rights to up to 30% of the used network capacity of Telefónica Germany and thus extensive access to Germany's largest mobile network. In addition to our own landline network and privileged access to the Telefónica network, we also purchase standardized network services from various pre-service providers. These wholesale services are enhanced with end-user devices, self-developed applications and services from our "Internet Factory" in order to differentiate them from the competition.

- Vision
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Business-Modell



Brands and investments (as of December 31, 2017)



(1) Formerly Hi-Media

In the Access segment, we operate exclusively in Germany, where we are one of the country's leading providers.

Access products are marketed via our well-known brand 1&1, as well as via the discount brands of Drillisch Online AG, such as winSIM, yourfone and smartmobile.de, which enable us to offer a comprehensive range of products while also targeting specific customer groups.

Our **Applications segment** comprises ad-financed or fee-based applications for consumer and business customers. These applications include domains, home pages, webhosting, servers and e-shops, Personal Information Management applications (e-mail, to-do lists, appointments, addresses), group work, online storage and office software.



Groupwork, Webhosting

The applications are developed at our own "Internet Factory" or in cooperation with partner firms and operated on around 90,000 servers at our 10 data centers.

In our Applications segment, we are also a leading global player with activities in European countries (Germany, France, the UK, Italy, the Netherlands, Austria, Poland, Switzerland and Spain) as well as in North America (Canada, Mexico and the USA).

Applications are marketed to specific home-user and business-user target groups via the differently positioned brands 1&1, GMX, mail.com, WEB.DE, Arsys, Fasthosts, home.pl, InterNetX, ProfitBricks, Strato, and united-domains. We also offer customers professional services in the field of active domain management via Sedo. Free apps are monetized via advertising run by our in-house agency United Internet Media.

Our "Internet Factory"

At the heart of our business is our powerful "Internet Factory" for our Access and Applications products with around 9,400 employees, of which around 3,000 are engaged in product management, development and at our data centers. Our "Internet Factory" applies the mechanisms of rationalized production to the internet business. Highly efficient development departments "manufacture" products which represent the backbone of our business in both the Access and Applications segments. These are then run on some 90,000 servers at our 10 data centers. This "Internet Factory" enables us to extend, combine and scale our product lines almost at will – and then to export them throughout the world.

United Internet also stands for high sales strength as well as for outstanding operational excellence with around 58 million customer accounts worldwide.

Success factors of our business model

United Internet's business model offers various benefits: the contractual commitment of our customers via fee-based, fixed-term subscriptions (around 23 million customer contracts at year-end 2017) secures long-lasting customer relationships and thus stable and predictable sales and earnings. And over 35 million ad-financed free accounts provide a huge reservoir for monetizing our applications via advertising and e-commerce as well as converting users to fee-based contracts.

Thanks to our existing business relationships with millions of customers and users, we have our ear close to the market. This often enables us to anticipate customer wishes and trends. We then consistently develop new business fields – at a national and international level.

We have already picked up a number of customer wishes and successfully transformed them into new solutions or new business fields:

- We meet the **privacy demands** of our customers with a variety of initiatives. Within the “E-mail made in Germany” alliance, for example, e-mails are automatically encrypted, while “De-Mail” and “eIDAS” also offers customers legally binding communication via e-mail in Germany and Europe. Our modern data centers meet the strictest security standards with largely geo-redundant operation, i.e. applications and data are constantly mirrored at geographically separate data centers.
- Our mobile internet products reflect the trend toward ever greater **mobility** in internet usage. A clear and simple tariff structure offering great value for money and excellent service helps us achieve high customer retention rates and customer satisfaction, while securing a top-quality client base in a dynamic market environment.
- From our domestic market in Germany, our cloud and e-business solutions are now being marketed in new target markets as part of our **internationalization** strategy. As a result, the cultural diversity of our employees is also growing. The resulting potential for new ideas and innovation is strengthening our competitive edge and enhancing our long-term opportunities in future markets.
- 1&1 MyWebsite offers small businesses a simple and flexible way to establish their individual online presence. With its integrated sales and marketing tools, 1&1 MyWebsite lays the perfect foundation for the digital **commercial success** of our customers.
- **Trust** is the basis for our customer relationships. Data protection and security, 24/7 availability of our competent contact partners, and 24-hour replacement of defective equipment, for example, are all elements of the so-called 1&1 Principle which ensure customers can rely on us at all times.

Wherever it makes good business sense, we cover the large areas of the value chain – from product development and data center operation, to effective sales and marketing and active customer support.

Economies of scale represent a further key success factor for our business: each new customer enhances the profitability of our “Internet Factory”. After making the investments in our “factory” and developing products in the form of applications, it is then a question of utilizing them as fully as possible. The greater the number of customers using products provided by our “Internet Factory”, the greater our profit will be.

A further advantage is our marketing strategy tailored to specific target groups. Every United Internet customer gets the product they need. Our brands such as GMX, Mail.com, WEB.DE, 1&1, Fasthosts, Arsys, home.pl, Strato, united-domains and InterNetX are positioned differently and target a wide variety of user groups.

Last but not least, the exportability of our applications is a further trump card. They can often be used anywhere in the world and work on the same principle in Frankfurt as they do in London, Paris or New York.

Growth opportunities

In view of the dynamic market development of the Mobile Internet and Cloud Applications business fields, our growth opportunities are clearly apparent: universally accessible, increasingly powerful broadband connections are enabling new and more sophisticated cloud applications. These internet-based programs for end users and companies will be our growth drivers over the coming years – both as stand-alone products in our Applications segment as well as in combination with landline and mobile access products in our Access segment.

With our many years of experience as an access and applications provider, our expertise in software development and data center operation, marketing, sales and customer support, as well as our strong and well-known brands, and our customer relationships with millions of private users, freelancers and small companies in Germany and abroad, we are excellently placed to fully exploit the expected market growth in our two business fields.

Access segment

The Access segment comprises our fee-based access products for consumer and business customers. In our consumer business, these include our DSL and mobile internet products with the respective applications (such as home networks, online storage, telephony, video-on-demand or IPTV), while in the business segment these include data and network solutions for SMEs, as well as infrastructure services for large corporations.

In the Access segment, we operate exclusively in Germany, where we are one of the country's leading providers. Access products are marketed via our well-known brand 1&1, as well as via the discount brands of Drillisch Online AG, such as winSIM, yourfone and smartmobile.de, which enable us to offer a comprehensive range of products while also targeting specific customer groups.

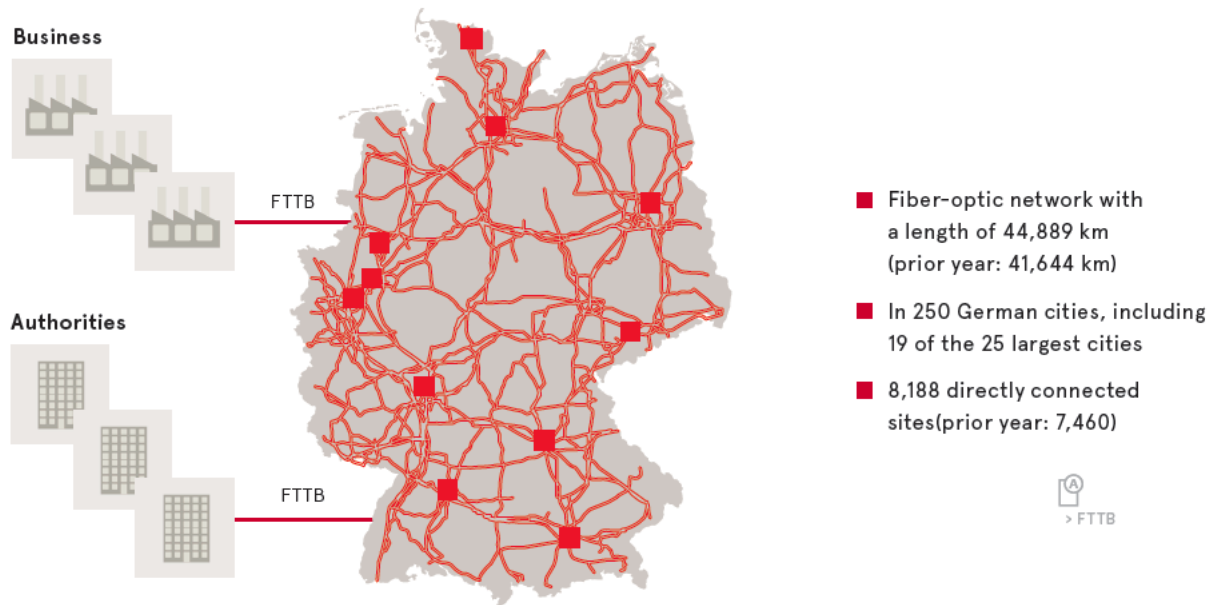
We own Germany's second-largest fiber-optic network with a length of around 45,000 km – a figure that is constantly rising. Our fiber-optic network currently connects mainly commercial buildings and local authority sites (FTTB).

Since the conclusion of the Layer 2 bitstream regulatory process in mid-2016, we have been steadily increasing our vertical integration and also producing VDSL/vectoring house connections based on the Layer 2 wholesale service of Deutsche Telekom. To this end, we are gradually connecting our own fiber-optic network with the BNGs (Broadband Network Gateways) of Deutsche Telekom. At the same time, our network is connected with the fiber-optic networks of well-known city carriers – enabling us to also offer fiber-optic house connections (FTTB/FTTH).

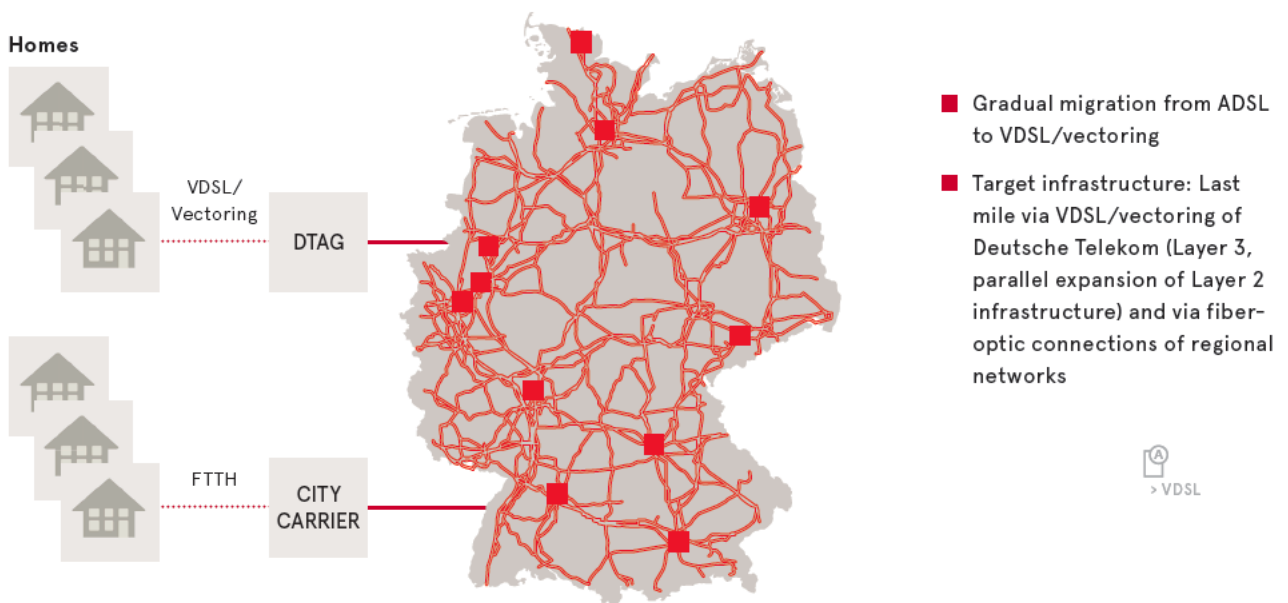
In regions outside the 1&1 Versatel network, we will continue to use Deutsche Telekom's VDSL/vectoring wholesale services on the Layer 3 basis, as well as ADSL connections via various wholesale providers.

- Vision
- Business model
- Internet Factory
- Success factors
- Growth opportunities**

Powerful fiber-optic infrastructure for business customers



Network expansion for private customers



In addition to our own fiber-optic network for our landline business, we are the only MBA MVNO in Germany – indirectly via Drillisch AG acquired in 2017 (now 1&1 Drillisch AG) – with long-term rights to up to 30% of the used network capacity of Telefónica Germany and thus extensive access to Germany’s largest mobile network. Apart from this privileged access to the Telefónica network, we also purchase standardized network services from Vodafone. These wholesale services are enhanced with end-user devices, self-developed applications and services from our “Internet Factory” in order to differentiate ourselves from the competition.

Leading MVNO with broad market coverage



The number of fee-based Access contracts for our current product lines rose by 4.10 million contracts to 12.64 million contracts in the fiscal year 2017 – due in part to the consolidation of Drillisch. A total of 3.99 million customer contracts were added in the Mobile Internet business (of which 3.35 million from the Drillisch acquisition), thus raising the total number of contracts to 8.30 million. There was growth in complete DSL contracts (ULL = Unbundled Local Loop) with the addition of 110,000 contracts, taking the total to 4.34 million.

 > ULL, T-DSL, R-DSL

Development of customer contracts in the Access segment in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Access, total contracts	12.64	8.54	+ 4.10
thereof Mobile Internet	8.30	4.31	+ 3.99
thereof DSL complete (ULL)	4.34	4.23	+ 0.11

In addition to the above mentioned customer contracts in the current product lines, our Access segment includes a further 0.47 million contracts without basic monthly fees and service provider contracts (volume-based tariffs / MSP tariffs) from the Drillisch acquisition, as well as 0.11 million DSL contracts in the phased-out T-DSL / R-DSL product lines.

In view of our strong brands, our innovative products, our customer-oriented services, our flexible price policy and our excellent value for money, we believe the Access segment is very well positioned for the future.

In the field of business solutions under the 1&1 Versatel brand, the focus in 2018 will lie on voice, data and network solutions for SMEs, as well as infrastructure services for large corporations. In addition, our own fiber-optic network is to be expanded with further connections to the BNGs (access points) of Deutsche Telekom, in order to extend the value chain.

AT A GLANCE

Vision
 Business model
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 Success factors
Growth opportunities

In the consumer business, approximately 1.2 million DSL and Mobile Internet contracts are expected to be added in 2018. Key growth drivers will be coordinated branding and customer targeting in the mobile internet business, as well as the greatly increased use of subsidized smartphones (mostly without initial additional payment) also when sold via GMX and WEB.DE, as well as the 1&1 Drillisch discount brands (smartmobil.de, yourfone, winSIM etc.). This applies to both new and existing customers. Additional hardware investments will be refinanced via higher mobile tariff prices within the minimum contractual terms.

This segment will benefit in particular from the strong market growth of the mobile internet sector. Following market growth of 6.6% to € 7.77 billion in 2017, PricewaterhouseCoopers expects further growth in mobile data services of 5.8% to € 8.22 billion in 2018.

This growth is being driven above all by low – and thus for the consumer attractive – prices, as well as by the boom in smartphones and tablet PCs, and their respective applications (or apps).

Market forecast: mobile internet access (cellular) in Germany (in € billion)

	2018e	2017	Change
Sales	8.22	7.77	+ 5.8%

Source: PricewaterhouseCoopers, October 2017

In view of the comparatively high level of household coverage already achieved and the trend toward mobile internet, experts continue to forecast only moderate growth for the German broadband market (landline-based).

According to the survey "German Entertainment and Media Outlook 2017-2021", PricewaterhouseCoopers expects sales of landline-based broadband connections to increase by 1.1% to € 8.15 billion in 2018.

Market forecast: broadband access (landline) in Germany (in € billion)

	2018e	2017	Change
Sales	8.15	8.06	+ 1.1%

Source: PricewaterhouseCoopers, October 2017

Applications segment

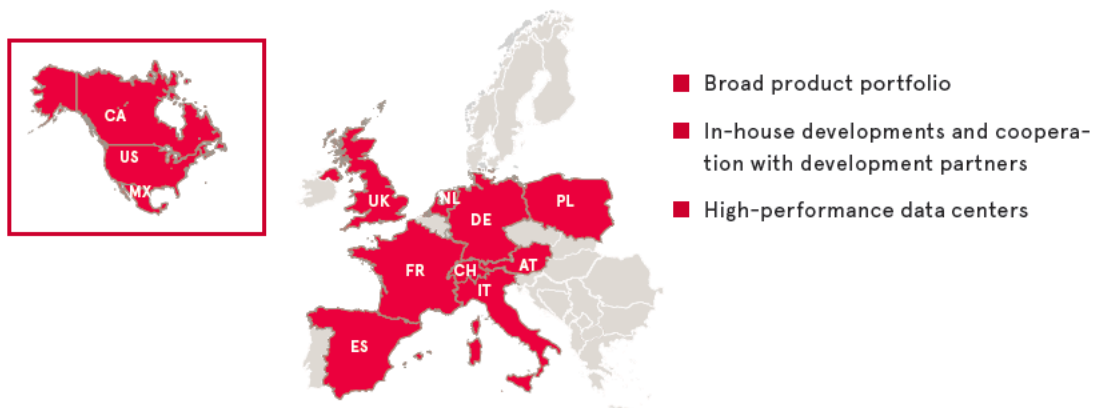
Our **Applications segment** comprises ad-financed or fee-based applications for consumer and business customers. These applications include domains, home pages, webhosting, servers and e-shops, Personal Information Management applications (e-mail, to-do lists, appointments, addresses), group work, online storage and office software. The applications are developed at our own "Internet Factory" or in cooperation with partner firms and operated on around 90,000 servers at our 10 data centers.

In the Applications segment, we are also a leading global player with activities in Europe (Germany, France, the UK, Italy, the Netherlands, Austria, Poland, Switzerland and Spain) as well as in North America (Canada, Mexico and the USA). Applications are marketed to specific home-user and business-user target groups via the differently positioned brands 1&1, GMX, mail.com, WEB.DE, Arsys, Fasthosts, home.pl, InterNetX, ProfitBricks, Strato and united-domains. Via Sedo, we also offer customers professional services in the field of active domain management. Free apps are monetized via advertising run by our in-house agency United Internet Media.

Our Applications business is broken down into ad-financed and fee-based applications, whereby the latter are in turn divided into Business and Consumer Applications.

In the field of **Business Applications**, we are active in both Europe (target markets: Germany, France, the UK, Italy, Netherlands, Poland, Austria, Switzerland, and Spain) and North America (target markets: Mexico, Canada, and the USA). With 8.02 million customer contracts in total, we are one of the world's leading companies in this business.

Business Applications: international footprint



In particular, we are targeting further growth with the aid of powerful applications which will open up business opportunities on the internet for our customers and help them digitize their processes. We have therefore expanded our product range over the past few years – based on our proven hosting packages – with the addition of numerous cloud-based e-business solutions.

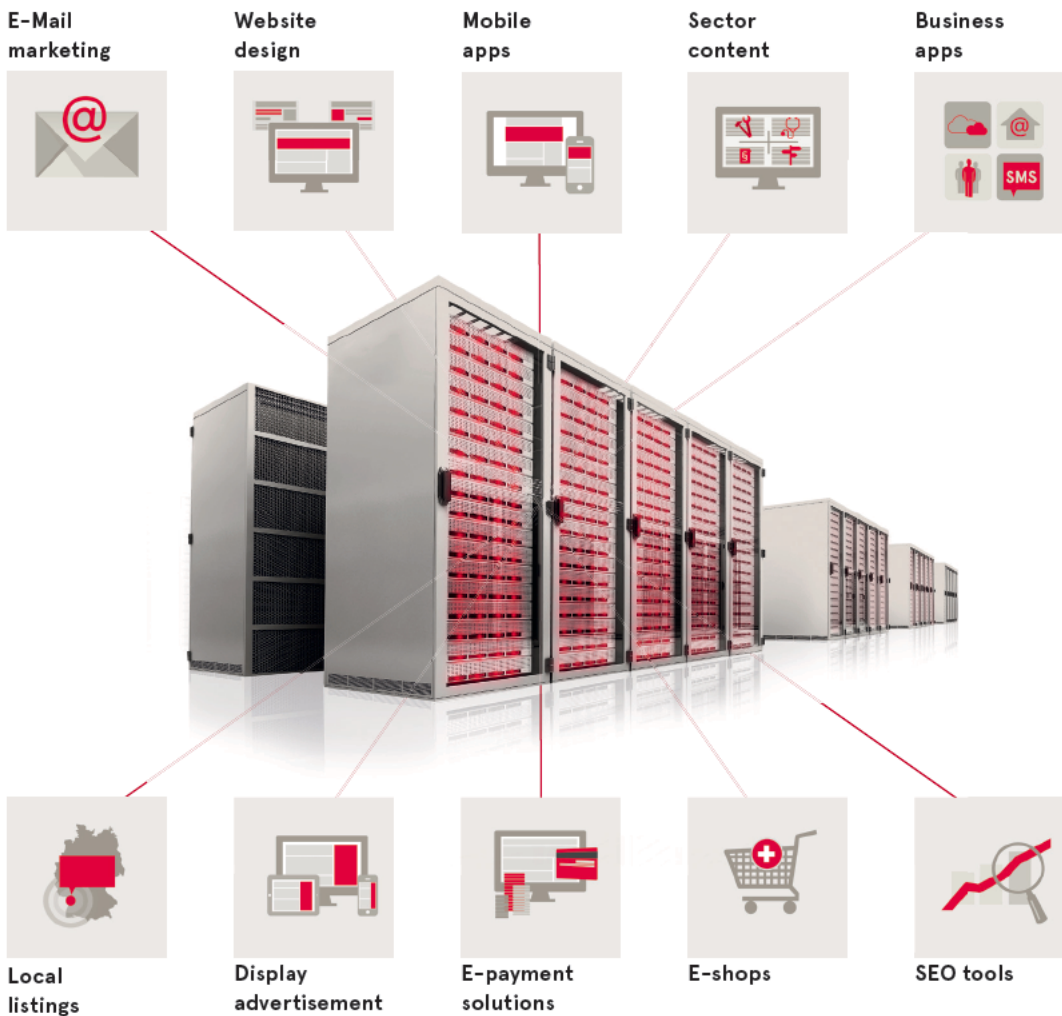
The main focus for our Business Applications in fiscal year 2017 was on the sale of additional features to existing customers (e.g. further domains, e-shops and business apps), as well as the acquisition of high-value customer relationships. We achieved organic growth in **fee-based Business Applications contracts** in fiscal year 2017, with an increase of 100,000 contracts. Moreover, the initial consolidation of Strato as of April 1, 2017 resulted in the addition of 1.87 million contracts. The total number of Business Applications contracts as of December 31, 2017 therefore amounted to 8.02 million.

Development of Business Applications contracts in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Business Applications, total contracts	8.02	6.05	+ 1.97
thereof "domestic"	4.01	2.34	+ 1.67
thereof "foreign"	4.01	3.71	+ 0.30

Vision
Business model
Internet Factory
Success factors
Growth opportunities

Business Applications: from webhoster to e-business solutions provider



Our ad-financed applications (free accounts) and fee-based **Consumer Applications** are marketed actively via the GMX and WEB.DE brands primarily in Germany, Austria and Switzerland, where we are among the leading players.

Since our acquisition of the US provider mail.com in late 2010, we have also been driving our internationalization in this business.

Over the past few years, we have expanded our brands – GMX, WEB.DE and mail.com – from pure e-mail service providers to complete command centers for the communication, information and identity management needs of our users.

Consumer Applications: from e-mail service to command center for communication, information and identity management

Communication and organisation
E-mail, calendar, contacts, SMS, Fax



Online office
Texts, spreadsheets, presentations




Our free accounts are monetized via online advertising, which is marketed by United Internet Media (UIM). UIM also exclusively markets certain third-party sites, like 'Das Telefonbuch', 'Das Örtliche' and 'Gelbe Seiten' (German telephone directories and yellow pages).

In the field of Consumer Applications, we raised the number of pay accounts by 30,000 contracts to 2.23 million in fiscal year 2017. At the same time, the number of free accounts increased by 1.13 million to 35.42 million in the reporting period. Consequently, the number of Consumer Accounts rose by 1.16 million in total to 37.65 million accounts.

Vision
Business model
Internet Factory
Success factors
Growth opportunities

Consumer Applications: market standing in Germany

	E-mail ⁽¹⁾	Cloud storage ⁽¹⁾	Content ⁽¹⁾	eIDAS/De-Mail	
	#1	#3	#1	#1	<ul style="list-style-type: none"> ■ Differentiation via data privacy and information security ■ Ad space marketed by United Internet Media
Deutsche Telekom	#2	#6	#2	#2	
Google	#3	#2	-	-	
Microsoft	#4	#5	n.a.	-	
Yahoo!	#11	#9	n.a.	-	

(1) E-mail and cloud storage: representative survey of Convios Consulting commissioned by United Internet, 2017 (most-used e-mail and cloud suppliers for private users in Germany)
 Content: Reuters Digital News Report, 2016 (most-used news provider in Germany)

Development of Consumer Applications accounts in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Consumer Applications, total accounts	37.65	36.49	+ 1.16
thereof with Premium Mail subscription	1.67	1.72	- 0.05
thereof with Value-Added subscription	0.56	0.48	+ 0.08
thereof free accounts	35.42	34.29	+ 1.13

With our strong and specialized brands, a steadily growing portfolio of cloud applications, and existing relations with millions of home users, freelancers, and small businesses, we are well positioned in our Applications segment – for both consumer and business applications – to utilize the opportunities offered by the cloud computing market.

In the case of Business Applications, further exploitation of existing target markets is planned for 2018. The main focus will once again be on expanding business with existing customers through sales of additional products, such as new top-level domains and marketing tools like 1&1 List Local, as well as on gaining new high-quality customer relationships, e.g. via the 1&1 Cloud Server. The various technological platforms of our brands will also be merged and a rebranding campaign conducted.

The main focus for Consumer Applications in 2018 will be the reduction of advertising space for GMX and WEB.DE. At the same time, we will drive the expansion of data-driven business models to improve ad monetization – as part of netID, the log-in alliance with RTL, Pro7Sat1 and Zalando.

The trend toward the increasing use of cloud applications is working in our favor for all activities of our Applications segment – both for Business and Consumer Applications.

In an update of its study "Forecast Analysis: Public Cloud Services, Worldwide" (October 2017), Gartner forecasts global growth for public cloud services of 21.2%, from \$ 153.1 billion to \$ 185.5 billion in 2018.

Market forecast: global cloud computing (in \$ billion)

	2018e	2017	Change
Global sales of public cloud services	185.5	153.1	+ 21.2%

Source: Gartner, December 2017

The prospects for funding our free applications via online advertising are also promising, with further growth forecast by experts for 2018. In its study "German Entertainment and Media Outlook 2017-2021" (October 2017), PricewaterhouseCoopers predicts an increase of 6.1% to € 7.50 billion.

Market forecast: online advertising in Germany (in € billion)

	2018e	2017	Change
Online advertising revenue	7.50	7.07	+ 6.1%

Source: PricewaterhouseCoopers, October 2017

AT A GLANCE

Vision

Business model

Internet Factory

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1. COMPANY AND GROUP PROFILE

1.1 BUSINESS MODEL

Group structure

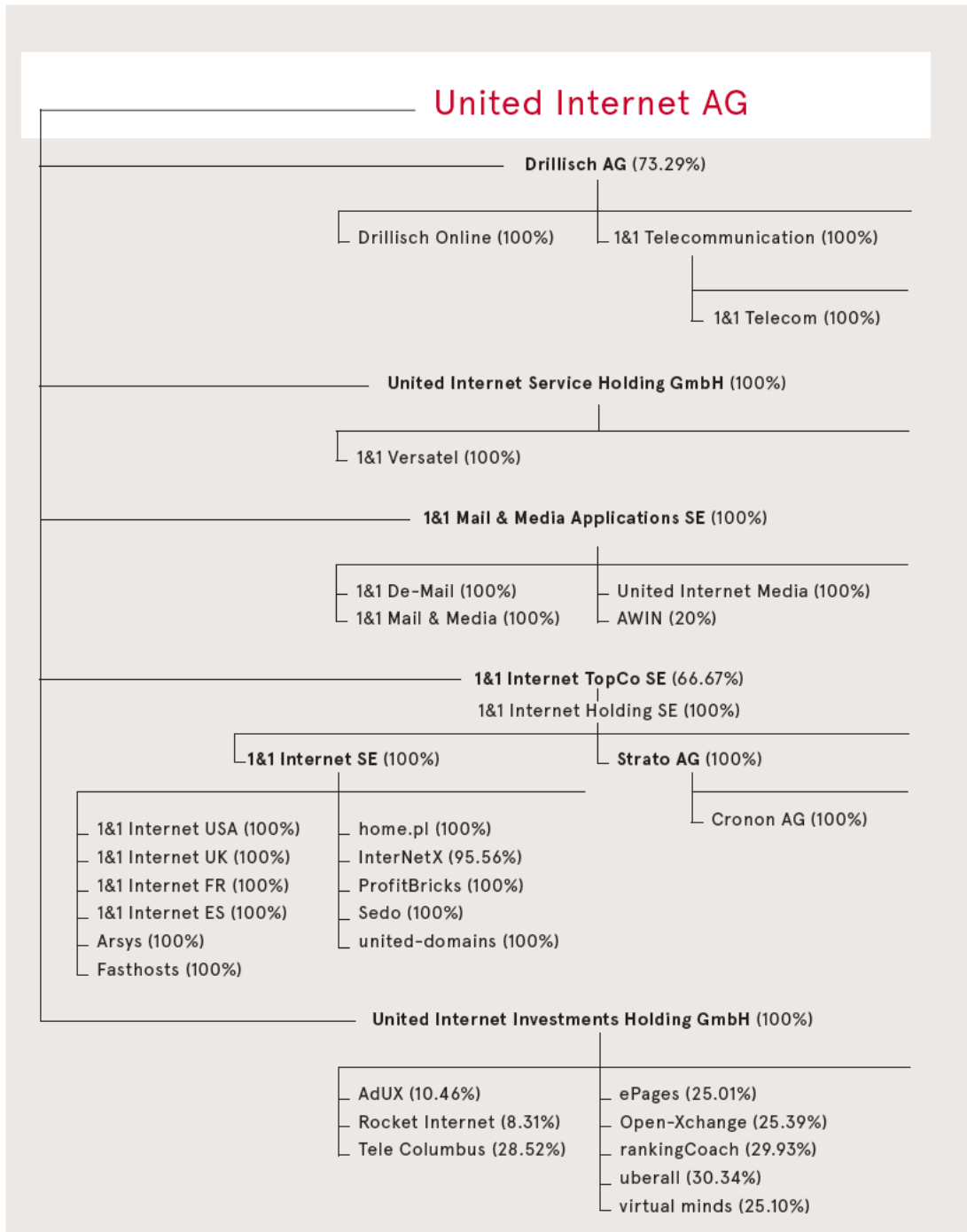
Founded on January 1, 1998 and based in Montabaur, Germany, United Internet AG is the **Group parent company** of the United Internet Group.

Together with its service company United Internet Corporate Services GmbH, United Internet AG focuses mainly on centralized functions such as Finance, Corporate Controlling & Accounting, Tax, Press Relations (PR), Investor Relations (IR), Investment Management, Legal, Corporate Governance, Compliance, Risk Management, Corporate Audit, Procurement, Corporate IT, Facility Management, and HR Management.

Compared to the previous year, the Group structure as of December 31, 2017 changed in particular as a result of the Warburg Pincus investment in the Business Applications division, the takeover of Strato AG, and the merger with Drillisch AG.

- As part of the strategic partnership with United Internet already announced in November 2016, Warburg Pincus (via Warburg Pincus WP XII Venture Holdings S.à r.l., Luxembourg) acquired an indirect 33.33% stake in our Business Applications division via a newly created holding structure (1&1 Internet TopCo SE / 1&1 Internet Holding SE) in the first quarter of 2017. The entire Business Applications activities of the United Internet Group are now pooled in the newly created holding structure.
- On April 1, 2017, the complete acquisition of Strato AG from Deutsche Telekom AG, as announced in December 2016, was closed and Strato integrated into the above mentioned holding structure.
- On May 12, 2017, the Management Boards of United Internet AG and Drillisch AG entered into a business combination agreement governing the step-by-step acquisition of 1&1 Telecommunication SE by Drillisch. The aim of the overall transaction is to contribute 1&1 Telecommunication to Drillisch (in return for Drillisch shares) and thus create a more powerful full-service telecommunications provider under the umbrella of United Internet.
 - To this end, the complete telecommunications business with home users (DSL and Mobile Internet) of United Internet was pooled in 1&1 Telecommunication SE. The consumer business (mass market business DSL) previously pursued by 1&1 Versatel was also integrated into 1&1 Telecom GmbH, a subsidiary of 1&1 Telecommunication SE.
 - Activities with business users and other telecommunications providers (wholesale) were not part of this transaction. This business will continue to be operated by 1&1 Versatel and was transferred to United Internet Service Holding GmbH by means of a carve out (from 1&1 Telecommunication SE).
 - Since the successful conclusion of total transaction on September 8, 2017, Drillisch holds 100% of shares in 1&1 Telecommunication SE and in turn United Internet holds 73.29% of shares in Drillisch AG

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Simplified illustration of the Group structure of United Internet (as of December 31, 2017) with significant operating subsidiaries and investments

Following the completion of the above mentioned structuring measures, operating activities in the **Access segment** relating to Consumer Access are mainly managed by the companies Drillisch Online AG and 1&1 Telecom GmbH – under the umbrella of Drillisch AG (now named 1&1 Drillisch AG). In the field of Business Access, United Internet mainly operates via 1&1 Versatel GmbH – held by United Internet Service Holding GmbH.

Operating activities in the **Applications segment** are primarily managed in the field of Consumer Applications via the companies 1&1 De-Mail GmbH, 1&1 Mail & Media GmbH and United Internet Media GmbH – pooled together under 1&1 Mail & Media Applications SE. In the field of Business Applications, United Internet is primarily active via Strato AG and its subsidiary Cronon AG – held by the holding companies 1&1 Internet TopCo SE and 1&1 Internet Holding SE – as well as via 1&1 Internet SE and its main domestic and foreign subsidiaries. In addition to 1&1's foreign subsidiaries 1&1 Internet Inc. (USA), 1&1 Internet Ltd. (UK), 1&1 Internet S.A.R.L. (France) and 1&1 Internet España S.L.U. (Spain), these include in particular Arsys Internet S.L. (Spain), Fasthosts Internet Ltd. (UK), home.pl S.A. (Poland), InterNetX GmbH, ProfitBricks GmbH, Sedo GmbH and united-domains AG.

In addition to these operative and fully consolidated subsidiaries, United Internet AG held a number of other **investments** as of December 31, 2017. These mainly consist of equity interests – held by United Internet Investments Holding GmbH (formerly: United Internet Ventures AG) – in the listed companies AdUX S.A. (formerly: Hi-Media S.A.), France (10.46%), Rocket Internet SE, Germany (8.31%), and Tele Columbus AG, Germany (28.52%), as well as investments in the strategic partners ePages GmbH, Germany (25.01%), Open-Xchange AG, Germany (25.39%), rankingCoach International GmbH, Germany (29.93%), uberall GmbH, Germany (30.34%), and virtual minds AG, Germany (25.10%). In addition, United Internet holds shares in AWIN AG, Germany (20.00%), via 1&1 Mail & Media Applications SE – following the contribution of affilinet to AWIN.

Further details on these investments and changes in investments are provided in section 2.2 "Business development" under "Group investments".

Business operations

With 22.89 million fee-based customer contracts (prior year: 16.79 million) and 35.42 million ad-financed free accounts (prior year: 34.29 million), United Internet is a leading European internet specialist.

The Group's operating business is divided into the two reporting segments "Access" and "Applications".

■ Access segment

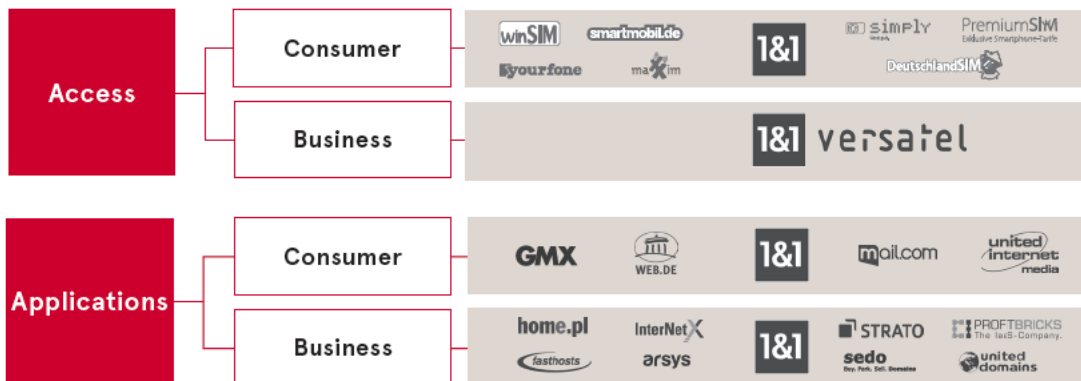
The Access segment comprises United Internet's fee-based access products for its consumer and business customers. In its consumer business, these include DSL and mobile access products with the respective applications (such as home networks, online storage, telephony, video-on-demand or IPTV), while in the business segment these include data and network solutions for SMEs, as well as infrastructure services for large corporations.



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Segments, target groups and brands (as of: December 31, 2017)



With a current length of 44,889 km (prior year: 41,644 km), United Internet owns Germany's second-largest fiber-optic network. Moreover, the company – indirectly via Drillisch AG acquired in 2017 (now 1&1 Drillisch AG) – is the only MBA MVNO in Germany with long-term rights to a share (rising to 30%) of the used network capacity of Telefónica Germany and thus extensive access to Germany's largest mobile network. In addition to its own landline network and privileged access to the Telefónica network, the company also purchases standardized network services from various pre-service providers. These wholesale services are enhanced with end-user devices, self-developed applications and services from the company's own "Internet Factory" in order to differentiate them from the competition.

In its Access segment, United Internet operates exclusively in Germany where it is one of the leading providers.

Access products are marketed via well-known brands, such as 1&1, or the discount brands of the former Drillisch AG, such as winSIM, yourfone and smartmobile.de, which enable the company to offer a comprehensive range of products while also targeting specific customer groups.

■ Applications segment

The Applications segment comprises ad-financed or fee-based application products for consumer and business customers. These applications include domains, home pages, webhosting, servers and e-shops, Personal Information Management applications (e-mail, to-do lists, appointments, addresses), group work, online storage and office software.

The applications are developed at the company's own "Internet Factory" or in cooperation with partner firms and operated on around 90,000 servers at the company's 10 data centers.

In its Applications segment, United Internet is also a leading global player with activities in European countries (Germany, France, the UK, Italy, the Netherlands, Austria, Poland, Switzerland and Spain) as well as in North America (Canada, Mexico and the USA).

Applications are marketed to specific home-user and business-user target groups via the differently positioned brands GMX, mail.com, WEB.DE, 1&1, Arsys, Fasthosts, home.pl, InterNetX, ProfitBricks, Strato and united-domains. Via the Sedo brand, United Internet also offers customers professional services in the field of active domain management. Free apps are monetized via advertising run by the company's in-house agency United Internet Media.

Management

The **Management Board** of United Internet AG comprised the following five members in fiscal year 2017:

- Ralph Dommermuth, company founder and Chief Executive Officer (with the company since 1988)
- Frank Krause, Chief Financial Officer (with the company since 2015)
- Robert Hoffmann, Management Board member responsible for Business Applications – until December 31, 2017 (with the company since 2006)
- Jan Oetjen, Management Board member responsible for Consumer Applications (with the company since 2008)
- Martin Witt, Management Board member responsible for Access – until September 30, 2017 (with the company since 2009)

In fiscal year 2017, United Internet continued to drive also the structural reorganization of the Group into the Access (Consumer and Business) and Applications (Consumer und Business) segments.

Following the merger with Drillisch in the Consumer Access division and investment of Warburg Pincus in the Business Applications division, the foundation has also been laid for the future management of these two now largely independent divisions and their importance reflected with the corresponding Management Board seats.

Following the successful conclusion of the merger between Drillisch AG and 1&1 Telecommunication SE, for example, Mr. Martin Witt stepped down as planned from his position as a member of the Management Board of United Internet AG (as of September 30, 2017) in order to focus fully on the development of the Consumer Access division in his role as CEO of 1&1 Telecommunication SE and in his new additional role as member of the Management Board of Drillisch AG (as of October 1, 2017). Moreover, Mr. Ralph Dommermuth took over responsibility for the Consumer Access division as CEO of Drillisch AG on January 1, 2018 – in addition to his role as CEO of United Internet AG.

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After serving on the Management Board of 1&1 Internet SE for eleven years, five of which as CEO of 1&1 Internet SE and Member of the Board for Business Applications at United Internet AG, Robert Hoffmann stepped down from the Management Board of United Internet at his own request on December 31, 2017 in order to pursue new entrepreneurial challenges. Robert Hoffmann successfully laid the foundation for United Internet's growth plans in the field of Business Applications. Offerings for small businesses were expanded with the addition of new cloud services, such as online and social marketing, cloud productivity and accounting, the cloud infrastructure portfolio was revamped, new growth markets were tapped via the acquisition of Arsys, home.pl, Strato and recently ProfitBricks, and new markets entered in Mexico and Italy. In addition, United Internet acquired stakes in strategically relevant cooperation partners, such as ePages, OpenXChange, rankingCoach and uberall. And with the above mentioned investment of Warburg Pincus in the Business Applications division, a strong partner was gained for the planned IPO. Robert Hoffmann already handed over his position as CEO of 1&1 Internet SE to Eric Tholomé on October 1, 2017. Eric Tholomé can look back on a long and successful career in the New Economy – he has been developing and marketing software, hardware and digital solutions at various companies for more than 25 years. Before joining 1&1 Internet SE, Eric Tholomé worked for Google – as of 2007 – in Switzerland and Silicon Valley in a variety of management positions, with responsibility for Gmail, YouTube, the Google Cloud platform and Google Shopping. Over the past five years, he was also responsible for Google's largest development center outside the USA with over 2,000 employees in Zurich. As CEO of the 1&1 Internet holding companies and 1&1 Internet SE, Eric Tholomé will focus exclusively on the development of Business Applications division.

As in the previous year, the **Supervisory Board** of United Internet AG elected by the Annual Shareholders' Meeting 2015 comprised the following three members in fiscal year 2017:

- Kurt Dobitsch, chair
- Michael Scheeren, deputy chair
- Kai-Uwe Ricke

Main markets and competition

Germany is the most important **sales market** of the United Internet Group by far and accounts for around 91% of total sales. In addition to Germany, the Group's most important sales markets include the UK, the USA, Spain, France, Poland, Austria, and Switzerland.

Competitive standing in the Access segment

In terms of its competitive standing, United Internet (in the purely domestically aligned Access segment) is among the top three suppliers in Germany's broadband market with its DSL products and one of the fastest growing companies with its mobile internet products in the German mobile communications market. Following the merger with Drillisch (now 1&1 Drillisch) in 2017, United Internet is the fourth force in Germany's telecommunications market with mobile and landline products – after Deutsche Telekom, Vodafone and Telefónica Germany.

Competitive standing in the Applications segment

United Internet has long been the market leader in Germany for hosting and cloud applications (in the globally aligned Applications segment) and strengthened its position in 2017 with the takeover of its competitor Strato.

In Europe, United Internet's hosting and cloud applications are now available in all major markets – either locally or via Germany. In addition to the domestic German market, these mainly include the major European economies of France, the UK, Italy, Poland and Spain. With the exception of Italy, where United Internet only began operations in May 2012, the company is among the market leaders in the aforementioned countries. All in all, therefore, United Internet is also the leading European supplier of hosting and cloud applications.

Further target markets for the Group's application business outside Europe are the North American countries Canada, USA and Mexico. In the most important of these markets, the USA, United Internet is one of the leading companies in this segment.

Viewed globally, United Internet is thus one of the top three companies for hosting and cloud applications – also according to internet analysts such as 451 RESEARCH.

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Main locations

As of December 31, 2017, the United Internet Group employed a total of 9,414 people at around 40 domestic and foreign facilities.

Main locations (by headcount; > 50 employees)

Location	Main activity	Company / brand
Montabaur (HQ)	HQ, Investments, IR, PR, Finance, Corporate Controlling & Accounting, Risk Management, Internal Audit, Legal, Compliance, HR	United Internet
	Finance, PR, Marketing, Sales, Logistics, Customer Service for Access & Applications Segments	1&1
Karlsruhe	Development, Product Management, Data Center Operation, Marketing, Sales, Purchasing, Customer Service for Access & Applications Segments	1&1, WEB.DE, GMX, mail.com, United Internet Media
Berlin	Development, Customer Service for Applications Segment (Business)	1&1
	Access Segment (Business)	1&1 Versatel
	Applications Segment (Business)	Strato, ProfitBricks
Munich	Applications Segment (Consumer)	GMX, WEB.DE
	Access Segment (Consumer)	1&1 Drillisch
Zweibrücken	Customer Service for Access & Applications Segments	1&1
Cebu City (Philippines)	Customer Service for Applications Segment (Business)	1&1
Madrid / Logroño (Spain)	Applications Segment (Business) in Spain, DC Operation	1&1, Arsys
Stettin (Poland)	Applications Segment (Business) in Poland	home.pl
Gloucester (UK)	Applications Segment (Business) in UK, DC Operation	1&1, Fasthosts
Flensburg	Access Segment (Business)	1&1 Versatel
Düsseldorf	Access Segment (Business)	1&1 Versatel
Dortmund	Access Segment (Business)	1&1 Versatel
Krefeld	Access Segment (Consumer)	1&1 Drillisch
Maintal	Access Segment (Consumer)	1&1 Drillisch
Bucharest (Romania)	Development for Applications Segment	1&1
Chesterbrook / Lenexa (USA)	Applications Segment (Business) in North America, DC Operation and Customer Service	1&1
Stuttgart	Access Segment (Business)	1&1 Versatel
Essen	Access Segment (Business)	1&1 Versatel
Regensburg	Applications Segment (Business)	InterNetX
Cologne	Applications Segment (Business)	Sedo
Münster	Access Segment (Consumer)	1&1 Drillisch
Starnberg	Applications Segment (Business)	united-domains

1.2 Strategy

United Internet's business model is based predominantly on customer contracts (electronic subscriptions) with fixed monthly amounts and contractually agreed terms. Such a business model ensures stable and plannable revenue and cash flows, protects against macroeconomic effects and provides the financial scope to grasp opportunities in new business fields and markets – organically or via acquisitions and investments.

A large number of customer relationships also helps the company to utilize so-called economies of scale: the more customers using the products created by our development teams and operated at our own data centers, the greater our profit will be. These profits can then be invested in new customers, new developments and new business fields.

From the current perspective, Cloud Applications and Mobile Internet will be the growth markets over the coming years. With its clear positioning in the Access and Applications segments, United Internet is well placed to exploit the expected market potential.

In view of the dynamic market development of Cloud Applications and Mobile Internet, the company's growth opportunities are clearly apparent: universally accessible, increasingly powerful broadband connections are enabling new and more sophisticated cloud applications. These internet-based programs for end users and companies will also be United Internet's growth drivers in the years ahead – both as stand-alone products in the Applications business field as well as in combination with landline and mobile access products in the Access segment business field.

With its many years of experience as an access and application provider, its expertise in software development and data center operation, marketing, sales and customer support, as well as its strong and well-known brands (such as 1&1, GMX and WEB.DE), and customer relationships with millions of private users, freelancers and small companies in Germany and abroad (currently around 59 million user accounts world-wide), the company is excellently positioned.

In order to leverage this positioning for further sustainable growth, United Internet will also invest heavily in new customers, new products and business fields in future, as well as in its further internationalization.

In addition to organic growth, United Internet also continually seeks possibilities for company acquisitions, investments and cooperations, in order to extend its market positions, competencies and product portfolios.

Thanks to its high and plannable level of free cash flow, United Internet has a strong source of internal funding as well as good access to debt financing markets. Further information on the company's equity strength and external financing is presented in section 2.2 Business Development and 2.3 Position of the Group.

Further information on strategy, opportunities and targets is included in the "Risk, Opportunity and Forecast Report" in section 4.



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1.3 Control Systems

The internal control systems help management steer and monitor the Group and its segments. The systems consist of planning, actual situation and forecast calculations based on the Group's annually revised strategic planning. Particular attention is paid to market developments, technological developments and trends, as well as their impact on the Group's own products and services, and the Group's financial possibilities. The corporate control system's aim is the continual and sustainable development of United Internet and its subsidiaries.

The Group's reporting system comprises the monthly profit calculations and quarterly IFRS-compliant reports for all consolidated subsidiaries. It presents the financial position and performance of the Group and all divisions. Financial reporting also includes other detailed information which is required for the assessment and control of operating business.

The key performance indicators of the United Internet Group for chief corporate management are presented in "Segment reporting" under point 5 of the Notes to the Consolidated Financial Statements.



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Quarterly reports on significant risks for the company represent a further component of the control systems.

The above mentioned reports are discussed at meetings of the Management Board and Supervisory Board and provide the fundamental basis for assessments and decisions.

In order to control the Group's performance, United Internet AG uses in particular the key figures of the income statement (sales, EBITDA, EBIT, EPS), of the statement of cash flows (free cash flow) and of the statement of financial position (asset items, financial liabilities). The company also employs non-financial key figures, in particular the number and growth of fee-based customer contracts, as well as ad-financed free accounts. The use and definition of the relevant key financial figures is shown in section 2.2.



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The key performance indicators (KPIs) are the number of fee-based customer contracts, sales, and EBITDA. These figures are also used in forecast reporting.

A comparison of the KPIs stated in the forecast and the actual figures is provided in this Management Report in 2.2 "Business Development" in the section "Actual and Forecast Development" as well as in 2.3 "Position of the Group".



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The number of customer contracts, the gross and net sales figures and the related customer acquisition costs in particular – compared to the company's plans and forecast calculations – serve as an early warning system.

1.4 Research and development

As an internet service provider, the United Internet Group does not engage in research and development (R&D) on a scale comparable with manufacturing companies. Against this backdrop, United Internet does not disclose key figures for R&D.

At the same time, the United Internet brands stand for high-performance internet access, solutions and innovative web-based products and applications which are mostly developed in-house. The success of United Internet is rooted in an ability to develop, combine or adapt innovative products and services and launch them on major markets.

Thanks to its own development teams, United Internet is able to react fast and flexibly to new ideas and trends and continually enhance its established products, adapting them to changing market needs – a key success factor in the fast-moving internet market. The company's expertise in product development, enhancement and roll-out minimizes its reliance on third party development work and supplies in many areas and thus ensures decisive competitive and time-to-market advantages.

At United Internet's own development centers (especially in Karlsruhe, Berlin and Bucharest), over 3,000 developers, product managers and technical administrators (corresponding to around 32% of all employees) use mainly open source code in clearly defined and modeled development environments. Third-party programming services are also used to swiftly and efficiently implement specific projects. This enables the company to quickly change existing products and adapt them to changing customer needs. United Internet also procures solutions from partners, which are then modified according to needs and integrated into its systems. With the aid of its self-developed and integrated applications, United Internet has a set of modules which can be easily combined and provided with product-specific or country-specific user interfaces in order to create a variety of powerful and integrated applications – a huge benefit when tailoring products to varying target groups or for international rollouts.

Due to the steady growth in customer figures, the demands placed on reliability and availability are constantly rising. In addition to the further development of existing products and continual optimization of back-end operations, the company also focuses on continually enhancing existing processes in order to raise system reliability and thus also customer satisfaction.

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Focus areas 2017

Access

■ Open access platform

As one of the leading DSL and mobile providers in Germany, 1&1 already developed an open access platform two years ago. This platform links the fiber-optic networks of regional providers with the fiber-optic network of 1&1 Versatel and allows 1&1 as a nationwide provider to market these connections. The fiber-optic network of United Internet subsidiary 1&1 Versatel – with a length of around 45,000 km, the second-largest in Germany – provides nationwide aggregation possibilities. After connecting the first partner, wilhelm.tel in northern Germany in 2016, three more fiber-optic providers were added to the 1&1 platform in 2017 with M-net in Munich, R-KOM in Regensburg, and NetCologne in Cologne. Further partners are to be connected to the open access platform in the future. By using the standardized interface (S/PRI 4.0) and enhancing the technical capabilities of the platform, the effort involved in connecting other carriers and their fiber-optic house connections was further reduced. Thanks to the newly gained cooperation partners and a further enhanced product portfolio, a growing number of private customers can now benefit from modern fiber-optic connections. In addition, 1&1 thus ensures access to the best possible infrastructures.

■ Layer 2 Bitstream Access

In January 2017, 1&1 and 1&1 Versatel started the construction of the Layer 2 platform in order to be able to source high-bit-rate VDSL wholesale services at much more attractive terms from Deutsche Telekom in the future and at the same time significantly increase their own added value. To this end, 1&1 Versatel expanded its network and connected so-called BNGs (access points for Layer 2) with fiber-optics. This was and is an important development step in order to exploit commercial synergies through the use of the company's own fiber-optic network and expand its own future-ready product design – by developing into an independent network operator.

Over 700,000 customers had already been successfully migrated to this new platform by the end of 2017. This was made possible by 1&1 Versatel's use of Deutsche Telekom's BNGs. As a result, 1&1 developed into Germany's largest Layer 2 customer within a year and boasts the largest Layer 2 network of the alternative carriers.

Nationwide coverage will continue to be driven by the Layer 2 platform as the fiber-optic network is successively expanded.

■ "1&1 Digital-TV"

In the fiscal year 2017, 1&1 launched "1&1 Digital-TV" together with 1&1 Versatel and the IPTV specialist Zattoo as its technical service provider. In addition to the technical platform and application work, license agreements for content and functions had to be negotiated and agreed with over 25 partners. The licenses are in the hands of 1&1, thus ensuring 100% product design and price sovereignty as well as maximum flexibility to respond to market conditions.

"1&1 Digital-TV" was rolled out in December 2017 and offers users the possibility to receive TV via the 1&1 broadband network. It can be used either via the 1&1 TV box or via Wi-Fi on tablets or smartphones (Android/iOS). Native apps for Fire TV and Apple TV are also available. 1&1 has thus strengthened its position as a full-service provider offering one-stop shopping for its customers. "1&1 Digital-TV" can be ordered as a chargeable option with all VDSL connections.

The basic package offers up to three TV streams that can be used simultaneously, and contains around 90 free-to-air channels. Public channels are already included in HD quality. Customers can also request HD for all private channels. A variety of genre- and country-specific TV packages are also available.

"1&1 Digital-TV" is the first completely cloud-based TV service from a landline provider on the German market. User-friendly functions such as recording, pause, instant restart and catch-up are realized completely in the cloud. It is therefore possible to program recordings at home or on the road via a smartphone. The recordings are then stored in a personal cloud and can be accessed via DSL within the private home network.

Anyone wanting to watch a program from the beginning again during a broadcast can restart it using the Instant Restart function. In addition, the EPG (Electronic Program Guide) offers a catch-up feature that provides quick access to past programs: the selected content can be retrieved up to seven days after broadcast.

■ 1&1 Control Center and 1&1 Control Center App

The trend towards digitalization is still continuing and the number of customers who want to manage their contracts online or via apps is steadily growing. The aim of the 1&1 Control Center is therefore to cover four different areas of customer service – Self Care, Customer Care, Help, and Cross & Upselling. For example, customers can view their data and minute usage, as well as invoices, and can change payment methods and tariffs, or use special offers in the integrated customer shop. At the same time, they can contact customer service via call, recall, email or chat, or reach their desired destination via the smart search function.

In 2017, new regulatory requirements were implemented in the Control Center. In addition to the increase in failure and data security, there were adjustments in itemized billing, and the EU Roaming Regulation was integrated. At the same time, the user-friendliness of the app was improved with a much more intuitive design and further new features, such as push notifications which can inform about new invoices but also serve as a new communication and distribution channel. Customers can also provide their traffic and usage data on a voluntary basis, thus contributing to further product enhancements. All in all, sales performance was improved significantly without increasing the amount of advertising.

DSL customers can now also use the app to measure the quality of their broadband connection at any time and optimize their home Wi-Fi networks. The aim is to ensure enough bandwidth is available in all rooms of the apartment or house for applications such as "1&1 Digital TV" for use on various devices.

Business Applications

■ MyWebsite

A change of strategy was implemented for MyWebsite in 2017 to ensure that it remains a leading product in the future. The development and operation of the core editor components were taken over by a strong, highly specialized partner so that the company's own teams can focus more on integration and innovation in the field of sector expertise, user experience and support.

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Following an intensive selection process, Duda Inc. based in Palo Alto, California, was chosen as the partner. Duda was responsible for bringing a completely new, highly modern editor component to the MyWebsite product offering which enables modifications to the company's internal system to be made much faster and more efficiently. In addition to significant increases in performance, this resulted in the following enhancements to the MyWebsite functions:

- Dynamic personalization of website content depending on events, time, location, cookies (visitor targeting)
- Versioning of websites and management of backups
- Transfer of content from existing websites or social networks (crawler)
- Modern blog system with a variety of settings and networking options (syndication)
- Multilingual websites including automatic translations and localizations
- Availability of all editing options on mobile devices
- More flexible design options such as moving image backgrounds, parallax scrolling and responsive layouts
- Access to and editing of website source code

At the same time, in-house product development focused on a whole series of value-adding measures:

- Integration and consolidation in order to be able to access a central system offering across the entire brand network in the future. In addition provision, this includes the planning and implementation of migrations from various existing website editors.
- Further increase in industry expertise to provide maximum assistance and inspiration for SMEs with regard to establishing and expanding their digital footprint. Launched in the third quarter of 2017, this included testing and developing a completely new approach to providing website templates and enriching them with industry-specific text and image content. Within the new editor, the 1&1 image pool with over 20 million images was enhanced once again by increasing the number and industry-relevance of the search results and presenting them in clearer display. In addition, modules with special functions for specific industries were integrated, for example for making table reservations directly on the website.
- Innovations in the user experience and support to shorten the most important factor in web page creation: time. A dialog system was placed before the initial use of the new editor to enable users to follow and execute the setup process in a few simple steps. One major addition is the online business card, which is explained in more detail below. With regard to the user-friendliness of the editor, extensive user tests were conducted in order to optimize all functions according to the needs of the respective target group and to make them as intuitive as possible. The help system also got a major overhaul with deeper integration so that more detailed information is always available within the current use context.

■ Online Business Card

In the 4th quarter of 2017, a new function was rolled out together with the greatly simplified MyWebsite set-up process that enables customers to publish their initial online presence within seconds: the Online Business Card. The main idea behind this concept is to give customers the time they need to create their perfect website with the MyWebsite editor, knowing that site visitors can already get the most important information about their business during this time – a need which was revealed during intensive user research.

The Online Business Card enables customers to quickly and easily configure their company logo, contact information, directions to the firm, contact form, and social networking links in one of five designs in order to make this information visible for both visitors and search engines. Customers whose companies are already represented in an online directory can transfer the corresponding data into their Online Business Card, making the set-up process even faster.

■ 1&1 Website Checker

The 1&1 Website Checker provides even better support for SMEs in their quest for online success. It analyzes more than 20 website criteria in the four categories: "Online Presence", "Being Found", "Being Safe", and "Being Fast". The 1&1 Website Checker is available for free to all customers in the 1&1 Control Center and the 1&1 Hosting Manager app.

The monthly email report monitors the online presence of 1&1 customers and informs them about new optimization potential and the development of visitor figures.

■ Alexa Skill

1&1 now offers its hosting customers a skill for Amazon's voice assistant Alexa. The Alexa skill provides information on the latest invoice and can send an invoice copy by email if required. In addition, the skill provides information about the number of visitors to the customer's website.

The skill can be activated for free in the Amazon Skill Store and linked with the 1&1 user account. 1&1 is thus one of the first hosters to offer this modern form of user interface. Depending on user feedback, further functions will be added to the skill.

■ CaaS platform (Container-as-a-Service)

The latest container technologies Docker and Kubernetes, packaged "as a service", represent a quantum leap for the ever faster development cycles of software development and the "fail (and learn) fast" methods. Strict modularization of the software, also known as cloud-native software, supports this container technology by allowing software modules (also known as micro-services) to be exchanged in individual containers within just a few seconds.

At the same time, containers can be started and stopped in milliseconds so that micro-services react elastically to changes in load and, consequently, use the underlying infrastructure much more efficiently. The management software Kubernetes guarantees the maintenance of the service level by automatically starting and stopping the required number of container instances.

1&1 already uses this technology for the provision of managed cloud hosting services, as well as for internal management components. Moreover, a beta version of this technology is now also offered to customers.

Consumer Applications

■ Big Data & Tracking

United Internet sees a key competitive advantage in the consistent exploitation of the enormous data volumes which result from its operating business. The aim is to understand customer wishes more fully, thus enabling the company to optimize its product portfolio and provide services more efficiently.

With the aid of its own big data platform, the continuous integration of additional data sources from across the entire company provides more accurate analysis and understanding of customer needs and product usage. This knowledge makes it possible to optimize existing products and services or to develop new business fields.

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One of the most important data sources for the big data platform is a tracking system that registers 18 billion user interactions per month on United Internet's portals and web services. This has been given a new technical basis and thus, first of all, prepared for the requirements of the upcoming EU General Data Protection Regulation. Secondly, new data processing methods like stream processing and machine learning were introduced so that further use cases can now be tapped and new customer systems, such as recommendation engines, can be supplied with online information.

■ Log-in alliance

In cooperation with the media group RTL Germany and ProSiebenSat.1, United Internet has announced the creation of a log-in alliance. Against the backdrop of the EU General Data Protection Regulation (GDPR) and the planned ePrivacy Regulation, the log-in alliance represents a counterweight to the "walled gardens" of the US platform operators, such as Google and Facebook. The main focus is on the data sovereignty of users.

With the same log-in data, users can log in to any of the initiative's partners via a single, cross-industry infrastructure. Thanks to this single-sign-on concept, individual registration with different access data and passwords is no longer necessary. At the same time, users retain full control and decide for themselves which data is transmitted to other service providers.

United Internet will also act as the technical service provider within the log-in alliance. The company can draw on its vast experience in dealing with user data in a high-load and high-availability environment.

The basis is a solid technology base that supports the basic idea of an open and federal network. Of particular importance is the use of established standards to ensure easy integration of diverse internet services and cooperation partners.

The company regards this openness with regard to the integration of different suppliers and service providers as a decisive advantage over its competitors.

2 ECONOMIC REPORT

2.1 General economic and sector conditions

General economic development

The International Monetary Fund (IMF) upgraded its forecasts for the global economy throughout 2017. In the latest update to its "World Economic Outlook" on January 22, 2018, the Fund calculated preliminary growth for the **global economy** of 3.7% in 2017. This is 0.5 percentage points more than in the previous year (3.2%) and also 0.3 percentage points more than the IMF had forecast in January 2017 (3.4%).

The Fund attributed this stronger-than-expected trend in 2017 to a general global economic upturn focusing on Europe and Asia.

From the point of view of United Internet, the economies of its current target markets all performed better than originally expected (apart from the USA, which was in line with expectations). With the exception of Mexico, Spain and the UK, the pace of economic growth was also faster than in the previous year.

With growth of 2.3% in 2017, the **US economy** improved strongly over the previous year (1.5%) and was in line with the IMF forecast issued at the beginning of the year (outlook January 2017: 2.3%). Economic growth of 3.0% in **Canada** was also well above the prior-year figure (1.4%) and also exceeded the original expectations (1.9%). **Mexico's** growth rate of 2.0%, however, was well down on the previous year (2.9%) but above the IMF's original forecast (1.7%).

At 2.4%, economic growth in the **eurozone** was not only significantly stronger than in the previous year (1.8%) but also easily exceeded the original expectations of the IMF (1.6%).

In **France**, the 1.8% increase in economic output was well up on the previous year (1.2%) and the original expectations (1.3%). With economic growth of 3.1%, **Spain** fell just short of its prior-year rate (3.3%) but was still well above (2.3%). **Italy** achieved growth of 1.6% and thus easily surpassed both the prior-year figure (0.9%) and the original expectations of the IMF (0.7%).

In the non-euro country **UK**, the economic trend was slightly better than expected. Although growth of 1.7% was slightly down on the previous year (1.9%), it did exceed IMF expectations (1.5%).

The IMF calculated economic growth of 2.5% for **Germany**, United Internet's most important market (sales share 2017: around 91%), in 2017. This is 0.6 percentage points more than in the previous year (1.9%) and 1.0 percentage point more than the original expectations (1.5%). The IMF's calculations for Germany correspond with the preliminary figures of the country's Federal Statistics Office (Destatis), which calculated growth in gross domestic product (GDP) of 2.5% (after price and calendar adjustments). This growth was driven in particular by consumer spending, as well as public sector spending.

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Changes in growth forecasts made during 2017 for United Internet's key target countries and regions

	January forecast	April forecast	July forecast	October forecast	Actual 2017	Change on January forecast
World	3.4%	3.5%	3.5%	3.6%	3.7%	+ 0.3 %-points
USA	2.3%	2.3%	2.1%	2.2%	2.3%	+/- 0.0 %-points
Canada	1.9%	1.9%	2.5%	3.0%	3.0%	+ 1.1 %-points
Mexico	1.7%	1.7%	1.9%	2.1%	2.0%	+ 0.3 %-points
Eurozone	1.6%	1.7%	1.9%	2.1%	2.4%	+ 0.8 %-points
France	1.3%	1.4%	1.5%	1.6%	1.8%	+ 0.5 %-points
Spain	2.3%	2.6%	3.1%	3.1%	3.1%	+ 0.8 %-points
Italy	0.7%	0.8%	1.3%	1.5%	1.6%	+ 0.9 %-points
UK	1.5%	2.0%	1.7%	1.7%	1.7%	+ 0.2 %-points
Germany	1.5%	1.6%	1.8%	2.0%	2.5%	+ 1.0 %-points

Source: International Monetary Fund, World Economic Outlook (Update), January 2018

Multi-period overview: GDP trend in United Internet's key target countries and regions

	2013	2014	2015	2016	2017	YoY change
World	3.3%	3.4%	3.2%	3.2%	3.7%	+ 0.5 %-points
USA	2.2%	2.4%	2.6%	1.5%	2.3%	+ 0.8 %-points
Canada	2.0%	2.5%	0.9%	1.4%	3.0%	+ 1.6 %-points
Mexico	1.4%	2.3%	2.6%	2.9%	2.0%	- 0.9 %-points
Eurozone	- 0.5%	0.9%	2.0%	1.8%	2.4%	+ 0.6 %-points
France	0.3%	0.2%	1.3%	1.2%	1.8%	+ 0.6 %-points
Spain	- 1.2%	1.4%	3.2%	3.3%	3.1%	- 0.2 %-points
Italy	- 1.9%	- 0.4%	0.7%	0.9%	1.6%	+ 0.7 %-points
UK	1.7%	2.9%	2.2%	1.9%	1.7%	- 0.2 %-points
Germany	0.2%	1.6%	1.5%	1.9%	2.5%	+ 0.6 %-points

Source: International Monetary Fund, World Economic Outlook (Update), January 2018

Multi-period overview: development of price- and calendar-adjusted GDP in Germany

	2013	2014	2015	2016	2017	YoY change
GDP	0.6%	1.9%	1.5%	1.9%	2.5%	+ 0.6 %-points

Source: German Federal Statistical Office, January 2018

Development of sector / core markets

Global ICT sales (ICT = Information and Communication Technology) are calculated to have grown by 3.3% to € 3.2 trillion in 2017. The figure was announced by the industry association Bitkom on the basis of a recent survey of the European Information Technology Observatory (EITO) on September 20, 2017. There was particularly strong growth in the emerging markets. In an international comparison, the ICT markets in India (+ 9.0%) and China (+ 8.5%) continued to grow at the fastest rates. The world's largest ICT market by far is still the USA with growth of 3.0% to € 979 billion. ICT sales in the EU are expected to have grown by 1.8% to € 683 billion in 2017.

At its annual press conference on February 14, 2018, the industry association Bitkom calculated that the ICT market in Germany grew by 2.2% to € 161.3 billion in 2017. With sales of € 86.2 billion and growth of 3.9%, the IT sector still displays the strongest growth and largest market volume. Vendors of software (+ 6.3%), IT hardware (+ 4.2%) and IT services (+ 2.3%) once again posted the strongest growth in 2017. Compared to the previous year, the telecommunications market stabilized with a slight increase of 0.1% to € 65.7 billion. There was growth for user devices (+ 4.7%) and telecommunication infrastructure (+ 0.5%), while demand for telecommunication services fell slightly (- 0.1%). Following a few weaker years, the consumer electronics market recovered with sales rising by 2.6% to € 9.4 billion.

The most important ICT markets for United Internet's business model are the German broadband and mobile internet markets for its mostly subscription-financed Access segment, and the global cloud computing and German online advertising markets for its subscription- and ad-financed Applications segment.

(Stationary) broadband market in Germany

In view of the high level of household coverage already achieved and the strong trend toward mobile internet usage, demand for new landline broadband connections in Germany has slowed since 2008. With expected growth of 1.0 million to 33.0 million in 2017, the number of new connections was again well below previous record years and also below the prior-year figure (1.3 million new connections). These figures were calculated by the Association of Telecommunications and Value-Added Service Providers (Verband der Anbieter von Telekommunikations- und Mehrwertdiensten – VATM) and Dialog Consult in their joint "TC Market Analysis for Germany 2017" (October 18, 2017). Within the above mentioned growth, the connections of relevance for United Internet in the two technology fields DSL and FTTB / FTTH grew by 0.5 million to 24.6 million and by 0.1 million to 0.8 million. The number of cable connections rose by 0.4 million to 7.6 million. Approximately 0.1 million connections are still operated via satellite / powerline.

In its survey "German Entertainment and Media Outlook 2017-2021" (October 2017), PricewaterhouseCoopers (PWC) expects total sales of landline broadband connections to rise by 1.1% to around € 8.06 billion in 2017.

According to calculations of Dialog Consult / VATM, the average volume of data used is rising much more strongly than the number of newly activated connections and sales of broadband connections – as an indicator of continued growth in usage of e.g. IPTV and cloud applications – with growth of 33.2% to 79.0 GB (per connection and month). As a result, demand for more powerful broadband connections also developed strongly. For example, the proportion of switched broadband connections with speeds of at least 50 MBit/s increased by 4.4 percentage points, from 23.8% in the previous year to 28.2% in 2017.

Key market figures: broadband access (landline) in Germany

	2017	2016	Change
Broadband revenues (in € billion)	8.06	7.97	+ 1.1%

Source: PricewaterhouseCoopers, October 2017

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Mobile internet market in Germany

According to estimates of Dialog Consult / VATM, the number of active SIM cards in the German mobile communications market increased by 5.2 million to 135.0 million in 2017.

Due in part to the elimination of roaming fees within the EU (mid-2017), however, mobile revenues decreased by 1.9% to € 26.2 billion. Sales of user devices and content fell by 5.4% to € 3.5 billion, while voice and connection revenues declined by 13.6% to € 9.5 billion. By contrast, sales of data services (including SMS) increased by 10.0% to € 13.2 billion. The revenue share of data services therefore grew by 5.5 percentage points to 50.4% (prior year: 44.9%). The aforementioned revenue figures also include – in addition to retail sales – interconnection, wholesale and user device sales. According to calculations by PricewaterhouseCoopers, purely retail sales of mobile data services revenues – the main market for United Internet – grew by 6.6% to € 7.77 billion in 2017 and thus continued to approach the figure for landline revenues.

According to forecasts of Dialog Consult / VATM, the average volume of data used (per connection and month) – as an indicator of the growing use of mobile data services – rose even more strongly in the same period by 43.8% to 850 MB.

Key market figures: mobile internet access (cellular) in Germany

	2017	2016	Change
Mobile internet revenues (in € billion)	7.77	7.29	+ 6.6%

Source: PricewaterhouseCoopers, October 2017

Global cloud computing market

There was also further dynamic growth in the cloud computing market. In an update of its study "Forecast Analysis: Public Cloud Services, Worldwide" (December 2017), Gartner Inc. forecast global growth for public cloud services of 21.8% in 2017, from \$ 125.7 billion to \$ 153.1 billion.

Cloud computing is no short-term trend, but represents a fundamental shift in the provision and use of IT services. The aforementioned figures indicate the dynamic potential of this market. IT users get better services for less money with cloud computing. Small and mid-size companies in particular can gain access to IT applications which only major corporations could afford in the past.

Key market figures: cloud computing worldwide (in \$ billion)

	2017	2016	Change
Global sales of public cloud services	153.1	125.7	+ 21.8%
thereof business process services (BPaaS)	42.5	39.6	+ 7.3%
thereof application services (SaaS)	60.1	47.6	+ 26.3%
thereof application infrastructure services (PaaS)	11.9	9.2	+ 29.3%
thereof system infrastructure services (IaaS)	29.9	22.2	+ 34.7%
thereof management and security services	8.7	7.1	+ 22.5%

Source: Gartner, December 2017

German online advertising market

PricewaterhouseCoopers expects an increase in (net) revenues of the German online advertising market of 6.8% to around € 7.07 billion in 2017.

With a growth of 26.3%, mobile online advertising posted the strongest growth – due in particular to the sharp rise in the use of mobile devices. However, video advertising and search word marketing also rose strongly once again, with growth of 8.6% and 6.8%, respectively.

Key market figures: online advertising in Germany (in € billion)

	2017	2016	Change
Online advertising revenues	7.07	6.62	+ 6.8%
thereof search marketing	3.46	3.24	+ 6.8%
thereof display advertising	1.52	1.48	+ 2.7%
thereof affiliate / classifieds	0.99	0.98	+ 1.0%
thereof mobile online advertising	0.72	0.57	+ 26.3%
thereof video advertising	0.38	0.35	+ 8.6%

Quelle: PricewaterhouseCoopers, Oktober 2017

Legal conditions / significant events

With the exception of the EU Roaming Regulation introduced in mid 2017, the legal parameters for United Internet's business activities remained largely unchanged from the previous year in 2017 and thus had no significant influence on the development of the United Internet Group.

Apart from the investment of Warburg Pincus and the takeovers of Strato and Drillisch, there were no significant events in fiscal 2017 which had a material effect on the development of business.

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2.2 Business development

Use and definition of relevant financial performance measures

In order to ensure the clear and transparent presentation of United Internet's business trend, the Group's annual financial statements and interim financial statements include key financial performance measures – in addition to the disclosures required by International Financial Reporting Standards (IFRS) – such as EBITDA, the EBITDA margin, EBIT, the EBIT margin and free cash flow.

United Internet defines these measures as follows:

- **EBIT:** Earnings before interest and taxes represents the operating result disclosed in the statement of comprehensive income.
- **EBIT margin:** Presents the ratio of EBIT to sales.
- **EBITDA:** Earnings before interest, taxes, depreciation and amortization are calculated as EBIT / operating result plus the depreciation and amortization (disclosed in the consolidated financial statements) of intangible assets and property, plant and equipment, as well as assets capitalized in the course of company acquisitions.
- **EBITDA margin:** Presents the ratio of EBITDA to sales.
- **Free cash flow:** Calculated as cash flow from operating activities (disclosed in the consolidated financial statement), less capital expenditure for intangible assets and property, plant and equipment, plus payments from the disposal of intangible assets and property, plant and equipment.

Insofar as necessary for a clear and transparent presentation, these indicators are adjusted for special items. Such special items usually refer solely to those effects capable of restricting the validity of the key financial performance measures with regard to the Group's financial and earnings performance – due to their nature, frequency and/or magnitude. All special items are presented and explained for the purpose of reconciliation with the unadjusted financial figures in the relevant section of the financial statements.

Currency-adjusted sales and earnings figures are calculated by converting sales and earnings figures with the average exchange rates of the comparative period instead of the current period.

Actual and forecast development

United Internet AG maintained its growth trajectory in fiscal year 2017. The company raised the number of customer contracts, improved its sales and earnings figures once again, and reached its forecasts.

Following the sale and deconsolidation of affilinet, the comparative figures of the previous year (sales and EBITDA) were adjusted. The number of customer contracts in the previous year was also adjusted as United Internet's reporting now focuses on customer contracts with basic monthly fees in its current product lines following the initial consolidation of Drillisch (in September 2017). Contracts without basic monthly fees and old contracts for product lines being phased out are only reported for information purposes.

Forecast development

United Internet published its guidance for the fiscal year 2017 in its annual financial statements 2016 and provided more specific guidance during the course of the year as follows.

	Fiscal year 2016	Forecast 2017 (03/2017)	Specification (08/2017)	Specification (11/2017)
Customer contracts	16.79 million ⁽¹⁾	+ approx. 800,000 ⁽²⁾ + approx. 1.8 million ⁽³⁾	+ approx. 800,000 ⁽²⁾	+ approx. 6.1 million ⁽⁶⁾
Sales	€ 3.81 billion ⁽¹⁾	+ approx. 7% ⁽⁴⁾	+ 5 - 6%	+ approx. € 4.20 billion
EBITDA	€ 835 million ⁽¹⁾	+ approx. 12% ⁽⁵⁾	+ approx. 12%	€ 970 million - € 1 billion ⁽⁷⁾

(1) Customer contracts 2016 acc. to current product lines; sales / EBITDA 2016 after sale and deconsolidation of affilinet

(2) Organic growth

(3) Expected contract growth from Strato takeover

(4) Incl. approx. € 95 million sales from initial Strato consolidation as of April 1, 2017 and opposing sales burdens from regulation topics (roaming / termination charges) amounting to approx. € 60 million

(5) Incl. approx. € 36 million EBITDA from initial Strato consolidation as of April 1, 2017 and opposing EBITDA burdens from regulation topics and Telefónica DSL migration with net effect of approx. € 30 million

(6) In current product lines; thereof 1.87 million from initial Strato consolidation and 3.35 million from initial consolidation of Drillisch

(7) Including regulation effects, costs of Telefónica DSL migration and currency effects, and without consideration of extraordinary results

Significant year-on-year growth was also forecast for the financial KPI EBIT – in ordinary business (without special items).

By contrast, in March 2017 (and thus before the Drillisch transaction), earnings per share (EPS) were expected to be virtually unchanged from the previous year (€ 2.11 from continued operations) due to increased PPA amortization from the Strato takeover, a sharp rise in minority interests following the Warburg Pincus investment in the Business Applications division, and one-off tax effects from this transaction.

Special items

In order to ensure the comparability of the forecast KPIs EBITDA, EBIT and EPS and those actually achieved, they are first adjusted for special items.

These special items only refer to those effects capable of restricting the validity of the key financial performance measures with regard to the company's financial and earnings performance – due to their nature, frequency and/or magnitude.

Key earnings figures for 2016 and 2017 were influenced by special items with different effects:

Special items 2016:

- "Writedowns on financial assets": this special item results from the writing down of financial assets (especially impairment of shares held by United Internet in Rocket Internet SE) and has a negative impact on EPS.

Special items 2017:

- "Revaluation of Drillisch shares": this special item results from one-off, non-cash-effective, extraordinary income from the Drillisch takeover (due to the revaluation of Drillisch shares acquired before the complete transaction was closed) and has a positive effect on EBITDA, EBIT and EPS.

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- "Revaluation of ProfitBricks shares": this special item results from one-off, non-cash-effective, extraordinary income from the ProfitBricks takeover (due to the revaluation of ProfitBricks shares held before the takeover) and has a positive effect on EBITDA, EBIT and EPS.
- "M&A transaction costs": this special item results from the costs for M&A activities (especially in connection with the Drillisch takeover) and has a negative effect on EBITDA, EBIT and EPS.
- "Restructuring costs offline sales": this special item results in particular from one-off costs in connection with the sale of yourfone shops at year-end 2017 and the restructuring of the Drillisch retail organization and has a negative effect on EBITDA, EBIT and EPS.
- "Trademark writedowns Strato": this special item results from trademark writedowns on Strato and has a negative effect on EBIT and EPS.
- "Financing costs Drillisch": this special item results in particular from bank commissions in connection with the overall Drillisch transaction and has a negative effect on EPS.
- "Writedowns on financial assets": this special item results from the writing down of financial assets (especially impairment of shares held by United Internet in Rocket Internet SE) and has a negative impact on EPS.
- "Tax effects from M&A activities": this special item results from one-off tax effects in connection with the Warburg Pincus investment in the Business Applications division and the Drillisch takeover and has a negative effect on EPS.

Reconciliation of EBITDA, EBIT and EPS with figures adjusted for special items (in € million; EPS in €)

	Fiscal year 2017 ⁽¹⁾	Fiscal year 2016 ⁽¹⁾
EBITDA	1,253.3	835.4
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 17.1	-
Restructuring costs offline sales (2017)	+ 28.3	-
EBITDA before special items (operating)	979.6	835.4
EBIT	958.9	642.7
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 17.1	-
Restructuring costs offline sales (2017)	+ 28.3	-
Trademark writedowns Strato (2017)	+ 20.7	-
EBIT before special items (operating)	705.9	642.7
EPS (I) ⁽²⁾	3.06	0.86
EPS (II) ⁽²⁾	3.25	0.88
Revaluation of Drillisch shares (2017)	- 1.51	-
Revaluation of ProfitBricks shares (2017)	- 0.08	-
M&A transaction costs (2017)	+ 0.06	-
Restructuring costs offline sales (2017)	+ 0.10	-
Trademark writedowns Strato (2017)	+ 0.07	-
Financing costs Drillisch (2017)	+ 0.01	-
Writedowns on financial assets (2017 / 2016)	+ 0.10	+ 1.25
Tax effects from M&A activities (2017)	+ 0.21	-
EPS I before special items (operating)	2.02	2.11
EPS II before special items (operating)	2.21	2.13

(1) After initial consolidation of affilinet in 2017; previous year adjusted

(2) EPS I = EPS from continued operations; EPS II = EPS including discontinued operations

Actual development

United Internet continued to invest heavily in new customer relationships in fiscal year 2017 and succeeded in raising the number of **fee-based customer contracts** organically by 880,000 contracts. The initial consolidation of Strato and Drillisch resulted in a further 1.87 million and 3.35 million contracts.

As a result, the forecast (November specification: + 6.1 million organic growth and from initial consolidation of Strato and Drillisch) was met.

In fiscal year 2017, **consolidated sales** rose by 10.5% to € 4.206 billion (comparable prior-year figure: € 3.808 billion) and were thus slightly above the November specification after the Drillisch takeover (approx. € 4.2 billion).

Consolidated EBITDA from operating activities increased by 17.3% to € 979.6 million in fiscal year 2017 (comparable prior-year figure: € 835.4 million) and is thus within the targeted range of the November specification (€ 970 million - € 1 billion).

Despite increased PPA amortization from the Strato takeover, there was also strong year-on-year growth in **EBIT** from operating activities, which rose as forecast by 9.8% to € 705.9 million.

Operating **EPS** of € 2.02 fell short of the original forecast of € 2.11 (comparable prior-year figure from continued operations). This was due to the strong increase in minority interests caused by the 27% stake of non-controlling shareholders in 1&1 Drillisch AG and thus in the Consumer Access division.

Summary: actual and forecast development of business in 2017

	Fiscal year 2016	Forecast 2017 (03/2017)	Specification (08/2017)	Specification (11/2017)	Results fiscal year 2017
Customer contracts	16.79 million ⁽¹⁾	+ approx. 800,000 ⁽²⁾ + approx. 1.8 million ⁽³⁾	+ approx. 800,000 ⁽²⁾	+ approx. 6.1 million ⁽⁴⁾	+ 6.1 million
Sales	€ 3.81 billion ⁽¹⁾	+ approx. 7% ⁽⁴⁾	+ 5 - 6%	+ approx. € 4.20 billion	€ 4.206 billion
EBITDA	€ 835 million ⁽¹⁾	+ approx. 12% ⁽⁵⁾	+ approx. 12%	€ 970 million - € 1 billion ⁽⁷⁾	€ 979.6 million

(1) Customer contracts acc. to current product lines; sales / EBITDA adjusted after sale and deconsolidation of affilinet in 2017

(2) Organic growth

(3) Expected contract growth from Strato takeover

(4) Incl. approx. € 95 million sales from initial Strato consolidation as of April 1, 2017 and opposing sales burdens from regulation topics (roaming / termination charges) amounting to approx. € 60 million

(5) Incl. approx. € 36 million EBITDA from initial Strato consolidation as of April 1, 2017 and opposing EBITDA burdens from regulation topics and Telefónica DSL migration with net effect of approx. € 30 million

(6) In current product lines; thereof 1.87 million from initial Strato consolidation and 3.35 million from initial consolidation of Drillisch

(7) Including regulation effects, costs of Telefónica DSL migration and currency effects, and without consideration of extraordinary results

Including special items, EBITDA rose to € 1,253.3 million, EBIT to € 958.9 million and EPS from continued operations to € 3.06.

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Segment development

Access segment

The **Access segment** comprises United Internet's fee-based access products for its consumer and business customers. In its consumer business, these include DSL and mobile access products with the respective applications (such as home networks, online storage, telephony, video-on-demand or IPTV), while in the business segment these include data and network solutions for SMEs, as well as infrastructure services for large corporations.

With a current length of 44,889 km (prior year: 41,644 km), United Internet owns Germany's second-largest fiber-optic network. Moreover, the company – indirectly via Drillisch AG acquired in 2017 (now 1&1 Drillisch AG) – is the only MBA MVNO in Germany with long-term rights to a share (rising to 30%) of the used network capacity of Telefónica Germany and thus extensive access to Germany's largest mobile network. In addition to its own landline network and privileged access to the Telefónica network, the company also purchases standardized network services from various pre-service providers. These wholesale services are enhanced with end-user devices, self-developed applications and services from the company's own "Internet Factory" in order to differentiate them from the competition.

In its Access segment, United Internet operates exclusively in Germany where it is one of the leading providers.

Access products are marketed via well-known brands, such as 1&1 or the discount brands of the former Drillisch AG, such as winSIM, yourfone and smartmobile.de, which enable the company to offer a comprehensive range of products while also targeting specific customer groups.

Following the initial consolidation of Drillisch (since September 2017), United Internet's **reporting of fee-based contracts** is based on the current product lines with basic monthly fees. These include the Mobile Internet contracts of the former 1&1 and the MVNO budget contracts of the former Drillisch AG (grouped together under Mobile Internet), as well as the DSL / VDSL contracts (complete DSL contracts) of the former 1&1. Mobile tariffs without basic monthly fees and old mobile/DSL tariffs will only be reported for a transitional period. These include the volume-based and MSP tariffs of the former Drillisch AG and the phased-out T-DSL / R-DSL product lines of the former 1&1.

The number of **fee-based contracts** for current product lines of the Access segment rose by 4.10 million contracts to 12.64 million in the fiscal year 2017 – due in part to the consolidation of Drillisch. A total of 3.99 million customer contracts were added in the company's Mobile Internet business (of which 3.35 million from the Drillisch acquisition), thus raising the total number of contracts to 8.30 million. There was growth in complete DSL contracts (ULL = Unbundled Local Loop) with the addition of 110,000 customer contracts, taking the total to 4.34 million.

Development of Access contracts in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Access, total contracts	12.64	8.54	+ 4.10
thereof Mobile Internet	8.30	4.31	+ 3.99
thereof DSL complete (ULL)	4.34	4.23	+ 0.11

Development of Access contracts in the 4th quarter of 2017 (in million)

	Dec. 31, 2017	Sep. 30, 2017	Change
Access, total contracts	12.64	12.39	+ 0.25
thereof Mobile Internet	8.30	8.06	+ 0.24
thereof DSL complete (ULL)	4.34	4.33	+ 0.01

In addition to the above mentioned customer contracts in the current product lines, United Internet's Access segment includes a further 0.47 million contracts without basic monthly fees and service provider contracts (volume-based tariffs / MSP tariffs) from the Drillisch acquisition as well as 0.11 million DSL contracts in the phased-out T-DSL / R-DSL product lines.

Despite burdens from regulation effects, **sales of the Access segment** grew by 9.4% from € 2,917.2 million in the previous year to € 3,192.6 million in the fiscal year 2017. Revenue in the home-user business grew by 15.2%, from € 2,414.0 million to € 2,781.6 million (including the reclassification of 1&1 Versatel's mass market business as of May 1, 2017). This figure includes a revenue contribution from Drillisch of € 223.0 million as well as opposing burdens on sales from regulation effects (international roaming / termination charges) amounting to € 29.7 million. At € 447.9 million, sales to business users of 1&1 Versatel were down on the previous year (€ 513.7 million). As already reported in the half-yearly financial report 2017 – this was due to negative regulation effects (€ - 14.8 million), a decline in one-off revenue from project business (€ - 18.8 million), and the reclassification of mass market business (€ - 52.1 million). Without these effects, sales rose by € 19.9 million. Sales consolidation within the segment amounted to € 36.9 million (prior year: € 10.5 million).

In the reporting period, **segment EBITDA** increased by 18.5%, from € 525.6 million in the previous year to € 622.7 million. EBITDA in the home-user business grew by 36.9%, from € 395.2 million to € 541.2 million (including the reclassification of 1&1 Versatel's mass market business as of May 1, 2017). This figure includes an earnings contribution from Drillisch of € 56.8 million, as well as an opposing burden from regulation effects and costs for the Telefónica DSL migration of € 15.7 million. At € 81.5 million, EBITDA in 1&1 Versatel's business-user segment was down on the previous year (€ 124.0 million). This was due to negative regulation effects (€ - 1.4 million), a decline in one-off revenue from project business (€ - 7.9 million), and the reclassification of mass market business (€ - 34.1 million). Without these effects, EBITDA rose by € 0.9 million.

Segment EBIT rose by 10.6%, from € 389.9 million in the previous year to € 431.2 million. The lower percentage growth compared to EBITDA results from increased PPA amortization from the Drillisch takeover.

In addition, segment EBITDA and segment EBIT were dominated by one-off, non-cash-effective, extraordinary income of € 303.0 million from the Drillisch takeover (due to the revaluation of Drillisch shares acquired before the complete transaction was closed), as well as by – with an opposing effect – one-off costs in connection with the sale of yourfone shops at year-end 2017 and the restructuring of the Drillisch retail organization amounting to € 28.3 million. Including these effects, segment EBITDA rose to € 897.4 million and segment EBIT to € 705.9 million.

All **customer acquisition costs** for DSL and Mobile Internet products, as well as costs for the migration of resale DSL connections to complete DSL packages (ULL = Unbundled Local Loop) and upgrades to VDSL connections, continue to be charged directly as expenses.

As a result of the expansion of business and the Drillisch takeover, the number of **employees** in this segment rose by 30.1% to 4,526 as of December 31, 2017 (prior year: 3,478).

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Key sales and earnings figures in the Access segment (in € million)

Sales	3,192.6	2,917.2	+ 9.4%
EBITDA	622.7 ⁽¹⁾	525.6	+ 18.5%
EBIT	431.2 ⁽¹⁾	389.9	+ 10.6%

■ 2017
■ 2016

(1) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million)

Quarterly development; change on prior-year quarter (in € million)

	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q4 2016	Veränderung
Sales	730.6	743.8	798.8	919.4	750.0	+ 22.6 %
EBITDA	133.7	126.3	164.0 ⁽¹⁾	198.7 ⁽²⁾	141.1	+ 40.8 %
EBIT	99.9	91.7	118.5 ⁽¹⁾	121.1 ⁽²⁾	107.4	+ 12.8 %

(1) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million)

(2) Without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million)

Multi-period overview: development of key sales and earnings figures (in € million)

	2013	2014	2015	2016	2017
Sales	1,788.3	2,135.1	2,742.6	2,917.2	3,192.6
EBITDA	245.4	330.8 ⁽¹⁾	492.1	525.6	622.7 ⁽²⁾
EBITDA margin	13.7%	15.5%	17.9%	18.0%	19.5%
EBIT	217.4	267.8 ⁽¹⁾	336.4	389.9	431.2 ⁽²⁾
EBIT margin	12.2%	12.5%	12.3%	13.4%	13.5%

(1) Without one-off income from Versatel acquisition (EBITDA and EBIT effect: € +112.6 million)

(2) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million)

Applications segment

The **Applications segment** comprises ad-financed or fee-based application products for consumer and business customers. These applications include domains, home pages, webhosting, servers and e-shops, Personal Information Management applications (e-mail, to-do lists, appointments, addresses), group work, online storage and office software.

The applications are developed at the company's own "Internet Factory" or in cooperation with partner firms and operated on around 90,000 servers at the company's 10 data centers.

In its Applications segment, United Internet is also a leading global player with activities in European countries (Germany, France, the UK, Italy, the Netherlands, Austria, Poland, Switzerland and Spain) as well as in North America (Canada, Mexico and the USA).

Applications are marketed to specific home-user and business-user target groups via the differently positioned brands GMX, mail.com, WEB.DE, 1&1, Arsys, Fasthosts, home.pl, InterNetX, ProfitBricks, Strato and united-domains. Via the Sedo brand, United Internet also offers customers professional services in the field of active domain management. Free apps are monetized via advertising run by the company's in-house agency United Internet Media.

With regard to Business Applications, the main focus in fiscal year 2017 was on the sale of additional features to existing customers (e.g. further domains, e-shops and business apps), as well as the acquisition of high-value customer relationships. Nevertheless, the number of fee-based **Business Applications contracts** was raised organically by 100,000 contracts in the fiscal year 2017. Moreover, the initial consolidation of Strato as of April 1, 2017 resulted in the addition of 1.87 million contracts. The total number of Business Applications contracts as of December 31, 2017 therefore amounted to 8.02 million.

Development of Business Applications contracts in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Business Applications, total contracts	8.02	6.05	+ 1.97
thereof "domestic"	4.01	2.34	+ 1.67
thereof "foreign"	4.01	3.71	+ 0.30

Development of Business Applications contracts in the fourth quarter of 2017 (in million)

	Dec. 31, 2017	Sep. 30, 2017	Change
Business Applications, total contracts	8.02	8.00	+ 0.02
thereof "domestic"	4.01	3.99	+ 0.02
thereof "foreign"	4.01	4.01	+/- 0.00

In the case of Consumer Applications, United Internet raised the number of pay accounts by 30,000 contracts to 2.23 million in fiscal year 2017. At the same time, the number of free accounts increased by 1.13 million to 35.42 million in the reporting period. Consequently, the number of **Consumer Accounts** increased by 1.16 million in total to 37.65 million accounts in fiscal year 2017.

Development of Consumer Applications contracts in fiscal year 2017 (in million)

	Dec. 31, 2017	Dec. 31, 2016	Change
Consumer Applications, total accounts	37.65	36.49	+ 1.16
thereof with Premium Mail subscription	1.67	1.72	- 0.05
thereof with Value-Added subscription	0.56	0.48	+ 0.08
thereof free accounts	35.42	34.29	+ 1.13

Development of Consumer Applications contracts in the fourth quarter of 2017 (in million)

	Dec. 31, 2017	Sep. 30, 2017	Change
Consumer Applications, total accounts	37.65	36.90	+ 0.75
thereof with Premium Mail subscription	1.67	1.69	- 0.02
thereof with Value-Added subscription	0.56	0.54	+ 0.02
thereof free accounts	35.42	34.67	+ 0.75

Following the **contribution of Group subsidiary affilinet GmbH to AWIN AG** completed on October 1, 2017, affilinet was deconsolidated in these consolidated financial statements and is no longer included in the sales and earnings figures of the Applications segment but disclosed separately under discontinued operations. The sales and earnings figures of the previous year were adjusted accordingly.

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Despite burdens from currency effects, **sales of the Applications segment** rose by 12.9% from € 922.5 million (comparable prior-year figure after deconsolidation of affilinet) to € 1,041.8 million in fiscal year 2017. With regard to subscriptions for Business Applications, sales rose by 19.3% from € 638.9 million to € 762.1 million. This figure includes a total contribution to sales from Strato AG (consolidated since April 1, 2017) and ProfitBricks GmbH (consolidated since August 7, 2017) of € 104.0 million, as well as burdens from currency effects of € 8.2 million. Due in particular to weak portal advertising revenues in the first quarter of 2017, total sales of Consumer Applications rose only moderately by 0.2%, from € 283.6 million to € 284.2 million. Sales consolidation within the segment amounted to € 4.5 million.

Due in particular to the year-on-year devaluation of the British pound, **sales of the Applications segment generated abroad** increased only moderately by 3.0% in fiscal year 2017, from € 370.0 million (comparable prior-year figure) to € 381.0 million. Adjusted for currency effects, sales generated abroad were up 5.2%.

Despite the burdens from currency effects, **segment EBITDA** rose by 12.6%, from € 329.7 million (comparable prior-year figure) to € 371.3 million. EBITDA for Business Applications was up 22.1%, from € 202.5 million to € 247.3 million. This figure includes a total EBITDA contribution from Strato and ProfitBricks of € 39.7 million as well as an opposing burden from currency effects of € 3.5 million. There was a further burden on earnings from a TV campaign run in the fourth quarter of 2017. Due in particular to weak portal advertising business in the first quarter of 2017, EBITDA for Consumer Applications as a whole fell by 2.8%, from € 127.6 million to € 124.0 million.

In addition, segment EBITDA was influenced by a net positive extraordinary result of € 7.4 million. This results from one-off, non-cash-effective, extraordinary income of € 16.1 million in the third quarter from the complete takeover of ProfitBricks (due to the revaluation of previously held ProfitBricks shares) and – with an opposing effect – M&A costs of € 8.7 million from the previous year (Warburg Pincus transaction) which were reallocated within the Group from United Internet Holding to the Business Applications segment in the third quarter of 2017.

Segment EBIT improved by 5.5%, from € 274.3 million (comparable prior-year figure) to € 289.5 million. The lower percentage growth compared to EBITDA results from increased PPA amortization from the Strato takeover.

EBIT also rose as a result of above mentioned positive extraordinary result by € 7.4 million in total. There was an opposing effect for this item from the trademark writedowns of Group subsidiary Strato totaling € 20.7 million.

Including these extraordinary effects, segment EBITDA rose to € 378.7 million and segment EBIT to € 276.2 million.

Customer acquisition costs in the Applications segment also continue to be charged directly as expenses.

Due to the acquisitions of Strato and ProfitBricks, as well as – with an opposing effect – internal staff transfers to the HQ division and the deconsolidation of affilinet, the number of **employees** in this segment rose by 7.7% to 4,547 as of December 31, 2017 (prior year: 4,221).

Key sales and earnings figures in the Applications segment (in € million)⁽¹⁾

Sales	1,041.8	922.5	+ 12.9%
EBITDA	371.3 ⁽²⁾	329.7	+ 12.6%
EBIT	289.5 ⁽²⁾	274.3	+ 5.5%

■ 2017
■ 2016

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted
 (2) Without extraordinary income from revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million), without internally allocated M&A costs (EBITDA and EBIT effect: € -8.7 million) and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Quarterly development; change on prior-year quarter (in € million)⁽¹⁾

	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q4 2016	Change
Sales	229.6	264.2	261.7	286.3	237.5	+ 20.5%
EBITDA	81.7	94.3	95.2 ⁽²⁾	100.1	95.9	+ 4.4%
EBIT	68.5	71.5	72.3 ⁽²⁾	77.2 ⁽³⁾	82.0	- 5.9%

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted
 (2) Without extraordinary income from revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million) and without internally allocated M&A costs (EBITDA and EBIT effect: € -8.7 million)
 (3) Without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Multi-period overview: development of key sales and earnings figures (in € million)

	2013	2014	2015	2016 ⁽¹⁾	2017 ⁽¹⁾
Sales	867.0	929.4	1,001.2	922.5	1,041.8
EBITDA	168.7	228.6	281.9	329.7	371.3 ⁽²⁾
EBITDA margin	19.5%	24.6%	28.2%	35.7%	35.6%
EBIT ⁽¹⁾	102.1	170.9	222.5	274.3	289.5 ⁽²⁾
EBIT margin	11.8%	18.4%	22.2%	29.7%	27.8%

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted
 (2) Without extraordinary income from revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million), without internally allocated M&A costs (EBITDA and EBIT effect: € -8.7 million) and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Group investments

United Internet AG continued to optimize its investment portfolio in the fiscal year 2017. New strategic investments were made, stakes in existing holdings were decreased, and further shares in existing investments acquired.

Significant changes in investments

Takeover of Strato completed

On December 15, 2016, United Internet announced its intention to acquire Strato AG. The takeover was initially subject to approval by the German Federal Cartel Office ("Bundeskartellamt"). This approval was granted on February 10, 2017 and United Internet closed the transaction as planned in the first quarter of 2017. Strato has been included in the consolidated financial statements since April 1, 2017.

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Investment of Warburg Pincus closed

The acquisition of a 33.33% stake in the Business Applications division by Warburg Pincus, announced on November 8, 2016, was successfully closed on February 15, 2017.

Investment in Tele Columbus increased

In the first quarter of 2017, United Internet increased its stake in Tele Columbus AG from 25.11% as of December 31, 2016 and holds around 28.52% of shares as of December 31, 2017. A total of € 34.9 million was paid for the purchase of additional shares.

Investment in rankingCoach

On March 28, 2017, United Internet AG announced that it had acquired – via United Internet Investments Holding GmbH (formerly: United Internet Ventures AG) – a stake of 29.93% in rankingCoach International GmbH in the course of a capital increase. Based in Cologne, rankingCoach was founded in 2014 by the company's managers Daniel Wette, Marius Gerdan and Thomas Meierkord as a spin-off of a major online marketing agency. Today, an international team of over 60 specialists supports small and mid-size enterprises (SMEs) in 11 languages and 24 countries. rankingCoach markets its products both directly to end-users and agencies, as well as indirectly via international partners, such as hosting providers, telecommunications companies and publishers. Online visibility and online reputation have a major impact on the business success of SMEs. rankingCoach offers affordable, web-based solutions in the field of search engine marketing (SEM), search engine optimization (SEO) and social media which are tailored to the needs of its various target groups. The capital increase is aimed in particular at driving technical product development, the expansion of services, and the company's further internationalization. In addition to the equity stake, rankingCoach and the United Internet subsidiary 1&1 Internet SE have signed a long-term cooperation agreement for 1&1 to use the online marketing solutions of rankingCoach as part of its hosting and cloud products marketed in Europe and North America. At the time of its announcement, the transaction was still subject to approval by the relevant anti-trust authorities. This approval was granted on April 13, 2017.

Merger with Drillisch

On May 12, 2017, the Management Boards of United Internet AG and Drillisch AG (each with the approval of their respective Supervisory Boards) entered into a business combination agreement governing the step-by-step acquisition of 1&1 Telecommunication SE by the former Drillisch AG (now 1&1 Drillisch AG) under the umbrella of United Internet.

The aim of the overall transaction (now completed) was to contribute 1&1 Telecommunication to Drillisch and thus create a more powerful full-service telecommunications provider under the umbrella of United Internet with considerable potential for synergies and growth. The combination of the two companies has now created a strong fourth player in the German telecommunications market alongside the three major full-service providers (Deutsche Telekom, Vodafone and Telefónica).

The merger of 1&1 Telecommunication and Drillisch was completed in two steps:

In the first step, United Internet contributed 9,372 shares of 1&1 Telecommunication SE (corresponding to around 7.75% of the share capital of 1&1 Telecommunication) to Drillisch in the course of a capital increase for non-cash contribution from approved capital under the exclusion of subscription rights conducted by Drillisch. In return, United Internet received 9,062,169 new Drillisch shares.

In a second step, the remaining 111,628 1&1 Telecommunication SE shares held by United Internet (corresponding to around 92.25% of the share capital of 1&1 Telecommunication) were contributed to Drillisch in return for the issue of 107,937,831 new Drillisch shares in total. This step required the approval of an Extraordinary General Meeting of Drillisch AG, which was held on July 25, 2017. At this general meeting, 97.85% of share capital represented voted in favor of the proposed capital increase for non-cash contribution. The majority of 75% required for approval was thus reached.

The transaction was accompanied by a voluntary public tender offer submitted by United Internet AG for all outstanding shares of Drillisch AG. United Internet offered to purchase the no-par value bearer shares, each representing a proportionate amount of Drillisch AG share capital of €1.10, from the current Drillisch shareholders. As compensation, United Internet offered to pay € 50 per no-par share – which is 8.2% more than the volume-weighted average domestic share price of Drillisch shares over the past three months as of May 11, 2017 (€ 46.18). The cash offer was made in accordance with the condition specified in the offer document published on May 26, 2017 regarding anti-trust approval. This condition was met with the approval of the German Federal Cartel Office (“Bundeskartellamt”). There was no minimum acceptance threshold for the tender offer. United Internet used bank loans to finance the Drillisch shares tendered as part of the tender offer. The financing banks confirmed that they would grant a maximum of € 2.5 billion (if all outstanding Drillisch shares were tendered). As at the expiry of the additional acceptance period on July 12, 2017, the tender offer had been accepted for a total of 1,224,157 Drillisch shares. After the acceptance period for the voluntary tender offer had expired, the related loan was canceled by United Internet as the acquired Drillisch shares were purchased from liquid funds.

With the registration of the capital increase for non-cash contribution in the Commercial Register on September 8, 2017, Drillisch acquired the remaining stake of approx. 92.25% in 1&1 Telecommunication. The capital increase had been approved by the Extraordinary General Meeting of Drillisch on July 25, 2017. 1&1 Telecommunication is thus a wholly-owned subsidiary of Drillisch. In return, United Internet received 107,937,831 new Drillisch shares, increasing United Internet’s stake in Drillisch to more than 73%. As a result, Drillisch has been consolidated in the financial statements of United Internet since September 8, 2017.

The contribution of 1&1 Telecommunication to Drillisch under the United Internet umbrella offers extensive synergies and growth opportunities for both United Internet and Drillisch. These jointly-identified synergies are expected to arise at the level of their combined business starting in 2018. An annual volume of € 150 million is anticipated as early as 2020, rising to approx. € 250 million annually by 2025. Synergies will result in particular from joint purchasing of hardware and services, more efficient use of network capacity available to Drillisch, and the expansion of the 1&1 product portfolio to include future technologies. To achieve these synergies, the companies expect one-off implementation costs of around € 50 million at the combined business level.

Complete takeover of ProfitBricks

In late July 2017, United Internet reached an agreement with the other shareholders of ProfitBricks GmbH, a technologically leading cloud hosting specialist, regarding the complete acquisition of the company. United Internet has held a stake in ProfitBricks since 2010 (previous shareholding 44.42%) and acquired the remaining 55.58% of shares from the other shareholders. The complete takeover has strengthened United Internet’s activities with Business Applications, which are pooled with its subsidiary 1&1 Internet SE. 1&1 was thus able to expand its leading position in Europe for cloud hosting and added an innovative enterprise cloud platform to its product range.

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Based in Berlin, ProfitBricks was founded in 2010 and employs over 100 people from more than 20 nations. The company is the first and only specialized cloud computing provider of Infrastructure-as-a-Service (IaaS) in Germany and offers professional public and hybrid cloud solutions which comply with the strict German and European data privacy guidelines.

The share purchase was approved by the German Federal Cartel Office ("Bundeskartellamt") on August 7, 2017. As a result, ProfitBricks has been included in the consolidated financial statements of United Internet since August 7, 2017.

Merger of affilinet and Awin

United Internet and Axel Springer plan to create a joint affiliate network by merging their companies affilinet and AWIN. A corresponding agreement was signed on August 1, 2017.

As part of the transaction, United Internet contributed its affiliate marketing business operated by its subsidiary affilinet GmbH to AWIN AG in return for 20% of AWIN shares. 80% of AWIN shares are held by Axel Springer.

The merger enables United Internet and Axel Springer to significantly strengthen their competitive standing in affiliate marketing and thus lay the foundation for accelerated growth in Germany and abroad. By pooling the expertise, skills and respective reach of AWIN and affilinet, the companies also plan to drive new revenue models. In addition, the business combination will lay the foundation for the targeted IPO of AWIN AG.

The merger was approved by the relevant anti-trust authorities in Austria and Germany on September 12 and 15, 2017 and closed as of October 1, 2017. affilinet was already carried as a discontinued operation in accordance with IFRS 5 in the half-yearly figures 2017.

Sale of yourfone Shop GmbH

With effect from December 31, 2017, Drillisch Online AG sold yourfone Shop GmbH and its approximately 100 stores to aptus 1206. GmbH, Berlin. At the same time, an extensive sales cooperation agreement was signed regarding the marketing of telecommunication products.

In addition to its (fully consolidated) core operating companies in the Access and Applications segments, United Internet also held investments in the following companies as of December 31, 2017.

Minority holdings in limited companies

United Internet has held a stake in **AdUX S.A.** (formerly: Hi-Media S.A.), Paris / France, since the transfer of the Group's Display Marketing business in July 2009. As of December 31, 2017, this shareholding amounted to 10.46%. The company's market capitalization on December 31, 2017 amounted to around € 13 million (prior year: € 21 million).

United Internet has held an investment in **Rocket Internet SE** since August 2014. As of December 31, 2017 the share of voting rights amounted to 8.31%. The company's market capitalization as of December 31, 2017 was around € 3.489 billion (prior year: € 3.161 billion).

In February 2016, United Internet announced its investment in **Tele Columbus AG**. As of December 31, 2017, the share of voting rights amounted to 28.52%. The company's market capitalization as of December 31, 2017 was around € 1.180 billion (prior year: € 1.003 billion).

Minority holdings in partner companies

United Internet has held a stake in **virtual minds AG** since February 2008 (main activity: media technologies, digital advertising and hosting). As of December 31, 2017, United Internet's share of voting rights amounted to 25.10%. Via its ADITION brand also an advertising supplier of United Internet portals, virtual minds generated a positive result in its fiscal year 2017.

In July 2013, United Internet acquired a stake in **Open-Xchange AG** (main activity: e-mail and collaboration solutions). United Internet has already been working successfully with the company for many years in its Applications business. As of December 31, 2017, United Internet's share of voting rights amounted to 25.39%. Open-Xchange closed its fiscal year 2017 with a negative result.

In February 2014, United Internet acquired a stake of 25.10% in **ePages GmbH** (main activity: e-shop solutions). In addition to the equity stake, ePages and United Internet's subsidiary 1&1 Internet SE agreed a long-term cooperation contract for the use of ePages solutions. As part of this cooperation, there is a joint technology platform for 1&1 E-Shops. As of December 31, 2017, United Internet's share of voting rights amounted to 25.01%. ePages posted a positive result in its fiscal year 2017.

In April 2014, United Internet acquired a stake in **uberall GmbH** (main activity: online listings). In addition, uberall and United Internet's subsidiary 1&1 Internet SE agreed a long-term cooperation contract for the use of uberall solutions. As of December 31, 2017, the share of voting rights amounted to 30.34%. uberall is still in the start-up phase and posted a negative result in its fiscal year 2017.

In April 2017, United Internet acquired a stake in **rankingCoach International GmbH** (main activity: online marketing solutions). In addition to the equity stake, rankingCoach and 1&1 Internet SE signed a long-term cooperation agreement for 1&1 to use the online marketing solutions of rankingCoach as part of its hosting and cloud products marketed in Europe and North America. As of December 31, 2017, the share of voting rights amounted to 29.93%. rankingCoach is also still in the start-up phase and posted a negative result in its fiscal year 2017.

Following the contribution of affilinet GmbH to AWIN in October 2017, United Internet also holds a stake in **AWIN AG** (main activity: affiliate marketing). As of December 31, 2017, United Internet's share of voting rights amounted to 20.00%. AWIN closed its fiscal year 2017 with a positive result.

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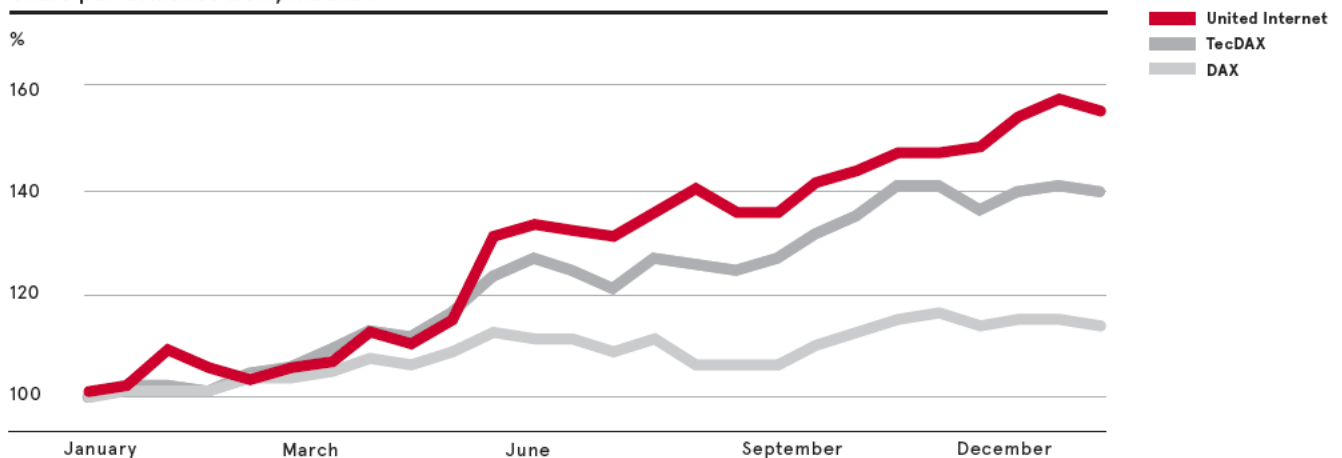
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Share and dividend

Share

In line with the company's positive performance and successful M&A activities, the United Internet **share** increased strongly in fiscal year 2017. Specifically, the share price rose by 54.6% to € 57.34 in fiscal year 2017 (December 31, 2016: € 37.10). The share thus outperformed both the DAX (+12.5%) and TecDAX (+39.6%) indices.

Share performance 2017, indexed



There was a corresponding increase in the **market capitalization** of United Internet AG from around € 7.61 billion in the previous year to around € 11.75 billion as of December 31, 2017.

In fiscal year 2017, average daily trading via the XETRA electronic computer trading system amounted to around 419,000 shares (prior year: 407,000) with an average value of € 19.70 million (prior year: € 16.30 million).

Multi-period overview: share performance (in €; all stock exchange figures are based on Xetra trading)

	2013	2014	2015	2016	2017
Year-end	30.92	37.49	50.91	37.10	57.34
Performance	+ 89.6%	+ 21.2%	+ 35.8%	- 27.1%	+ 54.6%
Year-high	31.00	37.95	51.94	49.89	59.17
Year-low	16.11	28.35	36.17	34.42	37.01
Average daily turnover	8,554,509	13,731,799	15,279,407	16,301,156	19,666,155
Average daily turnover (units)	367,102	420,640	354,904	407,372	418,771
Number of shares at year-end	194 million	205 million	205 million	205 million	205 million
Market value at year-end	6.00 billion	7.69 billion	10.44 billion	7.61 billion	11.75 billion
EPS ⁽¹⁾	1.07	2.28	1.80	0.86	3.06
Adjusted EPS ⁽²⁾	1.07	1.46	1.73	2.11	2.02

(1) EPS from continued operations

(2) EPS from continued operations and without special items: 2014 without positive one-off effect from Versatel acquisition and portfolio optimization (EPS effect: € +0.82); 2015 without effects from sale of Goldbach shares and part of stake in virtual minds (EPS effect: € +0.07); 2016 without negative one-off effect from impairment (EPS effect: € -1.25); 2017 without net positive one-off effects from valuation topics, transaction and restructuring costs, writedowns, financing costs and one-off tax effects (EPS effect: € +1.04)

Share data	
Share type	Registered common stock
Notional share of capital stock	€ 1.00
German Securities Identification Number (WKN)	508903
International Securities Identification Number (ISIN)	DE0005089031
Ticker symbol Xetra	UTDI
Reuters ticker symbol	UTDI.DE
Bloomberg ticker symbol	UTDI.GR
Segment	Prime Standard
Index	TecDAX
Sector	Software

Shareholder	Shareholding
Ralph Dommermuth Ralph Dommermuth GmbH & Co. KG Beteiligungsgesellschaft (39.02%) RD Holding GmbH & Co. KG (0.98%)	40.00%
Allianz Global Investors	4.78%
United Internet (treasury stock)	2.48%
Freefloat	52.74%

As of December 31, 2017; figures based on the last respective notification of voting rights

Dividend

In fiscal year 2017, United Internet continued to pursue its shareholder-friendly dividend policy based on continuity. The company's Annual Shareholders' Meeting on May 18, 2017 voted to accept the proposal of the Management Board and Supervisory Board to pay a **dividend** of € 0.80 per share for fiscal year 2016 (prior year: € 0.70). The total dividend payment of € 159.7 million (prior year: € 142.9 million) was made on May 23, 2017. The dividend payout ratio amounted to 36.8% of the adjusted consolidated net income after minority interests for 2016 (€ 433.9 million) and was thus at the upper end of the range targeted by the company's dividend policy (20-40% of adjusted consolidated net income after minority interests, unless funds are required for further company development).

For fiscal year 2017, the Management Board of United Internet AG will propose to the Supervisory Board a dividend of € 0.85 per share (prior year: € 0.80). The Management Board and Supervisory Board will discuss this **dividend proposal** at the Supervisory Board meeting on March 21, 2018 (and thus after the preparation deadline for this Management Report of March 16, 2018). The Annual Shareholders' Meeting of United Internet AG on May 24, 2018 will then vote on the joint proposal of the Management Board and Supervisory Board.

On the basis of 199.9 million shares with dividend entitlement (as of December 31, 2017), the total dividend payment for fiscal year 2017 would amount to € 169.9 million. This would correspond to 42.0% of consolidated net income from continued operations after minority interests for 2017 (€ 405.0 million) and thus lie slightly above the targeted payout range. Based on the year-end 2017 price of the United Internet share, the dividend yield would amount to 1.5%.

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Multi-period overview: dividend development

	For 2013	For 2014	For 2015	For 2016	For 2017 ⁽¹⁾
Dividend per share (in €)	0.40	0.60	0.70	0.80	0.85
Dividend payment (in € million)	77.5	122.3	142.9	161.3	169.9
Payout ratio	37.4%	27.3%	39.0%	90.0%	26.1%
Adjusted payout ratio ⁽²⁾	37.4%	43.0%	39.0%	37.2%	42.0%
Dividend yield ⁽³⁾	1.3%	1.6%	1.4%	2.2%	1.5%

(1) Subject to approval of Supervisory Board and Annual Shareholders' Meeting 2018

(2) Without special items: one-off income from Versatel acquisition and portfolio optimization (2014); Rocket impairment charges (2016); net positive one-off effects from non-cash-effective valuation topics, transaction and restructuring costs, writedowns, financing costs, one-off tax effects, and discontinued operations

(3) As of: December 31

Annual Shareholders' Meeting 2017

The Annual Shareholders' Meeting of United Internet AG was held in Frankfurt am Main on May 18, 2017. A total of 75% of capital stock was represented. The shareholders adopted all resolutions on the agenda requiring voting with large majorities.

Capital stock and treasury shares

United Internet purchased treasury shares once again in the fiscal year 2017. The share buyback was based on a resolution of the Management Board of June 30, 2016 to launch a new share buyback program. In the course of this new share buyback program, up to 5,000,000 shares in the company (corresponding to approx. 2.44% of capital stock) could be bought back via the stock exchange. The buyback followed the authorization of the Annual Shareholders' Meeting of May 22, 2014 to purchase treasury shares representing up to 10% of capital stock. The authorization was issued for the period up to September 22, 2017.

In the period January 1 to February 3, 2017, a total of 2,000,000 treasury shares were purchased at an average price of € 38.58 and with a total volume of € 77.2 million. Together with the 3,000,000 treasury shares already purchased in fiscal year 2016, the share buyback program adopted on June 30, 2016 was thus fully exhausted.

Following the issue of treasury shares as part of employee stock ownership plans, United Internet held 5,093,289 treasury shares as of December 31, 2017 (December 31, 2016: 3,370,943). This corresponds to 2.48% of the current capital stock of € 205,000,000 (December 31, 2016: 1.64%).

Investor Relations

In fiscal 2017, the Management Board and Investor Relations department of United Internet AG once again provided institutional and private investors with regular and comprehensive information. Information was provided to the capital market via the quarterly statements, half-yearly financial report and annual report, as well as at press and analyst conferences. The company's management and Investor Relations department explained the company's strategy and financial results in numerous one-on-one discussions at the company's offices in Montabaur, as well as at roadshows and conferences in Germany, Finland, France, the UK, Canada, Switzerland, Spain and the USA. Around 30 national and international investment banks are in contact with the company's Investor Relations department and publish regular studies and comments on the company's progress and share performance. Apart from such one-on-one meetings, shareholders and potential future investors can also receive the latest news on the company around the clock via the company's website (www.united-internet.de).

Liquidity and finance

The Group's financial strategy is primarily geared to the strategic business plans of its operating business units. In order to provide sufficient flexibility for further growth, United Internet therefore constantly monitors trends in funding opportunities arising on the financial markets. Various options for funding and potential for optimizing existing financial instruments are regularly reviewed. The main focus is on ensuring sufficient liquidity and the financial independence of the Group at all times. In addition to its own financial strength, the Group maintains sufficient liquidity reserves with core banks. The flexible use of these liquidity reserves enables efficient management of Group liquidity, optimal debt management to reduce interest costs, and the avoidance of negative interest on deposits.

New promissory note loan

In the past fiscal year, United Internet placed a new promissory note loan with a total amount of € 500 million for the purpose of general company funding. The five tranches in total have terms from March 2022 to March 2025, were placed at the issuance amount, and are 100% repayable. By placing mainly fixed-interest tranches, the Group naturally hedged the risk of rising interest rates and optimized the maturity profile with maturities of up to 8 years. The average interest rate is 1.14% p.a. The new promissory note loan is not tied to any covenants.

Adjustment of existing promissory note loan

At the same time, United Internet made an offer to the creditors of the fixed-interest tranches from the existing promissory note loan placed in 2014 to adjust the contractual terms. 99% of creditors accepted the offer, which focused in particular on relaxing the existing covenants.

Adjustment of syndicated loans

With effect from May 5, 2017, United Internet signed an agreement with its core banks regarding a consolidation and adjustment of its syndicated loan borrowing. The syndicated loan of € 750 million arranged in August 2014 and syndicated loan of € 810 million arranged in July 2015 were consolidated into a single loan arrangement. At the same time, the Company used the favorable market situation to renegotiate significant components of the loan agreements. In particular, existing covenants were relaxed, borrowing costs optimized, and some of the terms prolonged in order to further harmonize the maturity profile. No new debt was taken on as a result of this measure.

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Acquisition facility – takeover of Drillisch AG

In addition, United Internet signed an agreement with selected core banks on May 12, 2017 to provide the necessary funds to cover the voluntary public tender offer to the Drillisch shareholders. The agreed syndicated acquisition facility with a total amount of € 2.5 billion was divided into several tranches and maturities. However, the shares offered by Drillisch AG shareholders during the public tender offer could be purchased in full from existing liquid funds. As a result, it was not necessary to use the acquisition facility. Following the end of the offering period, United Internet canceled the acquisition facility.

Harmonization of bilateral credit and guaranty facilities

In order to harmonize the key components of the Group's funding, United Internet also consolidated its existing bilateral credit and guaranty facilities with core banks into a single arrangement. Individual contracts were summarized and terms optimized.

The successful financing activities of the past fiscal year demonstrate the company's trusting and cooperative relationships with its long-standing core banks and underline the United Internet Group's strong position on the capital market.

Further disclosures on the various financial instruments, drawings, interest rates and maturities are provided under point 30 of the Notes to the Consolidated Financial Statements.



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2.3 Position of the Group

Following the disposal of affilinet GmbH on October 1, 2017, affilinet was deconsolidated in the consolidated financial statements as of December 31, 2017 and the statement of comprehensive income (income statement) for the fiscal year 2017 and the preceding period adjusted accordingly. The revenues and expenses of affilinet are thus no longer included in the respective income statement items nor the sales and earnings figures stated below. The net income of affilinet after taxes is disclosed separately as a discontinued operation. However, the balance sheet of the previous year is to be disclosed unchanged.

Group's earnings position

In the fiscal year 2017, the number of **fee-based customer contracts** in current product lines rose organically and via the Strato and Drillisch takeovers by 6.10 million to a total of 22.89 million contracts. In addition to these customer contracts in the current product lines, the company holds a further 0.47 million contracts without basic monthly fees and service provider contracts (volume-based tariffs / MSP tariffs) from the Drillisch acquisition, as well as 0.11 million DSL contracts in the phased-out T-DSL / R-DSL product lines. Ad-financed free accounts rose by 1.13 million to 35.42 million.

Consolidated sales grew by 10.5% to € 4,206.3 million in fiscal year 2017 (comparable prior-year figure: € 3,808.1 million). Revenue contributions from Strato and ProfitBricks (€ 104.0 million) as well as Drillisch (€ 223.0 million) were offset in part by burdens on sales from regulatory effects (€ -44.5 million) and negative currency effects (€ -8.2 million).

Due in particular to the year-on-year decline in the value of the British pound, there was only a modest 3.0% increase in **sales outside Germany**, from € 370.0 million (comparable prior-year figure) to € 381.0 million in the fiscal year 2017. Adjusted for currency effects, foreign sales rose by 5.2%.

All **customer acquisition costs** for Access and Applications products, as well as costs for the migration of resale DSL connections to complete DSL packages and upgrades to VDSL connections, continue to be charged directly as expenses.

As a result of economies of scale and improved conditions for the purchase of pre-services, the **cost of sales** increased more slowly than revenues in fiscal year 2017, from € 2,461.8 million (64.6% of sales) in the previous year to € 2,689.1 million (63.9% of sales). Consequently, the **gross margin** rose from 35.4% in the previous year to 36.1%. The 12.7% increase in **gross profit** from € 1,346.4 million in the previous year to € 1,517.2 million thus even surpassed sales growth (10.5%).

Sales and marketing expenses increased from € 521.2 million (13.7% of sales) in the previous year to € 638.3 million (15.2% of sales). **Administrative expenses** rose less than proportionately from € 182.9 million (4.8% of sales) in the previous year to € 185.1 million (4.4% of sales).

Multi-period overview: development of key cost items (in € million)

	2013	2014	2015	2016	2017
Cost of sales	1,742.8	2,034.5	2,437.2	2,461.8	2,689.1
Cost of sales ratio	65.6%	66.4%	65.6%	64.6%	63.9%
Gross margin	34.4%	33.6%	34.4%	35.4%	36.1%
Selling expenses	481.4	481.3	557.2	521.2	638.3
Selling expenses ratio	18.1%	15.7%	15.0%	13.7%	15.2%
Administrative expenses	120.4	136.9	182.2	182.9	185.1
Administrative expenses ratio	4.5%	4.5%	4.9%	4.8%	4.4%

Other operating income results in particular from one-off, non-cash-effective, extraordinary income described below from the revaluation of Drillisch shares (€ 303.0 million) and from the revaluation of ProfitBricks shares (€ 16.1 million).

Key earnings figures for the fiscal years 2016 and 2017 were influenced by various special items.

Special items 2016:

- "Writedowns on financial assets": this special item results from writedowns on financial assets (especially impairment of shares held by United Internet in Rocket Internet SE) and has a negative impact on EBT, net income and EPS.

Special items 2017:

- "Revaluation of Drillisch shares": this special item results from one-off, non-cash-effective, extraordinary income from the Drillisch takeover (due to the revaluation of Drillisch shares acquired before the complete transaction was closed) and has a positive effect on EBITDA, EBIT, EBT, net income and EPS.
- "Revaluation of ProfitBricks shares": this special item results from one-off, non-cash-effective, extraordinary income from the ProfitBricks takeover (due to the revaluation of ProfitBricks shares held before the takeover) and has a positive effect on EBITDA, EBIT, EBT, net income and EPS.

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Reconciliation of EBITDA, EBIT, EBT, net income and EPS with figures adjusted for special items (in € million; EPS in €)

	Fiscal year 2017	Fiscal year 2016
EBITDA	1,253.3	835.4
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 17.1	-
Restructuring costs offline sales (2017)	+ 28.3	-
EBITDA before special items (operating)	979.6	835.4
EBIT	958.9	642.7
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 17.1	-
Restructuring costs offline sales (2017)	+ 28.3	-
Trademark writedowns Strato (2017)	+ 20.7	-
EBIT before special items (operating)	705.9	642.7
EBT	891.0	362.6
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 17.1	-
Restructuring costs offline sales (2017)	+ 28.3	-
Trademark writedowns Strato (2017)	+ 20.7	-
Financing costs Drillisch (2017)	+ 4.3	-
Writedowns on financial assets (2017 / 2016)	+ 19.8	+ 254.9
EBT before special items (operating)	662.1	617.5
Net income I ⁽²⁾	648.5	175.8
Net income II ⁽²⁾	687.1	179.2
Revaluation of Drillisch shares (2017)	- 303.0	-
Revaluation of ProfitBricks shares (2017)	- 16.1	-
M&A transaction costs (2017)	+ 12.0	-
Restructuring costs offline sales (2017)	+ 19.9	-
Trademark writedowns Strato (2017)	+ 14.5	-
Financing costs Drillisch (2017)	+ 3.0	-
Writedowns on financial assets (2017 / 2016)	+ 19.8	+ 254.9
Tax effects from M&A activities (2017)	+ 43.0	-
Net income I before special items (operating)	441.6	430.7
Net income II before special items (operating)	480.2	434.1
EPS I ⁽³⁾	3.06	0.86
EPS II ⁽³⁾	3.25	0.88
Revaluation of Drillisch shares (2017)	- 1.51	-
Revaluation of ProfitBricks shares (2017)	- 0.08	-
M&A transaction costs (2017)	+ 0.06	-
Restructuring costs offline sales (2017)	+ 0.10	-
Trademark writedowns Strato (2017)	+ 0.07	-
Financing costs Drillisch (2017)	+ 0.01	-
Writedowns on financial assets (2017 / 2016)	+ 0.10	+ 1.25
Tax effects from M&A activities (2017)	+ 0.21	-
EPS I before special items (operating)	2.02	2.11
EPS II before special items (operating)	2.21	2.13

(1) After initial consolidation of affilinet in 2017; previous year adjusted

(2) Net income I = Net income from continued operations; Net income II = Net income including discontinued operations

(3) EPS I = EPS from continued operations; EPS II = EPS including discontinued operations

- "M&A transaction costs": this special item results from the costs for M&A activities (especially in connection with the Drillisch takeover) and has a negative effect on EBITDA, EBIT, EBT, net income and EPS.
- "Restructuring costs offline sales": this special item results in particular from one-off costs in connection with the sale of yourfone shops at year-end 2017 and the restructuring of the Drillisch retail organization and has a negative effect on EBITDA, EBIT, EBT, net income and EPS.
- "Trademark writedowns Strato": this special item results in particular from trademark writedowns on Strato and has a negative effect on EBIT, EBT, net income and EPS.
- "Financing costs Drillisch": this special item results in particular from bank commissions in connection with the overall Drillisch transaction and has a negative effect on EBT, net income and EPS.
- "Writedowns on financial assets": this special item results from the writing down of financial assets (especially impairment of shares held by United Internet in Rocket Internet SE) and has a negative impact on EBT, net income and EPS.
- "Tax effects from M&A activities": this special item results from one-off tax effects in connection with the Warburg Pincus investment in the Business Applications division and the Drillisch takeover and has a negative effect on net income and EPS.

Operating EBITDA increased by 17.3% to € 979.6 million in fiscal year 2017 (comparable prior-year figure: € 835.4 million). EBITDA was impacted by the earnings contribution from Strato and ProfitBricks (€ 39.7 million) as well as from Drillisch (€ 56.8 million), and – with an opposing effect – from regulation effects and costs for the Telefónica DSL migration (€ -17.1 million), as well as negative currency effects (€ -3.5 million).

In addition, EBITDA was influenced by a net **positive extraordinary result** of € 273.7 million in the reporting period. This resulted from one-off, non-cash-effective, extraordinary income of € 303.0 million from the revaluation of Drillisch shares acquired before the complete transaction was closed, and from the revaluation of ProfitBricks shares already held before the takeover totaling € 16.1 million. There were opposing effects from M&A transaction costs for the above mentioned transactions of € 17.1 million and restructuring costs for offline sales of Drillisch totaling € 28.3 million.

Operating EBIT rose by 9.8% to € 705.9 million in the fiscal year 2017 (comparable prior-year figure: € 642.7 million). The lower percentage growth compared to EBITDA results from increased PPA amortization from the takeovers of Drillisch and Strato.

EBIT was also influenced in addition by the above mentioned positive extraordinary result of € 273.7 million. There was an opposing effect for this item from the writedowns of Group subsidiary Strato totaling € 20.7 million.

Including these extraordinary effects, EBITDA rose to € 1,253.3 million and EBIT to € 958.9 million.

Operating EBT rose by 7.2% to € 662.1 million (comparable prior-year figure without Rocket impairments: € 617.5 million). In addition, there was a net positive impact on EBT in the reporting period from the above mentioned extraordinary result (EBT effect: € 273.7 million) and – with an opposing effect – writedowns on the Strato brand (EBT effect: € -20.7 million), financing costs in connection with the total Drillisch transaction (EBT effect: € -4.3 million), and Rocket impairments (EBT effect: € -19.8 million). Including these special items, EBT rose to € 891.0 million.

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Operating net income from continued operations increased by 2.5% to € 441.6 million (comparable prior-year figure without Rocket impairments: € 430.7 million). Including discontinued operations, operating net income amounted to € 480.2 million (comparable prior-year figure without Rocket impairments: € 434.1 million). In addition, there was a net positive impact on net income in the reporting period from the above mentioned extraordinary result (net income effect: € 287.2 million) and – with an opposing effect – from writedowns on brands (net income effect: € -14.5 million), financing costs for Drillisch (net income effect: € -3.0 million), Rocket impairments (net income effect: € -19.8 million) and one-off tax effects from the Warburg Pincus investment in the Business Applications division and Drillisch takeover (net income effect: € 43.0 million). Including these special items, net income from continued operations rose to € 648.5 million, and including discontinued operations to € 687.1 million.

As a result of the strong increase in minority interests due to the 33% stake of Warburg Pincus in the Business Applications division and 27% stake of minority shareholders in 1&1 Drillisch AG (and thus in the Consumer Access division), operating EPS from continued operations fell to € 2.02 (comparable prior-year figure without Rocket impairments: € 2.11). Before PPA amortization resulting in particular from the Versatel, Strato and Drillisch takeovers, operating EPS amounted to € 2.34 (comparable prior-year figure without Rocket impairments: € 2.27). Including discontinued operations, operating EPS amounted to € 2.21 (comparable prior-year figure without Rocket impairments: € 2.13) and operating EPS before PPA amortization to € 2.53 (comparable prior-year figure without Rocket impairments: € 2.29). In addition, there was a net positive impact on EPS in the reporting period from the above mentioned extraordinary result (EPS effect: € 1.43) and – with an opposing effect – from writedowns on brands (EPS effect: € -0.07), financing costs in connection with the total Drillisch transaction (EPS effect: € -0.01), Rocket impairments (EPS effect: € -0.10) and one-off tax effects from the Warburg Pincus investment in the Business Applications division and Drillisch takeover (EPS effect: € -0.21). All in all, EPS from continued operations rose from € 2.02 to € 3.06, and including discontinued operations to from € 2.21 to € 3.25.

Key sales and earnings figures of the Group (in € million)⁽¹⁾

Sales	4,206.3	3,808.1	+ 10.5%
EBITDA	979.6 ⁽²⁾	835.4	+ 17.3%
EBIT	705.9 ⁽²⁾	642.7	+ 9.8%

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted

(2) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million) and without M&A transaction costs (EBITDA and EBIT effect: € -17.1 million), without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million), and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Quarterly development; change on prior-year quarter (in € million)⁽¹⁾

	Q1 2017	Q2 2017	Q3 2017	Q4 2017	Q4 2016	Change
Sales	952.7	1,001.4	1,054.1	1,198.1	980.0	+ 22.3%
EBITDA	213.0	216.9	254.2 ⁽²⁾	295.5 ⁽³⁾	224.8	+ 31.5%
EBIT	165.9	159.4	185.9 ⁽²⁾	194.7 ⁽³⁾	176.7	+ 10.2%

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted

(2) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million) and without M&A transaction costs (EBITDA and EBIT effect: € -15.2 million)

(3) Without M&A transaction costs (EBITDA and EBIT effect: € -1.9 million), without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million), and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Multi-period overview: development of key sales and earnings figures (in € million)⁽¹⁾

	2013	2014	2015	2016	2017
Sales	2,655.7	3,065.0	3,715.7	3,808.1	4,206.3
EBITDA	406.9	551.5 ⁽²⁾	757.2 ⁽³⁾	835.4	979.6 ⁽⁴⁾
EBITDA margin	15.3%	18.0%	20.4%	21.9%	23.3%
EBIT	312.2	430.6 ⁽²⁾	541.7 ⁽³⁾	642.7	705.9 ⁽⁴⁾
EBIT margin	11.8%	14.0%	14.6%	16.9%	16.8%

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted

(2) Without one-off income from Versatel acquisition and portfolio optimization (EBITDA and EBIT effect: € +186.1 million)

(3) Without one-off income from sale of Goldbach shares and part of stake in virtual minds (EBITDA and EBIT effect: € +14.0 million)

(4) Without extraordinary income from revaluation of Drillisch shares (EBITDA and EBIT effect: € +303.0 million) and revaluation of ProfitBricks shares (EBITDA and EBIT effect: € +16.1 million) and without M&A transaction costs (EBITDA and EBIT effect: € -17.1 million), without restructuring costs for offline sales (EBITDA and EBIT effect: € -28.3 million), and without Trademark writedowns Strato (EBIT effect: € -20.7 million)

Group's financial position

At € 656.4 million, **operative cash flow** was slightly up on the previous year (€ 644.2 million) in fiscal 2017.

Net cash inflows from operating activities of the fiscal years 2016 and 2017 were dominated by various tax effects. Whereas in fiscal year 2016 (in Q1) an income tax payment of around € 100.0 million was made (originally planned for the fourth quarter of 2015), there was a capital gains tax refund of € 70.3 million (originally planned for the fourth quarter of 2016) in fiscal year 2017 (in Q1) in connection with a dividend payment within the Group in fiscal year 2015. Without consideration of these opposing tax effects, **net cash inflows from operating activities** rose from € 587.0 million (comparable prior-year figure) to € 655.7 million in fiscal year 2017. Including the opposing tax effects, net cash inflows from operating activities rose from € 487.0 million to € 726.0 million.

Cash flow from investing activities amounted to € 897.7 million in the reporting period (prior year: € 422.7 million). This resulted mainly from capital expenditures of € 233.5 million (prior year: € 168.9 million), disbursements for the acquisition of shares in affiliated companies (less cash received) of € 528.1 million (Strato, ProfitBricks and Drillisch takeovers), and disbursements for the acquisition of shares in associated companies of € 127.9 million (mainly additional shares in Tele Columbus and Drillisch (prior to the completion of the overall transaction) and the investment in rankingCoach). Apart from capital expenditures, net cash outflows from investing activities in the previous year were also dominated by disbursements for the acquisition of shares in associated companies (investment in Tele Columbus) amounting to € 266.4 million.

Without consideration of the above mentioned opposing tax effects, **free cash flow** (i.e. net cash inflows from operating activities, less capital expenditures, plus payments from disposals of intangible assets and property, plant and equipment) was virtually unchanged from the previous year (€ 423.0 million) at € 424.4 million in 2017. Including the tax effects, free cash flow rose to € 494.7 million (prior year: € 323.0 million).

Cash flow from financing activities in the fiscal year 2017 was dominated by the purchase of treasury shares amounting to € 77.2 million (prior year: € 112.2 million), the net assumption of loans totaling € 138.6 million (prior year: € 224.2 million), the dividend payment of € 159.7 million (prior year: € 142.9 million), and payments from minority shareholders (investment of Warburg Pincus in Business Applications division) amounting to € 427.3 million (prior year: disbursement of € 0.7 million).

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Cash and cash equivalents amounted to € 238.5 million as of December 31, 2017 – compared to € 101.7 million on the same date last year.

Multi-period overview: development of key cash flow figures (in € million)

	2013	2014	2015	2016	2017
Operative cash flow	280.1	380.6	554.5	644.2	656.4
Cash flow from operating activities	268.3	454.0 ⁽²⁾	533.2 ⁽³⁾	587.0 ⁽⁴⁾	655.7 ⁽⁵⁾
Cash flow from investing activities	-207.8	-1,349.8	-766.0	-422.7	-897.7
Free cash flow ⁽¹⁾	211.6	386.6 ⁽²⁾	300.5 ⁽³⁾	423.0 ⁽⁴⁾	424.4 ⁽⁵⁾
Cash flow from financing activities	-59.2	1,240.9	23.1	-43.2	312.2
Cash and cash equivalents on December 31	42.8	50.8	84.3	101.7	238.5

- (1) Free cash flow is defined as net cash inflows from operating activities, less capital expenditures, plus payments from disposals of intangible assets and property, plant and equipment
- (2) 2014 without consideration of a capital gains tax payment due to closing-date effects of € 335.7 million
- (3) 2015 without consideration of a capital gains tax refund (net) of € 242.7 million and including an income tax payment (originally planned for the fourth quarter of 2015) of around € 100.0 million;
- (4) 2016 without consideration of the aforementioned income tax payment (originally planned for the fourth quarter of 2015) of around € 100.0 million
- (5) 2017 without consideration of the aforementioned capital gains tax refund (originally planned for the fourth quarter of 2016) of € 70.3 million

Group's asset position

The Group's **balance sheet total** rose from € 4.074 billion as of December 31, 2016 to € 7.606 billion on December 31, 2017.

Current assets increased from € 631.4 million as of December 31, 2016 to € 823.9 million on December 31, 2017. **Cash and cash equivalents** disclosed under current assets rose from € 101.7 million to € 238.5 million. Due to closing-date effects and the expansion of business, **trade accounts receivable** increased from € 228.0 million to € 290.0 million. **Inventories** grew from € 39.5 million to € 44.7 million. Due to closing-date effects, **current prepaid** expenses decreased from € 111.2 million to € 92.3 million. **Other financial assets** rose from € 21.5 million to € 100.3 million, mainly as a result of a reimbursement receivable from a pre-service provider. **Other non-financial assets** declined from € 129.4 million to € 58.2 million due to the above mentioned capital gains tax refund.

Non-current assets rose from € 3,442.3 million as of December 31, 2016 to € 6,781.9 million on December 31, 2017. Despite the increased stake in Tele Columbus and the investments in rankingCoach and AWIN (as part of the contribution of affilinet to AWIN), **shares in associated companies** fell from € 755.5 million to € 418.0 million due to the takeover and full consolidation of ProfitBricks and Drillisch. **Other financial assets** increased from € 287.7 million to € 333.7 million, in particular as a result of the subsequent valuation of listed shares in Rocket Internet as of December 31, 2017. **Property, plant and equipment and intangible assets** rose from € 655.0 million to € 747.4 million and from € 369.5 million to € 1,393.3 million following the acquisition of Strato, ProfitBricks and Drillisch. **Goodwill** also rose as a result of the Strato, ProfitBricks and Drillisch acquisitions from € 1,087.7 million to € 3,579.8 million.

Current liabilities rose from € 1,269.4 million as of December 31, 2016 to € 1,284.5 million on December 31, 2017. Due to closing-date effects and the expansion of business, current **trade accounts payable** increased from € 373.7 million to € 399.9 million. Short-term **bank liabilities** fell from € 422.2 million to € 248.2 million. **Income tax liabilities** increased from € 64.1 million to € 130.2 million, **other accrued liabilities** from € 13.2 million to € 49.4 million and **other financial liabilities** from € 114.7 million to € 135.6 million.

Non-current liabilities increased from € 1,606.5 million as of December 31, 2016 to € 2,270.8 million on December 31, 2017. In addition to the rise in long-term **bank liabilities** from € 1,338.4 million to € 1,707.6 million, the main reason was the increase in **deferred tax liabilities** from € 94.2 million to € 390.7 million, resulting mainly from the initial consolidation of Drillisch AG.

The Group's **equity capital** rose from € 1,197.8 million as of December 31, 2016 to € 4,050.6 million on December 31, 2017. This was mainly due to consolidation effects in connection with the investment of Warburg Pincus in the Business Applications division and consolidation effects from the acquisition of Drillisch AG by means of the contributing 1&1 Telecommunication to Drillisch. Consequently, the **equity ratio** rose from 29.4% to 53.3%. At the end of the reporting period on December 31, 2017, United Internet held 5,093,289 **treasury shares** (December 31, 2016: 3,370,943).

Despite the takeovers and investments made in 2017, **net bank liabilities** (i.e. the balance of bank liabilities and cash and cash equivalents) increased only moderately from € 1,658.9 million as of December 31, 2016 to € 1,717.3 million on December 31, 2017.

Multi-period overview: development of relative indebtedness

	2013	2014	2015	2016 ⁽¹⁾	2017 ⁽¹⁾
Net bank liabilities ⁽²⁾ / EBITDA	0.73	1.79	1.88	1.98	1.37
Net bank liabilities ⁽²⁾ / free cash flow ⁽³⁾	1.40	3.42	3.63	3.88	4.04

(1) After deconsolidation of affilinet in 2017; previous year adjusted

(2) Net bank liabilities = balance of bank liabilities and cash and cash equivalents

(3) Free cash flow 2014 and 2015 without consideration of closing-date effects from a capital gains tax payment of € 335.7 million (2014) and a capital gains tax refund (net) of € 242.7 million (2015) and an income tax payment (originally due in the fourth quarter of 2015) of around € 100.0 million (2016) and a capital gains tax refund (originally planned for the fourth quarter of 2016) of € 70.3 million



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Further details on the objectives and methods of the Group's financial risk management are provided under point 42 of the notes to the consolidated financial statements.

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Multi-period overview: development of key balance sheet items (in € million)

	2013	2014	2015	2016	2017
Total assets	1,270.3	3,673.4	3,885.4	4,073.7	7,605.8
Cash and cash equivalents	42.8	50.8	84.3	101.7	238.5
Shares in associated companies	115.3	34.9 ⁽¹⁾	468.4 ⁽¹⁾	755.5 ⁽¹⁾	418.0
Other financial assets	47.6	695.3 ⁽²⁾	449.0 ⁽²⁾	287.7 ⁽²⁾	333.7 ⁽²⁾
Property, plant and equipment	116.2	689.3 ⁽³⁾	665.2	655.0	747.4 ⁽³⁾
Intangible assets	165.1	385.5 ⁽³⁾	389.5	369.5	1,393.3 ⁽³⁾
Goodwill	452.8	977.0 ⁽⁴⁾	1,100.1 ⁽⁴⁾	1,087.7	3,579.8 ⁽⁴⁾
Liabilities due to banks	340.0	1,374.0 ⁽⁵⁾	1,536.5 ⁽⁵⁾	1,760.7 ⁽⁵⁾	1,955.8 ⁽⁵⁾
Capital stock	194.0	205.0 ⁽⁶⁾	205.0	205.0	205.0
Treasury stock	5.2	35.3	26.3	122.5	189.4
Equity	307.9	1,204.7 ⁽⁶⁾	1,149.8	1,197.8	4,050.6 ⁽⁶⁾
Equity ratio	24.2%	32.8%	29.6%	29.4%	53.3%

(1) Decrease due to contribution of the GFC and EFF funds to Rocket and complete takeover of Versatel (2014); increase due to investment in Drillisch (2015); increase due to investment in Tele Columbus (2016); decrease due to takeover and consolidation of ProfitBricks and Drillisch

(2) Increase due to investment in Rocket (2014), decrease due to sale of Goldbach shares and subsequent valuation of shares in listed companies (2015); decrease due to subsequent valuation of shares in listed companies (2016); increase due to subsequent valuation of shares in listed companies (2017)

(3) Increase due to complete takeover of Versatel (2014); increase due to takeover of Strato, ProfitBricks and Drillisch (2017)

(4) Increase due to complete takeover of Versatel (2014); increase due to takeover of home.pl (2015); increase due to takeover of Strato, ProfitBricks and Drillisch (2017)

(5) Increase due to Rocket investment and takeover of Versatel (2014); increase due to increased stake in Rocket, Drillisch investment, and acquisition of home.pl (2015); increase due to investment in Tele Columbus (2016); increase due to takeover of Strato and increased stake in Drillisch and Tele Columbus (2017)

(6) Increase due to capital increase (2014); increase due to consolidation effects in connection with the Warburg Pincus investment in the Business Applications division and takeover of Strato (2017)

Management Board's overall assessment of the Group's business situation

With the exception of the UK, Spain and Mexico, the macroeconomic conditions in the main target countries of the United Internet Group developed better than in the previous year during the reporting period. GDP in Germany – United Internet's most important market – grew by 2.5%. This figure was not quite matched by the German ICT market, which raised sales by 2.2%.

With (organic and inorganic) growth of 6.1 million customer contracts to 22.89 million, a 10.5% increase in sales to € 4.206 billion and an improvement in EBITDA of 17.3% to € 979.6 million, United Internet enjoyed further dynamic growth in fiscal year 2017 in excess of the macroeconomic and sector trends. With the milestones in customer contracts, sales and earnings achieved in fiscal year 2017, United Internet was also able to meet its original forecasts and the more specific guidance issued during the year.

The company's successful performance – especially when compared with the macroeconomic and sector trends – highlights the benefits of United Internet's business model based predominantly on electronic subscriptions with fixed monthly payments and contractually fixed terms. This ensures stable and predictable revenues and cash flows, offers protection against cyclical influences and provides the financial scope to win new customers, expand existing customer relationships, and grasp opportunities in new business fields and new markets – organically or via investments and acquisitions.

In the fiscal year 2017, the company once again invested heavily in gaining and expanding customer relationships, as well as in developing new products – thus laying the basis for future growth. In addition to strengthening the foundations for its operational business, United Internet tapped additional opportunities and growth potential with its takeovers of Strato AG, ProfitBricks GmbH and Drillisch AG with a variety of synergy effects in both reporting segments.

The financial position of United Internet AG remained strong in fiscal year 2017. Adjusted for tax effects, free cash flow was still high at € 424.4 million (comparable prior-year figure: € 426.9 million). This once again underlines the Group's ability to generate very healthy levels of cash while at the same time achieving strong qualitative growth.

The change in the Group's asset position was mainly caused by the takeovers of Strato and Drillisch.

As of the reporting date for the annual financial statements 2017, and at the time of preparing this management report, the Management Board believes that the United Internet Group as a whole is well placed for its further development. It regards the financial position and performance – subject to possible special items – as positive and is optimistic about the Group's future prospects.

2.4 Position of the Company

Earnings of United Internet AG

As a pure holding company, the earnings position of United Internet AG is usually dominated by its investment and financial result.

In the fiscal year 2017, **sales** of the parent company amounted to € 0.9 million (prior year: € 2.0 million) and result mainly from services rendered to the Group's subsidiaries.

Other operating income rose to € 1,434.8 million (prior year: € 6.2 million). The increase mainly results from extraordinary income of € 1,429.2 million in connection with the sale of shares in 1&1 Internet SE to 1&1 Internet Holding SE as part of the investment of Warburg Pincus in this division. Further income results from internal Group charges (€ 5.0 million) as well as income relating to other periods from the reversal of accruals (€ 0.6 million).

Adjusted for effects from employee stock ownership programs, **personnel expenses** in fiscal year 2017 amounted to € 1.4 million (prior year: € 1.3 million).

Other operating expenses decreased slightly to € 13.8 million (prior year: € 14.0 million) and mostly comprise legal, auditing and consulting fees of € 10.8 million (prior year: € 12.2 million).

Income from profit transfer agreements of € 141.5 million (prior year: € 103.2 million) result from the profit transfers of 1&1 Mail & Media Applications SE amounting to € 100.0 million, United Internet Investments Holding GmbH amounting to € 40.1 million, and United Internet Service Holding GmbH amounting to € 1.4 million.

Income from investments amounted to € 0 (prior year: € 120.0 million from a dividend paid from the balance sheet profit of 1&1 Internet SE).

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Expenses for loss assumptions of € 10.5 million (prior year: € 249.1 million mainly from the writedown of Rocket Internet shares held by United Internet Ventures AG (now United Internet Investments Holding GmbH)) mainly result from the compensation expense of the service company United Internet Corporate Services GmbH.

The parent company's **result before taxes** amounted to € 1,620.3 million (prior year: € -17.7 million).

Income taxes of € 77.9 million (prior year: € 29.6 million) comprise current taxes of 2017 of € 80.6 million (of which € 40.3 million for corporation tax and the solidarity surcharge and € 40.3 million for trade tax), and € 2.8 million from previous years. There was an opposing effect from the reversal of deferred tax liabilities amounting to € 5.5 million.

The **net income** in the separate financial statements of United Internet AG for the fiscal year 2017 amounted to € 1,542.4 million (prior year: net loss of € 47.3 million).

Assets and financial position of United Internet AG

The parent company's **balance sheet total** rose from € 4,512.7 million on December 31, 2016 to € 5,834.0 million on December 31, 2017.

Non-current assets of the parent company of € 4,952.7 million (prior year: € 2,993.2 million) are dominated by **financial assets**. **Shares in affiliated companies** increased to € 3,101.0 million (prior year: € 1,558.4 million). The main reason for this rise – in connection with the overall transaction with Drillisch – were the contributions to 1&1 Telecommunication SE and its transfer to Drillisch AG as well as the contributions to United Internet Service GmbH in connection with the carve out of 1&1 Versatel GmbH from 1&1 Telecommunication. There was an opposing effect from the prorated contribution or sale of 1&1 Internet SE to 1&1 Internet Holding SE. **Loans to affiliated companies** rose to € 1,851.6 million (prior year: € 1,434.6 million). The increase results in particular from finance provided by United Internet for the acquisition of 1&1 Internet SE and Strato AG by 1&1 Internet Holding SE. There was an opposing effect from contributions to United Internet Service GmbH in connection with the carve out of 1&1 Versatel and a loan repayment by 1&1 Telecom GmbH.

Current assets of the parent company amounting to € 881.1 million (prior year: € 1,519.5 million) comprise receivables due from affiliated companies and other assets. The **receivables due from affiliated companies** declined to € 832.0 million (prior year: € 1,389.9 million). These mainly comprise receivables within the United Internet Group's internal cash management system. Other assets disclosed under current assets amounting to € 41.4 million (prior year: € 121.0 million) consist mainly of receivables due from the tax office.

Shareholders' equity of the parent company amounted to € 3,566.7 million as of December 31, 2017 (prior year: € 2,247.3 million). The increase in equity during the reporting period is mainly due to the net income for the year of € 1,542.4 million, with an opposing effect from the dividend payout of € 159.7 million. The purchase of treasury shares (€ 77.2 million) and use of treasury shares for employee stock ownership plans (€ 13.9 million) resulted in a total net reduction of shareholders' equity of € 63.3 million. As a result of the increase in shareholders' equity, the equity ratio rose from 49.8% in the previous year to 61.1% as of December 31, 2017.

The parent company's **accruals** mainly comprise **accrued taxes**, mostly for previous years, amounting to € 55.0 million (prior year: € 12.6 million) as well as other **accrued liabilities** for employee stock ownership plans, legal, auditing and consulting fees, as well as bonuses and commissions totaling € 9.5 million (prior year: € 17.1 million).

The **liabilities** of the parent company are dominated in particular by liabilities to banks and liabilities due to affiliated companies. Due in particular to the dividend payment, the purchase of treasury shares, and investments and acquisitions, **liabilities to banks** rose to € 1,952.8 million in the fiscal year 2017 (prior year: € 1,747.4 million). Bank liabilities comprise two promissory note loans totaling € 1,036 million, syndicated loans totaling € 876 million, and the short-term use of a bilateral credit facility totaling € 41 million. **Liabilities to affiliated companies** fell to € 233.7 million (prior year: € 458.4 million) and mainly comprise liabilities from balances within the United Internet Group's cash pooling system (€ 214.7 million), from service arrangements (€ 4.9 million), and from profit transfer agreements (€ 10.5 million). **Other liabilities** of € 10.8 million (prior year: € 18.7 million) mainly consist of sales tax liabilities.

Cash flow of the parent company's financial statements is dominated by cash flows from the profit transfer agreements and the assumption of additional financial liabilities. The dividend payment in fiscal year 2017 and the purchase of treasury shares disclosed under financial activities had the opposing effect.

Management Board's overall assessment of the current business situation of United Internet AG

Due to its role as the Group's holding company, the economic position of United Internet AG at parent company level is mainly influenced by its investment result. The above statements on the Group's economic position therefore also apply qualitatively for United Internet AG itself.

2.5 Significant non-financial performance indicators

United Internet AG believes that its entrepreneurial activities are not solely restricted to the pursuit and implementation of economic objectives, but also involve a commitment and responsibility towards society and the environment. United Internet assumes this responsibility in a variety of ways. The most important aspects with regard to the management report, sustainable business policy, employees, green IT, and social responsibility, are summarized in the following sections.

Further information on these and other sustainability topics are included in the Sustainability Report 2017 of United Internet AG – based on the Global Reporting Initiative (GRI) framework – which will be published on the corporate website (www.united-internet.de) on April 10, 2018.

Sustainable business policy

United Internet AG is committed to pursuing a sustainable business policy. This sustainability is illustrated in particular by its high level of investment in customer relationships, in service, product and network quality, in security and data privacy, in customer retention and customer satisfaction – and thus also in sustainable growth.

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Customer growth

In its fiscal year 2017, United Internet once again invested heavily in customer growth and raised the number of fee-based customer contracts in its current product lines organically by 0.88 million to 16.97 million contracts with basic monthly fees. Including the takeovers of Strato and Drillisch, the number of fee-based customer contracts grew by as much as 6.10 million to 22.89 million contracts (prior year: 16.79 million).

Apart from these customer contracts in the current product lines, United Internet's Access segment holds a further 0.47 million contracts without basic monthly fees and service provider contracts (volume-based tariffs / MSP tariffs) from the Drillisch acquisition, as well as 0.11 million DSL contracts (prior year: 0.18 million) in the phased-out T-DSL / R-DSL product lines.

In addition to these fee-based contracts, United Internet also operates 35.42 million active free accounts (prior year: 34.29 million) at its data centers that are refinanced via advertising revenue.

In total, therefore, United Internet manages a total of 58.89 million customer accounts (prior year: 51.26 million) globally.

Over the past few years, the high-value contracts of the current product lines with a basic monthly fee have been greatly expanded, while the less valuable contracts with no monthly fee and the old contracts have been reduced (exception: 2017 due to 0.49 million contracts without basic monthly fee / old contracts resulting from the Drillisch takeover). The number of customer relationships via ad-financed free accounts – which also offer United Internet important potential for up- and cross-selling – were steadily improved over the past years.

Multi-period overview: development of customer relationships (Growth in million)

	2013 ⁽¹⁾	2014 ⁽²⁾	2015 ⁽³⁾	2016	2017 ⁽⁴⁾
Contracts with basic fees in current product lines	+ 1.55	+ 1.41	+ 1.25	+ 1.06	+ 6.10
Contracts without basic fees / old contracts	- 0.14	- 0.08	- 0.06	- 0.06	+ 0.40
Free accounts	- 0.05	+ 0.61	+ 1.03	+ 1.14	+ 1.13
Total customer accounts	+ 1.36	+ 1.94	+ 2.22	+ 2.14	+ 7.63

(1) Including 0.33 million contracts with basic fees in current product lines from takeover of Arsys

(2) Including 0.42 million contracts with basic fees in current product lines from takeover of Versatel

(3) Including 0.34 million contracts with basic fees in current product lines from takeover of home.pl and an opposing 0.08 million from contract streamlining

(4) Including 3.35 million contracts with basic fees in current product lines and 0.49 million contracts without basic fees / old contracts from takeover of Drillisch as well as incl. 1.87 million contracts from takeover of Strato

Service quality

United Internet has also invested heavily in service quality with the introduction of the so-called 1&1 Principle in 2012, its international rollout in 2013, and further constant enhancements in the following years.

With the 1&1 Principle, customers are given five clear product-related performance promises. These include, for example, a one-month test phase and highly available expert hotline, as well as – in the case of DSL and mobile products – delivery of hardware within one working day or on-site replacement of faulty equipment on the next working day, and – for cloud products – a monthly product upgrade or downgrade and geo-redundancy for maximum data security.

The excellent hotline test results achieved in 2017 are proof that the investments in service quality are paying off.

As in the previous years, a major hotline test conducted by CHIP magazine (published in November 2017) in cooperation with the market research experts of Statista tested the customer hotlines of companies in a wide variety of sectors. The Statista interviewers pretended to be potential new customers and conducted 8,689 test calls with a total of 141 companies in 12 different industries. The test categories were Availability, Waiting Time, Service and Transparency. The maximum score in each category – and in the overall ranking – was 100 points. The 1&1 service hotline came first out of the 16 providers tested in the field of “Mobile Provider”. In the overall ranking, the 1&1 service hotline scored 95.1 points (“Very Good”). It also came first out of 12 providers tested in the field of “Landline & Internet”. The 1&1 service hotline also scored the 1&1 service hotline scored 97.3 points (“Very Good”) in the overall ranking of this category. In the categories Availability, Waiting Time, the 1&1 service hotline reached the maximum score of 100 points.

In addition to the above mentioned test victory, the 1&1 service hotline also won in the hotline test of the German magazine “connect”. In its 09/2017 issue, Europe’s largest specialist magazine for telecommunication tested broadband providers in Germany in the categories Quality, Reachability and Friendliness. With an overall score of 429 points from a maximum 500, the 1&1 service hotline was test champion with a rating of “Very Good”.

The test results of the 1&1 service hotline in Spain for Applications products shows that these excellent ratings are not limited to Germany and the Access segment. For the fourth time in a row, the hotline received the coveted service award “Elegido servicio de atención al cliente”. This award honors companies with outstanding and top-quality customer service. In the Hosting category, 1&1 was lauded for its reliable customer service following a comprehensive test with over 200 calls by “mystery shoppers”.

Product quality

The product quality of the United Internet brands also received various accolades in the fiscal year 2017. For example, the US analyst firm Cloud Spectator rated the 1&1 Cloud Server as the best cloud solution for the second year running. As in the previous year, the 1&1 Cloud won the “Top 10 IaaS Providers Benchmark 2017” for North America and excelled on all counts with its outstanding value for money. The 1&1 Cloud Server reached the highest possible “CloudSpecs Score” of 100 points. This final average score resulted from individual tests in the vCPU, Memory Value and Block Storage Value sections.

Network quality

In terms of network quality, the United Internet brand 1&1 once again took first place in the prestigious landline network test of the respected German specialist magazine “connect” (published in July 2017). 1&1 was the only nationwide provider to receive an overall rating of “Very Good”, putting it ahead of competitors such as Deutsche Telekom, O2 and Vodafone, who were all rated “Good”.

connect holds its test annually and in 2017 checked the test connections of seven well-known providers in the categories Voice, Data, Web Services and Web TV.

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1&1 uses its own fiber-optic network for the realization of complete DSL connections. At locations where the network is not yet available, 1&1 cooperates with other telecommunications companies. 1&1 provides its telephony services via its own voice-over-IP (VoIP) platform, which has proven its reliability over the past 10 years now and is constantly being enhanced.

The latter once again impressed in the test with excellent landline voice services. 1&1 achieved the best connection times in its own network and very fast connection times for calls to other all-IP networks. 1&1 scored particularly well in the categories Data and Video with "very good response times and upload transfer rates, especially in the highest broadband class". The test also demonstrated that 1&1 offers the best Web Services compared to the competition and also impressed in the Web TV category. And of particular importance for gamers: 1&1 scored the fastest gaming pings.

The landline test was conducted in three bandwidth classes for the first time this year. In doing so, "connect" aims to reflect the actual market distribution more accurately. Class 1 comprises connections with speeds of up to 20 Mbit/s (downstream), Class 2 is for 25 to 50 Mbit/s, and Class 3 for 100 Mbit/s and more.

The landline test was carried out on behalf of "connect" by zafaco GmbH. According to "connect", about 1.8 million measurements were carried out on 92 test connections at 45 locations throughout Germany over a four-week period. The test connections automatically initiated voice and data transfers.

Security and data privacy

With the launch of the "E-Mail made in Germany" initiative in 2013 (in cooperation with a network also comprising Deutsche Telekom and freenet), United Internet also offers its customers high standards with regard to the security and privacy of e-mail communication. This includes the encrypted transmission of all e-mails on all network routes, the processing and storage of all data in Germany according to German data protection regulations and the identification of secure e-mail addresses within the e-mail applications. As of April 29, 2014, only SSL keys certified in Germany are used within the "E-Mail made in Germany" network and all transmission routes are fully encrypted. As an important enhancement of the security standard "E-Mail made in Germany", the United Internet e-mail services GMX and WEB.DE developed an encryption system based on the globally recognized "Pretty Good Privacy" (PGP) standard in 2015. The new e-mail security level works on all commonly used devices, is provided free to all customers of the two mail services, and is compatible with all previous PGP applications. In 2016, the PGP solution of GMX and WEB.DE was also rolled out in the foreign markets of France, Spain and the UK via the international e-mail brand mail.com.

Following end-to-end encryption for e-mails in the past few years, the United Internet portals GMX and WEB.DE also rolled out end-to-end encryption for the cloud content of its customers in the fiscal year 2017. In addition to the automatic uploading of photos from smartphones to the cloud and improved publishing and sharing functions, security has also been stepped up: all users of WEB.DE and GMX in Germany, Austria and Switzerland (DACH) can use their "safe" for free end-to-end encryption of their cloud data, thus offering protection from third parties. As a result, the portal brands are strengthening their "Cloud Made in Germany" initiative and clearly differentiating themselves from non-European solutions.

Customer retention and customer satisfaction

A high level of service, product and network quality combined with high standards of security and data privacy also have a positive impact on customer satisfaction/customer trust. For example, the United Internet brand GMX is the e-mail provider which Germans trust most. This was the result of a survey (published in October 2017) commissioned by the German magazine "Wirtschaftswoche" in which GMX received the "Highest Customer Trust" rating. Starting in 2014, "Wirtschaftswoche" has been examining the trust of German consumers in various companies once a year, in conjunction with the research company Service Value. The results are published in "Germany's Largest Trust Ranking". In 2017, around 275,000 customers of 972 companies in 77 sectors were interviewed. The survey's academic advisor is Rolf van Dick, a professor at the University of Frankfurt / Main. For the fourth year running, GMX has thus taken first place in this ranking of e-mail providers and achieved a score in 2017 which was 16.1% above the average for all e-mail providers (64.8%).

Employees

The internet sector is a highly dynamic and globally networked industry with short innovation cycles. United Internet AG has risen to these challenges with great success over many years now. One of the key factors for the success and growth of the United Internet Group are its dedicated and highly competent employees and executives with their entrepreneurial and autonomous approach to work. The company therefore attaches great importance to a sustainable and balanced strategy across all aspects of its HR activities: from employee recruitment, to targeted entry-level and vocational training formats, tailored skills training programs, support with individual career paths, through to sustainable management development programs and the retention of high potentials and top performers.

United Internet AG was once again recognized as a top employer in 2017. Based on an independent study of the "Top Employers Institute", United Internet received the "TOP Employers Germany" award – as in the preceding years. Certification is only awarded to organizations which offer staff attractive working conditions. Assessment is based on career opportunities, employer benefits, working conditions, training and development opportunities, and the corporate culture.

Headcount and key figures

In the highly competitive market for skilled workers in the IT sector, United Internet once again succeeded in recruiting top staff for its key positions and thus meeting the needs of its growing business. In addition to targeted employer branding, partnerships with education and training providers, and the positive impact of the company's product brands on candidates, our successful recruitment efforts center around a candidate-friendly, highly competitive acquisition and selection process and the efforts of our executives.

There was a strong year-on-year increase in headcount in the fiscal year 2017. Specifically, the number of employees rose by 19.2% to 9,414 (prior year: 7,897). The main reason was the acquisition of Strato (Applications segment), ProfitBricks (Applications segment) and Drillisch (Access segment). There was an opposing effect from the deconsolidation of affilinet (Applications segment).

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As a result of the above mentioned takeovers, headcount in Germany rose by 24.8% to 7,890 as of December 31, 2017 (prior year: 6,322). The number of employees at the Group's non-German subsidiaries decreased by 3.2% to 1,524 (prior year: 1,575) – due in particular to the deconsolidation of affilinet.

There were 4,526 employees in the Access segment (prior year: 3,478), 4,547 in the Applications segment (prior year: 4,221) and 341 employed at the Group's headquarters (prior year: 198). The strong increase in staff at the Group's headquarters resulted from the transfer of employees from the segments (especially the Applications segment) who already worked in corporate functions.

Multi-period overview: headcount development (domestic/foreign and by segment)⁽¹⁾

	2013	2014	2015	2016 ⁽²⁾	2017 ⁽²⁾	Change over 2016
Employees, total	6,723	7,832	8,239	7,897	9,414	+ 19.2%
thereof domestic	5,080	6,168	6,502	6,322	7,890	+ 24.8%
thereof foreign	1,643	1,664	1,737	1,575	1,524	- 3.2%
Access segment	2,025	2,965	3,142	3,478	4,526	+ 30.1%
Applications segment	4,664	4,829	4,945	4,221	4,547	+ 7.7%
Corporate	34	38	152	198	341	+ 72.2%

(1) Active employees as of December 31 of the respective fiscal year

(2) After deconsolidation of affilinet in 2017; previous year adjusted

Due in particular to the acquisition of Strato, ProfitBricks and Drillisch, personnel expenses rose to € 489.0 million in fiscal 2017 (prior year: € 433.8 million). The personnel expense ratio therefore rose to 11.6% (prior year: 11.4%).

Multi-period overview: development of personnel expenses (in € million)

	2013	2014	2015	2016 ⁽¹⁾	2017 ⁽¹⁾	Change over 2016
Personnel expenses	306.1	351.7	429.7	433.8	489.0	+ 12.7%
Personnel expense ratio	11.5%	11.5%	11.6%	11.4%	11.6%	

(1) After deconsolidation of affilinet in 2017; previous year adjusted

Sales per employee, based on annual average headcount, amounted to approx. € 486k in fiscal year 2017 (prior year: approx. € 472k).

Targeted staff support and ongoing development

In order to keep pace with or even anticipate new technologies, competitive ideas and market trends, it is important to continuously develop the company's employees. Pooling and retaining knowledge in-house requires a sustainable policy for aligning the company and market requirements for various functions with the individual career objectives and prospects of staff.

United Internet attaches great importance to giving all employees at all locations – regardless of departments and functions – the same opportunities for development. A transparent, group-wide framework for staff development was therefore defined from an early stage. The range comprises standard programs and support measures, as well as various function-based offerings which are

tailored to the respective employee and skills profile. Specifically, this involves a gradual assumption of responsibility and an expansion of competencies within the specific field of work function – from beginner to expert.

Staff are supported both in their daily work (“on the job”) as well as with targeted training measures. United Internet is also moving with the times in this respect by offering a wide range of training via a digital platform (1&1 Campus) in addition to the existing program. Everybody recognizes it on a day-to-day basis: learning is no longer restricted to school and vocational education. Social, economic and above all technological developments both call for and enable a permanent learning process. This platform offers flexible learning opportunities, a wide range of formats, easy usage possibilities, and requires users to display a high degree of inner drive during the learning process.

In addition to vertical development paths, horizontal development is also possible between different functions. In addition, the organization’s permeability allows transfers between products or segments and thus enables the interdisciplinary development of employees.

For employees who have reached the highest competency level (“senior”) for their respective function and would like to assume more responsibility for a special topic or in a management role, the company offers two career models: the “management track” and the “expert track”. Whereas employees choosing the “management track” gradually assume more and more staff responsibility, “experts” have a high degree of specialist knowledge. However, they have no direct line responsibility, but are top performers, “know-how owners”, and advisors on strategic questions in their specific field and act as multipliers for their knowledge inside and outside the company. Both the management and expert tracks are “permeable”, i.e. horizontal movement is also possible and an expert can become a manager and vice versa.

Discovering and nurturing potential and performance from an early stage

With the aid of junior management programs, such as the 1&1 Graduate Program, United Internet develops young talents fresh from university from an early stage. The main target is to be able to recruit and train future managers and specialists from within the company.

Further development programs are offered for staff with exceptional abilities and potential in all areas of the company. Such employees are then accompanied through a structured program of individual development and training plans in order to prepare them for their future personal challenges, and those of the company (MyWay+ for staff at Advanced/Senior level and 1&1 MOVEforward for “Entrepreneurial Types” at Executive and Expert level).

Specialist training by colleagues for colleagues

A particular training-on-the-job initiative in the United Internet Group’s technical divisions is the TEC campus, which is now in its fourth, highly successful year. TEC Campus comprises a series of lectures (“Business Academy”), training on tools, processes and methods, as well as e-learning, and two internal conferences. The program is jointly designed by Technology and HR staff in coordination with the Management Board member responsible for “Technology”. The aim is to create a framework in which staff can benefit from their mutual knowledge and networks.

PASK is a conference on all aspects of agility: technologies from development and operations are discussed here twice a year. Both events feature lectures and interactive formats, such as workshops, discussion rounds and open spaces. The wide-ranging topics and intensive pooling of topics within two days attract colleagues from all locations and departments and help expand networks and experience.

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Thanks in part to the measures described above, the United Internet Group was able to recruit around 70% of managers from within its own ranks in fiscal year 2017.

Training held in high regard

The United Internet Group also attaches great importance to apprenticeships and initial vocational training. The company trains young people to meet its future needs and offers them a successful start to their professional lives. The company currently offers apprenticeships in commercial and technical professions, including IT specialist (application development/systems integration), IT systems clerk, dialogue marketing clerk, marketing communication clerk, and office management clerk. In cooperation with Baden-Wuerttemberg Cooperative State University (Duale Hochschule Baden-Wuerttemberg - DHBW), United Internet also offers degree courses in Applied Computer Sciences, Information Management, Business Administration / Accounting and Business Administration / Services Marketing at the universities of Karlsruhe and Mannheim.

During their three-year training or DHBW studies, all participants experience a wide variety of different company departments. During these periods, they are fully integrated into the respective teams and daily processes. The apprentice workshops at the facilities in Karlsruhe and Montabaur have proved especially successful. Technical apprentices in particular spend part of their training period in the workshops in order to learn the basics for their later careers as early as possible. In addition to the provision of technical and methodological skills, the company also attaches great importance during training to behavior compliant with its corporate culture. The internalization of corporate culture, expertise, methodological skills and behavior in line with the corporate values form the basis for a successful transition to the post-training period. Many of those trained by the United Internet Group are thus ideally prepared for the transition to full-time employment.

In order to secure the number of high-caliber apprentices in spite of dwindling school-leaver numbers, United Internet is now starting its efforts even earlier: in addition to initial cooperation and school events, the company has also been offering one-on-one career advice for some time now. This service is also being used increasingly by the children of our employees. On specific information days, trainers provide information on apprenticeships and career opportunities within the company and are also available to give advice. In addition, internships are also offered to schoolchildren to give them an insight into working life.

At the beginning of the new apprenticeship year 2017, a total of nine refugees were given the opportunity of a future career (with an apprenticeship contract). Around 230 young people were serving their apprenticeships with Group companies at year-end 2017. After successfully passing their examinations, United Internet endeavors to take on as many apprentices as possible and to make an attractive job offer to every graduate. In fiscal year 2017, 51 apprentices and DHBW students were given full-time jobs

As part of the "Fair Company Initiative", United Internet is committed to providing fair conditions for interns and thus guaranteeing a high level of benefit from their internships. In addition to adequate financial compensation, interns receive dedicated personal support from their respective departments and HR. Interns and former interns regularly emphasize this aspect and stress the high learning effect achieved during their internships. Internships are offered every year for students of IT, Product Management and Online Marketing, as well as Finance and HR.

United Internet is also a sponsor of the "Germany Scholarship" program, in which companies and the state play an equal role in promoting future graduates and helping them complete successful and challenging degree courses. The scholarship program supports students whose achievements promise future excellence in their studies and careers. Since the program was launched in 2011, United Internet has sponsored students at the two elite universities LMU and TU Munich. However, United Internet does not limit its activities to financial support, but also offers the current five students personal mentoring by colleagues in the respective departments. This often leads to internships or jobs as working students.

Diversity

Without the individual strengths of its employees, United Internet would not be what it is today – an internationally successful, innovative company on track for growth. United Internet attaches great importance to the constructive use of diversity management and the handling of social differences between its employees.

The United Internet Group's corporate culture is based on mutual respect and a positive attitude toward individual differences with regard to culture, nationality, gender, age and religion – in other words, everything that makes the company's employees unique and distinctive. A work force composed of diverse personalities offers ideal conditions for creativity and productivity. The resulting potential for new ideas and innovation strengthens United Internet's competitive position and enhances its opportunities in future markets. In accordance with this principle, the company strives to find the field of activity and function for each employee which allows them to fully exploit their individual potential and talents. In addition to productivity, diversity also helps raise the general level of satisfaction among employees. These are key reasons for many applicants to select their future employer. As United Internet's customers also have a wide variety of needs and wishes, they appreciate a business partner who can live up to their own diversity.

However, the promotion of diversity is not simply a one-size-fits-all solution. Employees and applicants are recruited, employed and promoted on the basis of objective criteria, such as skills, aptitude and expertise. In corporate divisions in which women are structurally under-represented, United Internet seeks to raise their representation provided they have the same qualifications, skills and suitability. However, the company always decides on a case-by-case basis.

Multi-period overview: employees by gender

	Dec. 31, 2013	Dec. 31, 2014	Dec. 31, 2015	Dec. 31, 2016	Dec. 31, 2017
Women	35%	33%	34%	34%	31%
Men	65%	67%	66%	66%	69%

The average age of the United Internet Group's employees at the end of fiscal year 2017 was around 39 (prior year: 38).

Multi-period overview: employee age profile

	Dec. 31, 2013	Dec. 31, 2014	Dec. 31, 2015	Dec. 31, 2016	Dec. 31, 2017
under 30	30%	32%	27%	28%	24%
30 - 39	46%	43%	40%	41%	36%
40 - 49	20%	20%	25%	23%	27%
over 50	4%	5%	8%	8%	13%

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Employees of United Internet AG work in an international environment at some 40 sites around the world.

Multi-period overview: employees by country

	Dec. 31, 2013	Dec. 31, 2014	Dec. 31, 2015	Dec. 31, 2016 ⁽¹⁾	Dec. 31, 2017 ⁽¹⁾
Employees, total	6,723	7,832	8,239	7,897	9,414
thereof Germany	5,080	6,168	6,502	6,322	7,890
thereof France	23	46	25	3	3
thereof UK	208	227	234	209	232
thereof Philippines	468	450	390	386	366
thereof Poland	6	6	263	258	251
thereof Romania	288	264	229	194	174
thereof Spain	329	341	339	322	319
thereof USA	303	300	239	197	174
thereof Other	18	30	18	6	5

(1) After deconsolidation of affilinet in 2017; prior-year figures adjusted

Green IT

In the wake of the global climate debate and rising energy consumption, the term "Green IT" is often used in the computer industry. The term basically comprises all measures that contribute toward reducing a company's CO₂ emissions and energy consumption.

The ICT sector makes a significant contribution to global added value and is thus a strong economic factor. At the same time, it also emits a significant amount of CO₂ and consumes a lot of electricity. For internet service providers like United Internet, this applies in particular to the data centers where millions of cloud applications are managed for private and commercial users.

United Internet has been using electricity from renewable energy sources at its data centers in Germany since December 2007. The servers at our German data centers in Karlsruhe, Berlin and Baden Airpark, for example, are powered 100% by electricity from Norwegian and French hydroelectric power plants supplied by Stadtwerke Karlsruhe. The US data center in Lenexa was also converted to climate-neutral electricity in 2008. And the data centers in Spain and the UK also use power from regenerative sources.

The main elements of our energy-saving efforts at data centers in Germany are:

- An intelligent cooling system. The warm cooling water is first led through open-air coolers on the roof of the data center that do not require energy-hungry compressors and use the "natural" outdoor temperature for cooling.
- The server hardware. A proportion of our computers are built-to-order for United Internet. We leave out unnecessary components and specify, for example, energy-saving processors and power supplies with low heat loss. This means that less heat is radiated and data rooms do not have to be cooled as intensively.
- The software used. The webhosting operating system used by United Internet is our own development, based on Linux. The modification enables us to manage the data of several thousand customers on a single computer and at the same time and thus utilize our resources as sensibly as possible.
- The virtualization. The server hardware used in data centers is often only utilized at an average rate of 15% to 25%. With the aid of virtualization, efficiency can be increased significantly – thus saving energy.

Social responsibility

“United Internet for UNICEF” foundation

“United Internet for UNICEF” was set up in September 2006 as an independent foundation under German civil law. It primarily supports projects of UNICEF, the United Nation’s Children’s Fund.

Projects are carefully selected from the wide range of UNICEF topics and presented on the high-reach portals of the United Internet Group (1&1, GMX und WEB.DE) in order to attract as many donors as possible – for the particular project or as long-term UNICEF sponsors. During emergency situations, such as the famine in parts of Africa and Yemen in February 2017, newsletters can reach over 30 million people within 24 hours and thus facilitate the effective collection of donations.

For United Internet for UNICEF, 2017 was characterized by three major catastrophes: the acute famine situation in South-East Africa and Yemen, the refugee crisis of the Rohingya in Bangladesh and the ongoing emergency situation in Yemen.

In countries like South Sudan, Nigeria, Somalia and Yemen, millions of people – including countless children – risk fatal starvation. The causes include the effects of climate change, war, armed conflicts, and diseases such as HIV/AIDS and malaria.

In 2017, more than 600,000 Rohingya were forced to flee Myanmar, most of them to Bangladesh. Hundreds of thousands of children arrived at the emergency shelters of the neighboring country in terrible condition. Many were traumatized, injured or ill, and in urgent need of help.

Thanks to the generous support of donors, the United Internet for UNICEF foundation was able to provide several million euros for immediate on-site aid.

The single or repeat donations gained via United Internet’s portals are passed on 100% to UNICEF – thanks to the voluntary work of all foundation staff.

There were several reasons for us to set up a foundation devoted principally to supporting UNICEF:

- UNICEF makes a sustainable improvement to the lives of children. True to the principle of “Helping People Help Themselves”, UNICEF develops national programs around the world focusing on education, health, AIDS and child protection. UNICEF involves the local population in its development work and supports them in such a way that they can look after themselves and their children.
- UNICEF provides long-term aid, but also offers fast and reliable help in emergency situations. In the wake of earthquakes, floods or wars, UNICEF provides children with clean drinking water and drugs, sets up provisional schools and offers psycho-social care. UNICEF can draw on its many years of experience and global presence.
- UNICEF imposes strict controls on the use of donations. Both the UNICEF representatives in the program countries and the local partners are regularly inspected to ensure that funds are being used exactly as planned.

As a result of the foundation's appeals, approximately € 3.9 million (prior year: € 3.0 million) could be handed over to UNICEF in the fiscal year 2017 – according to preliminary figures. Since its creation, the foundation has so far collected € 39.4 million in donations and enlisted the support of around 12,327 active and long-term sustaining members of UNICEF via the 1&1, GMX and WEB.DE portals as of December 31, 2017 (prior year: 11,735).

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Further information on the United Internet for UNICEF foundation can be found online at www.united-internet-for-unicef-stiftung.de.



<https://www.united-internet-for-unicef-stiftung.de>

“1&1 Welcome”, “1&1 Language”, “1&1 Fit for Job”, “We Together” initiative

In addition to the United Internet for UNICEF foundation, the United Internet Group has been active since 2015 in various activities to promote the sustainable integration of refugees in Germany on the three levels which typify United Internet: with its employees, as an employer and via the company’s products.

Several hundred United Internet employees work as volunteers in local projects as part of the “**1&1 Welcome**” campaign. Together with local organizers, our employees offer regular activities to facilitate the transition into everyday German life, such as sports activities, playing music together, day trips and childcare. In a second step, “**1&1 Language**” was set up at centers near refugee homes to offer German language courses.

Since March 2016, the main focus of activities has been a training program to prepare refugees for the German labor market. The “**1&1 Fit for Job**” program provides courses in addition to those offered by the state and local authorities. At United Internet’s facilities in Montabaur, Karlsruhe and Munich, a modular program gives participants a general overview of office work, the cultural environment, and possible careers at the company, as well as hands-on training units on job applications and PC skills. All courses are held by company employees, who can devote up to 10% of their working hours to the program.

Graduates of this program will then also be offered internships or entry-level jobs. Armed with the knowledge from this training program, graduates are able to successfully apply for jobs at German companies – whether at United Internet or other employers. United Internet also organizes network meetings at various locations to share its experiences with other companies.

Over 230 refugees and immigrants have so far participated in the program at our sites in Montabaur, Karlsruhe and Munich. More than 80 participants subsequently completed an internship at companies of the United Internet Group and 17 are currently doing apprenticeships. Two graduates have since been given full-time employment. Numerous employees volunteer to act as trainers, sponsors, and internship assistants in the “Fit for Job” program, in addition to their daily work.

With its various programs, United Internet is also active in the “**We Together**” initiative, in which over 200 companies so far pool their integration activities and exchange notes on their experiences.

3 SUBSEQUENT EVENTS

There were no significant events subsequent to the end of the reporting period on December 31, 2017 which had a material effect on the financial position and performance or the accounting and reporting of the parent company or the Group.



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Information on the economic position of the Group and company at the time of preparing this Management Report are provided under point 4.3 in the "Forecast report".

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4 RISK, OPPORTUNITY AND FORECAST REPORT

The risk and opportunity policy of the United Internet Group is based on the objective of maintaining and sustainably enhancing the company's values by utilizing opportunities while at the same time recognizing and managing risks from an early stage in their development. A risk and opportunity management system which is "lived" ensures that United Internet AG can exercise its business activities in a controlled company environment.

The risk and opportunity management system regulates the responsible handling of those uncertainties involved with economic activity.

4.1 Risk report

Risk management

The concept, organization and task of United Internet AG's risk management system are defined by the Management Board and Supervisory Board and documented in a risk management strategy and risk manual which is valid for and available to all members of the Group. These requirements are regularly adapted to changing legal conditions and continually developed. The Corporate Risk Management department coordinates the implementation and ongoing development of the risk management system and is responsible for the centrally managed risk management process on behalf of the Management Board of United Internet AG.

The Corporate Audit department regularly examines the functioning and efficiency of the risk management system. As part of his statutory auditing obligations for the annual financial statements and consolidated financial statements, the external auditor also examines whether the risk early recognition system is generally suitable for the early identification of risks and developments which might endanger the company so that suitable countermeasures can be swiftly introduced. The system complies with statutory requirements regarding risk early recognition systems, as well as with the German Corporate Governance Code. Its design is based on the specifications of the international ISO standard ISO/IEC 31000. In accordance with the regulations of the German Stock Corporation Act, the Supervisory Board also examines the efficacy of the risk management system.

Methods and objectives of risk management

The risk management system comprises those measures which enable United Internet AG to identify, classify in terms of money and scenario, steer and monitor from an early stage all possible risks for the attainment of its corporate objectives with the aid of assessments and early warning systems. The aim of the group-wide risk management system is to provide maximum transparency for management regarding the actual risk situation, its changes and the available options for action so that a conscious decision can be taken to accept or avoid such risks. There is always an established indirect connection to central Group-wide risk management via the regular reporting channels throughout the Group and a direct connection for all major divisions. This ensures the completeness of registered risks in the risk management system.

The current status of the main risks is communicated to the Management Board and Supervisory Board four times per year. Identified important risks with an immediate impact or significant changes in the risk situation trigger an ad-hoc reporting obligation. The respective risk is then communicated immediately to the CFO of United Internet AG, who in turn reports it to the Supervisory Board where necessary. In this way, significant risks can be addressed as quickly as possible. In order to support the centralized risk management system, additional local risk managers have been installed in business fields of particular importance for the Group's business success (such as the areas "Technology & Development"). In order to facilitate the group-wide exchange and comparison of risk information, these local risk managers meet with the Group's central risk management team and – for cross-company issues – with the company-wide, cross-functional managers at regular Risk Manager Meetings. Risks are assessed with their net impact, i.e. effects from mitigating (corrective) measures are only considered in the risk assessment after implementation.

Risks for United Internet

Of the total risks identified for the Group, the following sections describe the main risk categories and individual risks from the company's point of view. Assessments which the company's Management Board makes regarding the likelihood of occurrence and the potential impact of the risks described below are provided at the end of this Risk Report.

Strategy

United Internet AG continues to seek increasingly international growth in European and non-European markets. As a result, the company faces a growing number of new challenges associated with different cultural backgrounds, different legal requirements, and the ethical and social expectations of customers and international staff with regard to the parent company. For both internal processes, such as the implementation of cross-company and international projects, and customer communications, business success also depends on the precise knowledge and consideration of country-specific characteristics of the parties involved. The company takes this into account by enhancing the cross-cultural skills and awareness of its employees and managers.

Market

Competition

Competition in both the Access and Application segments may increase further, for example, via the market entry of new competitors. This would have a negative impact on growth and/or the achievable margins of the respective segments.

In the course of diversifying its business model, United Internet occasionally enters new, additional markets with major competitors. Such entrepreneurial decisions for new products and business fields generally involve new risks which may result, for example, from the pricing of products, changes in the business strategies of pre-service providers, or from fraudulent use. United Internet attempts to minimize these risks with the aid of detailed planning based on past experience and external market studies, and by using various partners/suppliers and continually expanding its anti-fraud measures.

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Following the decision of the UK to leave the European Union, the advertising market has been noticeably more cautious. This has implications for the Applications segment of United Internet. Further effects in the UK, such as the adoption of new regulations (regarding company or tax legislation etc.), are possible but cannot be reliably estimated with regard to their financial impact.

Business development and innovations

A key success factor for United Internet is the development of new and constantly improved products and services in order to constantly raise the number of our customer contracts and strengthen customer retention. There is always a risk, however, that new developments might be launched too late on the market or not accepted by the target group. United Internet counters such risks by closely observing market trends and the competition as well as by undertaking product development which constantly responds to customer feedback.

Legal & political

Regulation

In the Access segment, the decisions of the German Federal Network Agency and Federal Cartel Office have an influence on the pricing of internet access tariffs. Price increases of network providers from whom United Internet purchases pre-services for its own customers can have a negative impact on the profitability of tariffs. In the same way, there is also the possibility that a lack of regulation may lead to a deterioration of market circumstances for United Internet. United Internet attempts to counter this tendency toward an increasing regulation risk by cooperating with various pre-service providers and by actively participating in the activities of industry associations. With its complete takeover of Versatel on October 1, 2014, United Internet now also has its own network. This network infrastructure gives United Internet the possibility to gradually expand its vertical integration procure fewer internally produced DSL pre-services.

Data protection

United Internet stores the data of its customers on servers according to international security standards at its own and at rented data centers. The handling of these data is subject to extensive legal regulations. The company is aware of this great responsibility and attaches great importance and care to data protection. At the same time, however, the possibility can never be excluded that data protection regulations are contravened due to human error or technical weaknesses. By using state-of-the-art technologies, continually monitoring all data-protection and other legal regulations, providing extensive staff training on data protection regulations, and involving data protection aspects and requirements as early as possible in product development, the company continually invests in improving the standard of its data security.

The EU's General Data Protection Regulation (GDPR) was adopted by the EU Parliament on 14 April 2016 and published in the Official Journal of the European Union on 4 May 2016. The new rules will apply from May 2018 onwards and include increased sanctions for breaches of duty, a revision of the requirement for consent declarations and new obligations for reporting to authorities and those affected in the case of data loss.

Litigation

The United Internet Group is currently involved in various legal disputes and arbitration proceedings arising from its normal business activities. The outcome is by definition uncertain and thus represents a risk. Insofar as the size of the obligation can be reliably estimated, accruals are formed for such risks from litigation.

Personnel

If United Internet does not effectively manage the manpower resources of its national and international facilities, the company may not be able to run its business efficiently and successfully. It is therefore essential that human resources are effectively controlled so that the company can ensure its short- and long-term needs for staff and the requisite expertise.

The company specifically counters this risk with a number of measures. These include succession and manpower planning, outsourcing and temporary use of external resources.

Highly skilled employees form the basis for the economic success of United Internet. The competition for skilled and specialist technical and management personnel is intense, however. If we are not capable of attracting, developing and retaining managers and staff with specialist professional and technological knowledge, United Internet will not be able to effectively pursue its business and achieve its growth targets.

Despite these risks, the company regards itself as an attractive employer and is well placed to hire highly skilled specialists and managers with the potential to drive its business success in the future. The company also counters this risk by developing the skills of its staff and managers. Development activities, mentoring and coaching programs are offered, as well as special programs for high potentials, which are geared to the ongoing development of talent and especially leadership skills.

Further details on our human resources are provided under point 2.5 of this Management Report "Significant non-financial performance indicators" under "Employees".

Fraud

In order to meet the requirements of dynamic customer growth and provide services as quickly as possible in the interests of its customers, United Internet has largely automated its order and provision processes – as have many other companies in such mass market businesses. The nature of such automated processes provides possibilities for attacks from internet fraudsters. For example, United Internet may suffer damage from automated hosting and domain orders made under false names and not paid for.

The fraudulent use of SIM cards may also incur damage for United Internet due to large-scale call forwarding or roaming calls, for example.

United Internet attempts to prevent such fraud attacks – or at least to recognize and end them at a very early stage – by permanently expanding its fraud management capabilities, working closely with pre-service providers and taking account of such risks in the design of its products.



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Provision of services

Threat potential of the internet

United Internet AG generates its commercial success largely within the environment of the internet. In order to provide products and services, the company uses information and telecommunication technologies (data centers, transmission systems, connection nodes etc.) in its business processes which are closely networked with the internet and whose availability may be endangered by threats from the internet. For example, there is a risk of DDoS attacks (DDoS = Distributed Denial of Service), which may lead to an overloading of technical systems and server downtime. In order to deal with such risks more quickly, the existing monitoring and alarm system, together with the necessary processes and documentation, is continually optimized.



> DDoS

There is also the risk of hacker attacks with the aim of stealing or deleting customer data or using services fraudulently. United Internet counters this risk with the aid of virus scanners, firewalling concepts, self-initiated tests and various technical monitoring mechanisms.

It was possible to observe an increasing professionalization of the attackers and their attack methods during the reporting period. According to Germany's Federal Office for Information Security (BSI), the number of known malicious program variants grew by around 280,000 per day in the period January to May 2017.

The threat potential of the internet represents the largest threat group for United Internet with regard to its effects, which are all monitored by numerous technical and organizational measures. Of particular relevance in this respect are the operation and continuous improvement of the security management system and the steady enhancement of system resilience.

Complexity and possible manipulation of hardware and software used

United Internet's products and related business processes are based on a complex technical infrastructure and a number of success-critical software systems (servers, customer relationship databases and statistics systems etc.). Constantly adapting this infrastructure to changing customer needs leads to greater complexity and regular changes. In addition to major events like the migration of databases, this may lead to various disruptions or defects. Should this affect our business systems or their databases, for example, daily account debiting may be delayed or no longer possible. Should this affect our performance systems, for example, United Internet may not be able to provide its customers with the promised service, on a temporary or longer-term basis. The company meets these risks by making targeted adjustments to the architecture, introducing quality assurance measures, and establishing spatially separated (geo-redundant) core functionalities.

For the operation of systems, there is a risk of targeted attacks from inside and outside the company, e.g. from hackers or manipulation by staff with access rights, which may result in non-availability or a deterioration of services. In order to counter this risk, the company takes a wide variety of software- and hardware-based safety precautions to protect the infrastructure and its availability. By dividing responsibilities, the company has made sure that activities or business transactions involving risks are not carried out by single employees but on the basis of the "double-check principle". Manual and technical access restrictions also ensure that employees may only operate within their particular area of responsibility. As an additional precautionary measure against data loss, all data are regularly backed up and stored in separate, i.e. geo-redundant, data centers.

Complexity in development

The growing demands placed on the development of the overall portfolio by the ever-increasing complexity and interoperability of the products offered necessitate a higher degree of coordination for the internal work processes of United Internet. The particular challenge is to ensure quality standards especially in view of fast-changing market events which require the maintenance of a usually high-performance and robust development component – and on numerous differing domestic and foreign markets.

A further aspect in this context is the preservation and expansion of core skills within the company for the development of the product portfolio. In the case of time-critical projects, for example, the use of highly specialized service providers may lead to additional expenses and negative consequences – such as the delay of planned campaigns, or similar security vulnerabilities etc. – if these were temporarily unavailable.

The company minimizes these risks by continuously developing and enhancing its internal processes, pooling and retaining its experts and key personnel, and continuously improving the organizational structures of the development components.

Additional disclosures on risks, financial instruments and financial risk management

The main financial liabilities incurred by the parent company United Internet AG for the financing of its activities include bank loans, overdraft facilities and other financial liabilities.

United Internet holds various financial assets which result directly from its business activities. They consist mainly of shares in affiliated companies and investments, as well as receivables from affiliated companies. As of the balance sheet date, the company mainly held primary financial instruments.

The aim of financial risk management is to limit risks through ongoing operating and financial activities. The company is hereby exposed to certain risks with regard to its assets, liabilities and planned transactions, especially liquidity risks and financial market risks, as described below.

Liquidity

The general liquidity risk of United Internet consists of the possibility that the company may not be able to meet its financial obligations, such as the redemption of financial debts. The company's objective is to continually cover its financial needs and secure flexibility, for example by using overdraft facilities and loans.

Our group-wide cash requirements and surpluses are managed centrally by our cash management system. By netting these cash requirements and surpluses within the Group, we can minimize the amount of external bank transactions. Netting is managed via our cash pooling process. The company has established standardized processes and systems to manage its bank accounts and internal netting accounts as well as for the execution of automated payment transactions.

In addition to operating liquidity, United Internet also holds other liquidity reserves, available at short notice. These liquidity reserves consist of syndicated credit lines with varying terms.

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The strong expansion of business over the past few years has increased the company's exposure to possible credit default. Despite the increased possibility of occurrence (due to customer growth), the effects on United Internet's liquidity are classified as very low. The company still has no significant concentration of liquidity risks.

Financial covenants

Some of the company's existing credit lines are tied to so-called financial covenants. An infringement of these covenants may cause the lender to terminate the financial arrangement and demand immediate repayment of the amounts drawn. The covenants contained in the loan agreements of United Internet require the company to maintain a specified net financial debt-to-EBITDA ratio and a specified EBITDA-to-interest ratio. These ratios are used to calculate the relative burden which the financial liabilities (e.g. from interest payments) place on the company. Compliance with the covenants is regularly monitored by the company's Management Board.

Financial market

The activities of United Internet AG are exposed in particular to financial risks from changes in interest rates, exchange rates and stock exchange prices.

■ Interest

The company is fundamentally exposed to interest risks as the major share of its borrowing bears variable interest rates with varying terms.

As part of its liquidity planning, the company constantly monitors the various investment possibilities and debt conditions. Any borrowing requirements are met by using suitable instruments to manage liquidity. Surplus cash is invested on the money market to achieve the best possible return. Due to developments on the global finance markets, the interest risk remained largely unchanged.

Market interest rate changes might have an adverse effect on the interest result and are included in our calculation of sensitive factors affecting earnings. In order to present market risks, United Internet has developed a sensitivity analysis which shows the impact of hypothetical changes to relevant risk variables on pre-tax earnings. The reporting period effects are illustrated by applying these hypothetical changes in risk variables to the stock of financial instruments as of the balance sheet date.

■ Currency

United Internet's currency risk mainly results from its operations (if revenue and/or expenses are in a currency other than the Group's functional currency) and its net investments in foreign subsidiaries.

The UK's decision to leave the European Union and the subsequent devaluation of the British pound (GBP) has increased the risk of currency losses. However, the possible effects are still judged to be very low.

■ Stock exchange prices (valuation risk)

A stock exchange risk mainly results from investments in listed companies. These investments are carried at amortized cost in the separate financial statements of the parent company and at fair value or at equity in the consolidated financial statements. Should the (proportional) stock exchange value of an investment permanently lie below its amortized cost, the company recognizes an impairment of the financial instrument in the income statement of its separate financial statements. Changes in fair value assessments are recognized in the income statement of the consolidated financial statements if there is any impairment due to a significant or persistent decline in the fair value.



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Further details are provided in the notes to the consolidated financial statements in section 2 "Accounting and valuation principles" and section 3 "Significant accounting judgments, estimates and assumptions".

Capital management

In addition to the legal provisions for stock corporations, the company has no further obligations to maintain capital according to its statutes or other agreements. The key financial indicators used by the company are mainly performance-oriented (sales, EBITDA, EBIT, EPS). The targets, methods and processes of capital management are thus subordinate to these performance-oriented financial indicators.

In order to maintain and adapt its capital structure, the company can adjust dividend payments or pay capital back to its shareholders, purchase treasury shares and where necessary place them again or issue new shares. As of December 31, 2017 and December 31, 2016, no changes were made to the company's targets, methods and processes.

Management Board's overall assessment of the Group's risk position

The assessment of the overall level of risk is based on a consolidated view of all significant risk fields and individual risks, also taking account of their interdependencies.

From the current perspective, the main challenges focus on the areas of "Market", "Legal & Political", and "Personnel".

The continuous expansion of its risk management system enables United Internet to limit such risks to a minimum, where sensible, by implementing specific measures.

In non-operating business, impairment charges depending on the further share price development of listed United Internet investments may lead to (non-cash effective) burdens.

Although the assessment of key risk areas or individual risks changed over the course of fiscal year 2017 due to the development of external conditions or as a consequence of the company's own countermeasures, the overall risk situation for United Internet is virtually unchanged compared to the previous year and against the background of corporate development. In the assessment of the overall risk situation, the opportunities which exist for United Internet were not taken into consideration. There were no risks which directly jeopardized the continued existence of the United Internet Group in the fiscal year 2017 nor as of the preparation date for this Management Report, neither from individual risk positions nor from the overall risk situation.

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Probability of occurrence / possible impact of company risks

	Probability of occurrence	Possible impact
Risks in the field of "Strategy"		
Internationalization	High (2016: Low)	Very low (2016: High)
Risks in the field of "Market"		
Competition	Low (2016: High)	Very high (2016: High)
Business development and innovations	High (2016: Low)	Low (2016: High)
Risks in the field of "Legal & Political"		
Regulation	High (2016: High)	High (2016: High)
Data protection	Low (2016: Low)	High (2016: High)
Litigation	High (2016: High)	High (2016: High)
Risks in the field of "Personnel"		
Employees	High (2016: Low)	High (2016: High)
Risks in the field of "Fraud"		
Fraud	High (2016: High)	Low (2016: High)
Risks in the field of "Service Provision"		
Threat potential of the internet	Low (2016: Low)	Extremely high (2016: Extremely high)
Complexity / possible manipulation of hardware and software	Low (2016: Low)	Very high (2016: High)
Complexity in development	Low (2016: Low)	High(2016: High)
Risks in the field of "Financial Instruments and Financial Risk Management"		
Liquidity	High (2016: Very high)	Very low (2016: Very low)
Financial covenants	Very low (2016: Very low)	Very low (2016: Very low)
Financial market	Very low (2016: Low)	Very high (2016: High)
Capital management	Very low (2016: Very low)	Very low (2016: Very low)

Assessment categories of company risks in ascending order

Probability of occurrence	Possible impact
Very low	Very low
Low	Low
High	High
Very high	Very high
	Extremely high

4.2 Opportunity Report

Opportunity management

Opportunity management is based on strategic planning and the resulting measures for the development of products and their positioning for various target groups, markets and countries during the product life cycle.

The Group Management Board, as well as the operative management level of the respective business segments in the form of sub-group management boards and Managing Directors, have the direct responsibility for the early and continual identification, assessment, and steering of opportunities.

The management team of United Internet AG makes extensive use of detailed evaluations, models and scenarios on current and future trends regarding sectors, technologies, products, markets/ market potential and competitors in the Group's fields of activity. The potential opportunities identified during these strategic analyses are then examined with regard to the critical success factors and existing external conditions and possibilities of United Internet AG in planning discussions between the Management Board, Supervisory Board and operational managers before being implemented in the form of specific measures, targets and milestones.

The progress and success of these measures is continually monitored by operational management and the Managing Directors and Management Board members of the respective companies.

Opportunities for United Internet

United Internet's stable and largely non-cyclical business model ensures predictable revenues and cash flows, thus providing the financial flexibility to grasp opportunities in new business fields and markets – organically or via investments and acquisitions.

Broad strategic positioning in growth markets

In view of its broad positioning in current growth markets, the company's purely strategic growth opportunities are clearly apparent: universally accessible, permanently available and increasingly powerful broadband connections are enabling new and more sophisticated cloud applications. From the current perspective, these internet-based programs for home users, freelancers and small companies are likely to be United Internet's growth drivers over the coming years – both as stand-alone products in the Applications segment as well as in combination with landline and mobile access products in our Access segment.

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Participation in market growth

Despite the uncertain macroeconomic conditions, United Internet – as well as many of the sector’s leading analysts – expects further progress in those markets of importance to the company. United Internet is one of the leading players in these markets. At home and abroad. With its highly competitive Access products, its growing portfolio of cloud applications, its strong and specialized brands, its high sales strength, and already established business relationships with millions of private and business customers (cross-selling and up-selling potential), United Internet is also well positioned to participate in the expected market growth of both its business segments.

Expansion of market positions

United Internet AG is now one of the leaders in many of its business fields. Based on its existing technological know-how, its high level of product and service quality, the widespread popularity of Group brands such as 1&1, GMX or WEB.DE, its business relationships with millions of private and business customers, and its high customer retention ratio, United Internet sees good opportunities to build on its current market shares.

Entry into new business fields

One of United Internet's core competencies is to recognize customer wishes, trends and thus new markets at an early stage. With its broadly based value chain (from product development and data center operation, to effective marketing, powerful sales organization and active customer support), United Internet is often faster at placing innovations on the market and – thanks to the high level of cash generation in its existing business fields – capable of providing them with strong marketing support.

When new opportunities appear on the horizon, such as De-Mail, United Internet is well prepared and also capable of financing many years of cost-intensive preparation thanks to its strong cash generation in existing business fields. In view of the high market share among German e-mail users, the company is excellently placed to participate in the digital, legally secure post business (especially from “postal charges” and “ad mailings”). The same applies to the “electricity market” in Germany, in which the company has been active since mid-2016 via its high-reach GMX and WEB.DE portals.

Own landline infrastructure

Since its acquisition of 1&1 Versatel (2014), United Internet has had its own telecommunications network. With a length of about 45,000 km, it is Germany’s second-largest fiber-optic network. With its own network infrastructure, United Internet has the opportunity to extend its vertical integration and also gradually reduce its purchases of wholesale DSL services.

In addition, having its own network also offers United Internet the opportunity to systematically expand its B2B data and infrastructure business with SMEs and large corporations. This scale of this opportunity is underlined by the fast-growing data consumption of private users and companies (according to Dialog Consult / VATM estimates: +33.2% to approx. 79.0 GB data volume consumption per broadband connection and month in 2017) and the considerable pent-up demand for direct fiber-optic connections in Germany. According to the latest survey of the OECD (Organization for Economic Co-operation and Development) in December 2016, only 1.8% of all broadband connections in Germany are fiber-optic connections. Germany thus lags well behind in 30th place among the 35 OECD countries surveyed (average: 21.2%).

Access to Telefónica mobile network

Following the merger with Drillisch (2017), United Internet – indirectly via 1&1 Drillisch – is the only MBA MVNO in Germany with a long-term claim to a specific share (rising to 30%) of the used network capacity of Telefónica Germany and thus extensive access to Germany's largest mobile network. As a result, United Internet also has contractually assured, unrestricted access not only to LTE (4G), but also to all further future technologies.

As a consequence of the merger between 1&1 Telecommunication and Drillisch, United Internet can use its coordinated branding and customer targeting to address the German premium and discount segments more precisely while achieving a high and comprehensive reach among its target groups with its differently positioned brands.

High vertical integration for applications

In its Applications segment, United Internet covers the entire value creation chain. Applications are developed at the company's own "Internet Factories" or in cooperation with partner firms and operated on around 90,000 servers at the company's 10 data centers. This enables United Internet to maintain high quality standards and to respond quickly to customer needs and changing market situations in order to win new customers and retain existing ones.

Internationalization

Cloud applications can be used anywhere in the world and work on the same principle in Frankfurt as they do in London, Rome or New York. In the past, United Internet has already successfully adapted cloud products – such as 1&1 MyWebsite – to various languages and country-specific features and gradually rolled them out in different nations.

Thanks to the high degree of exportability which these products offer, United Internet is already active in its Applications segment in numerous European countries (Germany, Austria, Switzerland, the UK, France, Spain, Italy, Poland and the Netherlands), as well as in North America (USA, Canada and Mexico). Further countries and product roll-outs will gradually follow.

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Acquisitions and investments

In addition to organic growth, United Internet also constantly examines the possibility of company acquisitions and strategic investments. Thanks to its high and plannable level of free cash flow, United Internet also has a strong source of internal funding and good access to debt financing markets in order to utilize opportunities in the form of acquisitions and investments.

United Internet has enhanced its market standing in Germany and abroad, for example, by making several acquisitions and strategic investments while gaining considerable expertise in the field of mergers and acquisitions (M&A) and company integration. The most important M&A activities of recent years include the acquisition of WEB.DE's portal business (in 2005), the acquisitions of Fasthosts (2006) and united-domains (2008), the acquisition of freenet's DSL business (2009) and the acquisitions of mail.com (2010), Arsys (2013), Versatel (2014), home.pl (2015), Strato (2017), ProfitBricks (2017) and Drillisch (2017). The most important strategic investments include the investments in virtual minds (2008), Open-Xchange (2013), ePages (2014), uberall (2014), Rocket Internet (2014), Tele Columbus (2016), rankingCoach (2017) and Awin (2017 via contribution of affilinet).

4.3 Forecast report

Expectations for the economy

In its global economic outlook published in January 2018, the International Monetary Fund (IMF) updated its forecasts for the development of the global economies in 2018 and 2019. All in all, the IMF's outlook for the global economy is slightly more optimistic than in its previous forecasts.

According to the IMF, a major cause for the improved growth prospects is the current upswing in Europe and Asia, as well as the tax reform passed in the USA in December 2017. The IMF expects this tax reform to drive investment by US companies, which is likely to also benefit the USA's trade partners.

Despite the positive outlook, the IMF warned that this faster growth was largely based on factors which were not long-term by nature. If countries fail to remedy their structural deficiencies, achieve a fairer distribution of wealth, or equip themselves better for future challenges, the recovery could be over faster than expected.

Specifically, the IMF predicts that the **global economy** will grow by 3.9% in both 2018 and 2019, following growth of 3.7% in 2017. This is 0.2 percentage points more, for both years, than the IMF predicted in its outlook of October 2017.

The latest IMF forecasts for United Internet's target markets in North America (the USA, Canada and Mexico) are far more upbeat than before. After growth of 2.3% in 2017, the **US economy** is expected to grow by 2.7% in 2018 and 2.5% in 2019. The IMF has thus upgraded its previous forecasts (October- outlook 2017) by 0.4 and 0.6 percentage points. The **Canadian economy** is expected to grow by 2.3% and 2.0% in 2018 and 2019, respectively – following growth of 3.0% in 2017 – and thus 0.2 and 0.3 percentage points more than previously forecast. The economy in **Mexico** is expected to grow by 2.3% in 2018 and 3.0% in 2019, following growth of 2.0% in 2017. This is 0.4 and 0.7 percentage points more than previously forecast.

The IMF anticipates growth in the **eurozone** to reach 2.2% and 2.0% in 2018 and 2019 – compared to 2.4% in 2017. The previous forecasts for both years were thus upgraded by 0.3 percentage points.

The IMF expects diverging economic trends in United Internet's main European markets (France, Spain, Italy and the non-euro country UK). Following growth of 1.8% in 2017, the IMF forecasts an increase of 1.9% in both 2018 and 2019 for **France** – this is 0.1 and 0.0 percentage points more than previously predicted. **Spain** is expected to grow by 2.4% and 2.1% in 2018 and 2019 – after growth of 3.1% in 2017. This is 0.1 percentage point less for 2018 and 0.1 percentage point more for 2019 than previously forecast. The IMF forecasts growth in **Italy** of 1.4% and 1.1% in 2018 and 2019, following growth of 1.6% in 2017. This is 0.3 and 0.2 percentage points more than before. And after growing by 1.7% in 2017, the IMF forecasts growth for the **UK** of 1.5% in both 2018 and 2019. This is 0.0 and 0.1 percentage point less than previously expected.

For United Internet's most important market, **Germany**, the IMF forecasts economic growth of 2.3% in 2018 and 2.0% in 2019 – following on from 2.5% in 2017. These forecasts are both 0.5 percentage point more than previously expected.

Market forecast: GDP development of most important economies for United Internet

	2019e	2018e	2017
World	3.9%	3.9%	3.7%
USA	2.5%	2.7%	2.3%
Canada	2.0%	2.3%	3.0%
Mexico	3.0%	2.3%	2.0%
Eurozone	2.0%	2.2%	2.4%
France	1.9%	1.9%	1.8%
Spain	2.1%	2.4%	3.1%
Italy	1.1%	1.4%	1.6%
UK	1.5%	1.5%	1.7%
Germany	2.0%	2.3%	2.5%

Source: International Monetary Fund, World Economic Outlook (Update), January 2018

Market / sector expectations

At its annual press conference on February 14, 2018, the industry association Bitkom forecast that **global ICT sales** would grow by 2.9% to € 3.29 trillion in 2018.

Bitkom expects the **ICT market** in Germany to grow by 1.7% (prior year: 2.2%) to € 164.0 billion in 2018.

With an increase of 3.1% to € 88.8 billion, the IT market is expected to show the strongest growth again in 2018. Within this sector, growth in the software segment will be the fastest by with an increase of 6.3% (prior year: +6.3%) to € 24.4 billion. IT services – which include project business and IT consulting – are also expected to reach growth of 2.6% (prior year: +2.3%) to € 40.0 billion. Only slight growth of 0.9% (prior year: +4.2%) to € 24.4 billion is expected for the IT hardware segment.

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Growth in the telecommunications market is likely to remain modest. Sales are expected to grow by 0.4% (prior year: 0.1%) to € 65.9 billion. Sales of TC devices are set to grow by 1.3% (prior year: 4.7%) to € 10.7 billion. Smartphones are expected to account for € 10.1 billion of this total. Telecommunication infrastructure is forecast to grow by 1.4% (prior year: +0.5%) to € 6.7 billion (+0.5%), with growth of 0.1% (prior year: -1.0%) to € 48.5 billion for telecommunication services. A strong decline is anticipated for voice services in both the landline (-8.5%) and mobile (-8.3%) segments. By contrast, further growth is forecast for mobile data services (+ 6.0%).

Following growth in 2017, sales of consumer electronics are likely to fall again by 1.9% (prior year: +2.6%) to € 9.3 billion.

The most important ICT markets for United Internet's business model are the German broadband and mobile internet markets for its mostly subscription-financed Access segment, and the global cloud computing and German online advertising markets for its subscription- and ad-financed Applications segment.

(Stationary) broadband market in Germany

In view of the comparatively high level of household coverage already achieved and the trend toward mobile internet, experts continue to forecast only moderate growth for the German broadband market (landline).

According to the survey "German Entertainment and Media Outlook 2017-2021", PricewaterhouseCoopers expects sales of landline-based broadband connections to increase by just 1.1% to € 8.15 billion in 2018.

Market forecast: broadband access (landline) in Germany (in € billion)

	2018e	2017	Change
Sales	8.15	8.06	+ 1.1%

Source: PricewaterhouseCoopers, October 2017

Mobile internet market in Germany

By contrast, all experts continue to predict further strong growth for the mobile internet market. Following market growth of 6.6% to € 7.77 billion in 2017, PricewaterhouseCoopers also forecasts an increase in mobile data services of 5.8% to € 8.22 billion in 2018.

This growth will be driven above all by favorable – and thus for the consumer attractive – prices, as well as by the boom in smartphones and tablet PCs and the respective applications (apps).

Market forecast: mobile internet access (cellular) in Germany (in € billion)

	2018e	2017	Change
Sales	8.22	7.77	+ 5.8%

Source: PricewaterhouseCoopers, October 2017

Global cloud computing market

In an update of its study "Forecast Analysis: Public Cloud Services, Worldwide", Gartner forecasts global growth for public cloud services of 21.2%, from \$ 153.1 billion to \$ 185.5 billion in 2018.

Market forecast: global cloud computing (in \$ billion)

	2018	2017	Change
Global sales of public cloud services	185.5	153.1	+ 21.2%
thereof business process services (BPaaS)	46.2	42.5	+ 8.7%
thereof application services (SaaS)	73.3	60.1	+ 22.0%
thereof application infrastructure services (PaaS)	14.9	11.9	+ 25.2%
thereof system infrastructure services (IaaS)	40.6	29.9	+ 35.8%
thereof management and security services	10.5	8.7	+ 20.7%

Source: Gartner, December 2017

Online advertising market in Germany

Advertisers continued to display a strong willingness to invest in online advertising activities in 2017.

And experts forecast further growth for 2018. PricewaterhouseCoopers expects an increase of 6.1% to € 7.50 billion. The strongest growth is expected for mobile online advertising and search marketing with increases of 22.2% and 6.4%, respectively.

Market forecast: online advertising in Germany (in € billion)

	2018e	2017	Change
Online advertising revenues	7.50	7.07	+ 6.1%
thereof search marketing	3.68	3.46	+ 6.4%
thereof display advertising	1.54	1.52	+ 1.3%
thereof affiliate / classifieds	1.00	0.99	+ 1.0%
thereof mobile online advertising	0.88	0.72	+ 22.2%
thereof video advertising	0.40	0.38	+ 5.3%

Source: PricewaterhouseCoopers, October 2017

Expectations for the company

Conversion effects from IFRS 15

In May 2014, the International Accounting Standards Board (IASB) published the standard **IFRS 15** "Revenue from Contracts with Customers". Application is mandatory in reporting periods beginning on or after January 1, 2018. The new standard provides a single, principles-based five-step model for the determination and recognition of revenue to be applied to all contracts with customers. In particular, it replaces the previous standards IAS 18 "Revenue" and IAS 11 "Construction Contracts". United Internet will exercise its right to use the modified retrospective transitional method, i.e. in the consolidated financial statements for the fiscal year 2018, the prior-year figures are not adjusted. The conversion effects will be recognized directly in equity as of January 1, 2018.

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The application of IFRS 15 has a significant impact on the financial position and performance of United Internet. The new regulations mainly concern the following aspects:

- Whereas under the previous regulations, revenue from sales of hardware (e.g. cellphones) as part of a multiple-element arrangement (e.g. mobile contract and cellphone) was only recognized in the amount billed to the customer, IFRS 15 requires a separation of the total price for the customer contract based on the relative standalone selling prices of the individual elements. The resulting revenue share allocated to hardware is recognized in total on delivery to the customer. As the allocated revenue share generally exceeds the amount charged to the customer in the first month, the new regulations lead to accelerated revenue recognition.
- Moreover, IFRS 15 requires the capitalization of contract costs. Provided that certain conditions are met, the costs of contract acquisition (e.g. sales commissions) and the costs of contract completion (e.g. provision fees) must be capitalized and amortized over the estimated period of use.

In the case of permanent application and consistent business performance, IFRS 15 has no material impact on the results of United Internet. However, when business fluctuates, temporary differences occur compared to the previous accounting method: initial relief in the case of strong growth (compared to IAS 18) or initial burden in the case of declining new business (compared to IAS 18).

Forecast for the fiscal year 2018

Approximately 1.2 million **DSL and mobile internet contracts** are expected to be added in 2018. Key growth drivers will be coordinated branding and customer targeting in the mobile internet business, as well as the greatly increased use of subsidized smartphones (mostly without initial additional payment) also when sold via GMX and WEB.DE, as well as the Drillisch discount brands of the 1&1 Drillisch brands (smartmobil.de, yourfone, winSIM etc.). This affects both new and existing customers. Additional hardware investments will be refinanced via higher mobile tariff prices within the minimum contractual terms.

Sales of United Internet according to IFRS 15 are expected to reach approx. € 5.2 billion in fiscal year 2018 (prior year: € 4.21 billion). In addition to planned contract growth and the full-year consolidation of Strato / ProfitBricks and 1&1 Drillisch, this strong revenue growth will result from the above mentioned increased usage of subsidized smartphones in connection with earlier recognition of hardware sales according to IFRS 15 (sales effect: approx. € 200 million).

Consolidated **EBITDA** of approx. € 1.2 billion is anticipated (prior year: € 980 million). This figure includes a burden on earnings of approx. € 300 million from the above mentioned additional smartphone subsidies and – with an opposing positive effect – approx. € 300 million from accounting according to IFRS 15. EBITDA will also include approx. € 50 million in synergy effects from the merger with Drillisch, especially via savings from the joint procurement of wholesale network services and smartphones. These savings will be offset by approx. € 50 million for permanent growth investments in increased marketing budgets and the repositioning of GMX and WEB.DE. In addition, EBITDA will include approx. € 50 million one-off expenses for integration and rebranding projects.

Due to its role as a holding company, the earnings of United Internet AG at **parent company level** are mainly influenced by its investment result (profit transfers and dividends) and the interest result. In addition, United Internet AG will recognize additional interest income from the completed sale of shares in the Business Applications division to Warburg Pincus. Against this backdrop, the Management Board expects strongly positive net income for fiscal year 2018 (subject to possible special items).

United Internet AG plans to maintain its shareholder-friendly **dividend policy** based on continuity in the coming years. Dividend payouts will continue to represent 20-40% of adjusted net income from continued operations after minority interests (adjusted net income attributable to "shareholders of United Internet AG" – according to the consolidated statement of comprehensive income) in the future, unless funds are required for further company development.

Management Board's overall statement on the anticipated development

The Management Board of United Internet AG is upbeat about its prospects for the future. Thanks to a business model based predominantly on electronic subscriptions, United Internet believes it is largely stable enough to withstand cyclical influences. And with the investments made over the past few years in customer relationships, new business fields and internationalization, as well as via acquisitions and investments, the company has laid a broad foundation for its planned future growth.

United Internet will continue to pursue this sustainable business policy in the coming years.

In the Consumer Access division, the main focus in fiscal year 2018 – apart from the integration of 1&1 Drillisch – will be on the marketing of mobile internet products, as well as the synchronization of branding and customer targeting in the premium and discount segments of the mobile market. United Internet aims to participate in market growth and achieve above-average growth. The company also plans to leverage the strong positioning of its DSL products to generate further growth. In its Business Access division, the company's own fiber-optic network is to be expanded with further connections to the BNGs (access points) of Deutsche Telekom, in order to extend the company's value chain.

In addition to the German market, international business with cloud applications also promises strong potential for the medium- and long-term growth of the company. In 2018, the key topics in the Consumer Applications division will be the repositioning of GMX and WEB.DE, and the associated reduction in monetization via traditional advertising in favor of big data solutions, as well as a focus on high-quality customer relationships. In the Business Applications division, the focus will be expanding business with existing customers and gaining new high-quality customer relationships, as well as integration and rebranding projects.

Following a successful start to the year (at the time of preparing this Management Report), the company's Management Board believes that the company is on track to reach the forecast presented above in the section "Forecast for the fiscal year 2018".

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Forward-looking statements

This Management Report contains forward-looking statements based on current expectations, assumptions, and projections of the Management Board of United Internet AG and currently available information. These forward-looking statements are subject to various risks and uncertainties and are based upon expectations, assumptions, and projections that may not prove to be accurate. United Internet AG does not guarantee that these forward-looking statements will prove to be accurate and does not accept any obligation, nor have the intention, to adjust or update the forward-looking statements contained in this report.

5 ACCOUNTING-RELATED INTERNAL CONTROL AND RISK MANAGEMENT SYSTEM

In accordance with Sec. 289 (4) and Sec. 315 (4) German Commercial Code (HGB), United Internet AG is obliged to describe the main features of its accounting-related internal control and risk management system in its Management Report.

United Internet AG regards risk management as part of its internal control system (ICS). The ICS is understood as an ongoing process comprising organizational, controlling and monitoring structures to ensure permanent compliance with legal and corporate requirements.

The Management Board of United Internet AG is responsible for the scope and structure of its ICS and takes account of the company's specific requirements. The monitoring of the ICS's effectiveness is one of the duties of the Supervisory Board of United Internet AG, which is regularly informed by the Management Board about the status of the ICS and the findings of the company's Internal Audit system. Within the United Internet Group, the Corporate Audit department is responsible for independently auditing the appropriateness, effectiveness and functionality of the ICS and has been granted extensive rights with regard to information, examination and access in order to exercise its duties. Its audits are based on a risk-oriented audit plan which also includes regular audits of subsidiaries. In addition, the Corporate Audit department conducts fundamental audits regarding the proper functioning of important asset and inventory stock-taking. In addition, those areas of ICS of relevance for financial reporting are audited with regard to efficiency by the external auditors as part of their risk-oriented audit approach.

The accounting-related ICS is continually being developed and comprises principles, procedures and measures to secure the effectiveness, economic efficiency and compliance of the accounting system and to ensure that the relevant laws and standards are observed. During preparation of the consolidated financial statements, the ICS is used in particular to ensure the application of International Financial Reporting Standards (IFRS), as endorsed by the European Union, and the additional provisions under commercial law pursuant to Sec. 315e of the German Commercial Code (HGB). When preparing the annual financial statements and management report, the ICS also helps ensure that regulations under commercial law are observed.

However, a fundamental aspect of every ICS, irrespective of its particular design, is that it cannot provide absolute safety that material misstatements in accounting are avoided or detected. This may be due, for example, to incorrect discretionary decisions of individuals, faulty controls or criminal acts.

The following statements refer solely to the fully consolidated subsidiaries included in the annual financial statements of United Internet AG, for which United Internet AG has the direct or indirect possibility of determining their financial and monetary policy in order to derive a benefit from the activity of these companies.

The task of United Internet AG's risk management system includes setting measures to detect and assess risks, reduce them to an acceptable level, and monitor recognized risks. A risk management system requires organized action to deal suitably with uncertainty and threats and urges employees to utilize the regulations and instruments required to ensure compliance with the risk management principles. In addition to operative risk management, it also includes the systematic early recognition, management and monitoring of risks. The accounting-related risk management system focuses on the risk of false statements in accounting and external reporting.

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Specific accounting-related risks may arise, for example, from the conclusion of unusual or complex transactions. Business transactions which cannot be processed in a routine manner are also exposed to latent risks. It is necessary to grant a limited circle of people certain scope for discretion in the recognition and measurement of assets and liabilities, which may result in further accounting-related risks.

The accounting-related ICS comprises internal controls, defined on the basis of risk aspects, for those processes which are relevant for financial reporting as well as those processes that support the IT systems. Special emphasis is placed on IT security, change management and operational IT processes. Organizational, preventive and detective controls are applied, which can be conducted manually or with the aid of IT. The effectiveness and efficiency of the accounting-related ICS requires highly developed employee skills. Regular training, the "four-eye principle" and the functional separation of administrative, executive and approval processes are indispensable for the United Internet Group. The Corporate Accounting division and other accounting departments are responsible for the management of the accounting processes. Laws, accounting standards and other pronouncements are continuously analyzed with regard to their relevance and impact on accounting. The Group companies are responsible for the orderly and timely execution of the accounting-related processes and systems and are supported by the accounting departments accordingly.

If significant control weaknesses or opportunities for improvement are detected, they are assessed and countermeasures are developed with the persons responsible to improve the effectiveness of the ICS. Implementation of the measures is monitored by the Corporate Audit department and may be the subject of subsequent audits. In order to ensure the high quality of the accounting-related ICS, the Corporate Audit department is closely involved during all stages.

6 DISCLOSURES REQUIRED BY TAKEOVER LAW

The following disclosures according to Secs. 289a and 315a German Commercial Code (HGB) represent conditions as of the balance sheet date. As required by Sec. 176 (1) Sentence 1 AktG, the disclosures are explained in the sections below.

Composition of capital

The subscribed capital of United Internet AG as of December 31, 2017 amounts to € 205,000,000 divided into 205,000,000 no-par value, registered shares. Each share entitles the owner to one vote. There are no other share categories. In the case of a capital increase, the commencement of dividend entitlement for new shares may be determined separately from the moment of contribution. All shares are listed on the stock exchange.

Limitations affecting voting rights or the transfer of shares

There are legal limitations affecting voting rights of certain shares pursuant to Sec. 71b AktG and Sec. 71d Sentence 4 in conjunction with Sec. 71b AktG. At the end of the reporting period, United Internet holds 5,093,289 shares representing 2.48% of capital stock.

There are also legal limitations affecting voting rights regarding a conflict of interests pursuant to Sec. 136 (1) AktG for shares held by the Management Board and Supervisory Board .

Among the members of the Management Board, Mr. Ralph Dommermuth held 82,000,000 shares (40.00% of capital stock) as of December 31, 2017. Moreover, Mr. Robert Hoffmann held 211,907 shares (0.10% of capital stock), Mr. Jan Oetjen held 33,621 shares (0.02% of capital stock), and Mr. Frank Krause held 5,482 shares (0.00% of capital stock).

Among the members of the Supervisory Board, Mr. Michael Scheeren held 100,000 shares (0.05% of capital stock) at the end of the reporting period.

There are no limitations affecting the transfer of shares.

Direct and indirect participations in capital with over 10% of voting rights

The company's CEO, Mr. Ralph Dommermuth, owns 82,000,000 shares or 40.00% of the 205,000,000 shares in United Internet AG as of December 31, 2017. The Management Board is not aware of further participations in capital exceeding 10% of voting rights.

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Special rights

Mr. Ralph Dommermuth is personally entitled to nominate a member of the Supervisory Board. This right is exercised by naming a person for the Supervisory Board to the company's Management Board. The nomination becomes effective as soon as the nominated person declares his acceptance of the Supervisory Board seat to the Management Board. A requirement for the aforementioned nomination right is that Mr. Ralph Dommermuth holds shares himself or via affiliated companies pursuant to Sec. 15 ff. German Stock Corporation Law (AktG) representing at least 25% of the company's voting capital and can prove as much to the Management Board on nomination of the Supervisory Board member by providing depository account statements or similar documents. Mr. Dommermuth has so far not made use of this nomination right. The Management Board is not aware of any further shares with special rights.

Appointment and dismissal of Management Board members, amendments to company articles

The appointment and dismissal of Management Board members is determined by Secs. 84, 85 AktG in conjunction with section 1 of the rules of procedure for the Supervisory Board. According to Sec. 6 (1) of the company's articles, the Management Board consists of at least one person. The Supervisory Board appoints and dismisses the members of the Management Board, determines their number and can appoint one member of the Management Board as Chairman.

Each amendment of the company's articles requires the adoption of a shareholders' meeting resolution with a majority of at least three quarters of capital represented at the vote. Pursuant to Sec. 22 of the company's articles in conjunction with Sec. 179 (1) Sentence 2 AktG (Changes in capital stock and number of shares), the Supervisory Board is authorized to make amendments to the company's articles insofar as they only concern formulation.

Powers of the Management Board to issue new shares

The Management Board is entitled to issue new shares under the following circumstances:

The Management Board is authorized, subject to approval by the company's Supervisory Board, to increase the company's capital stock on one or more occasions before May 20, 2020 by a total of € 102,500,000.00 by issuing new no-par shares for cash and/or non-cash contributions (Authorized Capital 2015). The Management Board is also authorized, in certain cases stated in Sec. 5.4 of the company's articles, to exclude the statutory right of shareholders to subscribe to new shares. This applies in particular in the case of fractional amounts and when granting subscription rights for new shares to bearers of warrants, convertible bonds or warrant bonds. The Management Board is also authorized, subject to the approval of the Supervisory Board, to restrict subscription rights in the case that the issue price of the new shares is not substantially lower than the quoted market price and the issued shares do not exceed in total 10% of capital stock. The Management Board is authorized, subject to the approval of the Supervisory Board, to exclude subscription rights in the case of a capital increase in return for non-cash contributions, especially in connection with the acquisition of companies, investments or assets.

Capital stock has been conditionally increased by up to a further € 25,000,000.00, divided into 25,000,000 no-par shares (Conditional Capital 2015). The conditional capital increase is earmarked for shares to be granted to bearers or holders of warrant or convertible bonds, which the shareholders' meeting on May 21, 2015 authorized the company or a subordinated Group company to issue in the period ending May 20, 2020, providing the issue is in return for cash and no cash settlement is granted or the warrant or convertible bonds are serviced from the stock of treasury shares or approved capital.

Powers of the Management Board to buy and use treasury shares

The authorization of the Annual Shareholders' Meeting granted on May 22, 2014 and originally limited until September 22, 2017 to acquire, sell or cancel treasury shares was cancelled by the Annual Shareholders' Meeting of May 18, 2017.

At the same time, the Annual Shareholders' Meeting of May 18, 2017 issued a new authorization limited to September 18, 2020 and pursuant to Sec. 71 (1) No. 8 AktG, to acquire, sell or otherwise use or cancel treasury shares.

The Management Board was authorized, for every permissible purpose within the scope of legal restrictions, to purchase treasury shares in the amount of up to ten percent of the current capital stock (or if this value is lower, the existing capital stock at the time the stated authorization was implemented) The company may implement the authorization for the pursuit of one or more purposes. It can also be exercised by dependent or majority-owned corporations of the company or by third parties for the company's or their own account. At no point in time may more than ten percent of capital stock be accounted for by the respective purchased treasury shares in combination with other treasury shares held by the company or attributable to it pursuant to Sec. 71a et seq. AktG. The authorization may not be used for the purposes of trading with company shares.

The purchase of treasury shares is made at the discretion of the Management Board by way of repurchase via the stock exchange and/or by means of a public purchase offer issued to all shareholders.

- In the event of a purchase through the stock exchange, the counter value for the purchase of United Internet shares (without ancillary purchase costs) may not exceed, or fall below, ten percent of the company's average share price, as listed on the last five trading days preceding the due date in the closing auction of the Frankfurt stock exchange's XETRA trading system (or any functionally equivalent successor of the XETRA system). The due date is deemed to be the day on which an obligation to purchase is incurred.
- When acquiring treasury shares by way of a public purchase offer to all shareholders, the company may publish an offer aimed at all shareholders or publicly request the submission of offers. The exclusion and/or limitation of the shareholder's right to tender requires a Management Board resolution and consent of the Supervisory Board.

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In addition to a sale via the stock exchange or in another manner that ensures the equal treatment of all shareholders, the Management Board is also authorized, subject to the approval of the Supervisory Board, to use the treasury shares purchased based on this or any prior authorizations, pursuant to Section 71 (1) No. 8 AktG, for the following purposes:

- Sale for cash consideration that is not significantly below the Company's share price listed on the stock exchange at the time of sale (without ancillary purchase costs). The company's XETRA opening share price (or one of any functionally equivalent successor to the XETRA system) on the Frankfurt Stock Exchange on the day when the United Internet shares are sold is considered as the significant stock market price in terms of the above sales rule. This authorization, however, shall only apply on condition that this is a proportional amount of no more than ten percent, or if this value is lower, of the existing capital stock accounted for by the total sold shares when this authorization is implemented. Those shares with a subscription right which was excluded, by the direct or corresponding application of Sec. 186 (3) Sentence 4 AktG, for this authorization's duration at the same time should be counted toward the above-stated maximum threshold.
- Sale for payment in kind, particularly within the scope of the direct or indirect purchase of companies, parts of a company or equity shares therein, or other assets including receivables from the company, or entitlements to purchase assets, or as part of corporate combinations as a (partial) consideration.
- The granting of treasury shares as part of remuneration and/or employee stock ownership programs by which United Internet offers or transfers shares to United Internet AG Management Board members and/or to individuals who are in an employment relationship with the company or with one of its current or former affiliates and/or management board members of corporations affiliated with the company. Insofar as United Internet shares are to be transferred to members of the company's Management Board, the decision on this shall be incumbent upon the company's Supervisory Board.
- The fulfilment of conversion or option rights and/or conversion obligations stemming from convertible bonds or warrant bonds issued by the company or by corporations which are controlled or majority held by the company.
- Whole or partial cancellation without any further resolution of the Annual Shareholders' Meeting. The Management Board is authorized, subject to the approval of the Supervisory Board, to reduce the company's capital stock by the capital stock proportion attributable to the redeemed shares. Subject to the approval of the Supervisory Board, the Management Board may determine, in derogation herefrom, that the capital stock shall remain unchanged upon cancellation and that instead, by way of cancellation, the proportional ratio of remaining shares to the capital stock shall increase. The Supervisory Board is authorized to amend Section 5 of the company's by-laws in accordance with the respective utilization of its authorization to cancel shares.

The right of shareholders to subscribe to United Internet shares shall be excluded to the extent that these shares are used in accordance with the above authorizations. Furthermore, the Management Board may, with the approval of the Supervisory Board, exclude the subscription right of shareholders for fractional amounts, in the event of a disposal of treasury shares by way of an offer to all shareholders.

The authorization to purchase, sell or otherwise use, or cancel treasury shares, may be exercised independently of one another, on a one-off basis or multiple times, in whole or in part.

7 DECLARATION ON COMPANY MANAGEMENT / CORPORATE GOVERNANCE REPORT

As a German public company listed on the stock exchange, the management of United Internet AG is primarily determined by the German Stock Corporation Act (AktG) and the rules set forth in the currently valid version of the German Corporate Governance Code (GCGC).

The term Corporate Governance stands for responsible corporate management and control geared to long-term value creation. Efficient cooperation between Management Board and Supervisory Board, respect for stockholder interests, openness and transparency of corporate communications are key aspects of good corporate governance.

The Management Board and Supervisory Board of United Internet AG regard it as their duty to secure the company's continued existence and sustainable value creation through responsible corporate governance focused on the long term.

The following report contains the "Declaration on company management", in accordance with Sec. 289f HGB for the parent company and in accordance with Sec. 315d HGB for the Group, as well as the "Corporate Governance Report" of the Management Board and Supervisory Board pursuant to Section 3.10 of the German Corporate Governance Code.

Management and corporate structure

In accordance with its legal status, United Internet AG operates a dual management and monitoring structure comprising two corporate bodies: the Management Board and the Supervisory Board. The third body is the Shareholders' Meeting. All three bodies are committed to serving the company's interests.

Supervisory Board

Working procedures of the Supervisory Board

The Supervisory Board is elected by the Annual Shareholders' Meeting and consisted of three members in fiscal year 2017. The members of the Supervisory Board are generally elected for a period of five years.

In accordance with German law, the company's articles, its rules of procedure, and the corresponding recommendations of the German Corporate Governance Code – unless deviations are declared pursuant to Sec. 161 AktG – the Supervisory Board is in regular contact with the Management Board and monitors and advises it with regard to the management of business, and the company's risk and opportunity management system.

The Supervisory Board meets at regular intervals to discuss with the Management Board all matters of relevance to the company regarding strategy and its implementation, as well as planning, the development of business, the risk position, risk management and compliance. Together with the Management Board, it discusses the quarterly and half-year reports before publication and approves annual budgets. It examines the annual financial statements of the parent company and the group and adopts them if it has no reservations. In doing so, it also takes the reports of the company's external auditors into account.

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The Supervisory Board's responsibilities also include appointing members of the Management Board as well as determining and regularly monitoring their remuneration in compliance with the latest legal regulations and recommendations of the German Corporate Governance Code – unless deviations are declared pursuant to Sec. 161 AktG.

The Supervisory Board conducts regular tests to assess its own efficiency.

The members of the Supervisory Board complete the training and further education measures required for their tasks on their own, but receive appropriate support in this context from the company.

The Supervisory Board is convened at least once every quarter of a calendar year.

Supervisory Board meetings are convened in writing by its chairman at least 14 days in advance.

With meetings are convened, the Supervisory Board members are informed of the agenda items. If an agenda item has not been properly announced, a resolution concerning it may only be adopted if no Supervisory Board member objects prior to the vote.

Resolutions of the Supervisory Board are generally adopted at meetings. Meetings are chaired by the Chairman of the Supervisory Board. If so arranged by the Chairman, resolutions may also be adopted outside of meetings by other means, for example by phone or e-mail, if no member objects to this procedure.

The Supervisory Board has a quorum if all 3 members participate in the resolution. A member shall also be deemed to participate in a resolution if he abstains from voting.

Unless the law prescribes otherwise, resolutions of the Supervisory Board are adopted with a simple majority.

Minutes are kept of the Supervisory Board's discussions and resolutions.

The Chairman of the Supervisory Board is authorized to submit on behalf of the Supervisory Board the declarations of intent required for the implementation of the Supervisory Board's resolutions.

Targets for the composition of the Supervisory Board / status of implementation

The company's Supervisory Board aims to achieve a composition of the Supervisory Board that enables qualified supervision and advice for the company's Management Board.

In view of

- the size of the Supervisory Board (three members),
- the business in which the company operates,
- the size and structure of the company,
- the scope of the company's international activities
- its current shareholder structure

the company's Supervisory Board has adopted the following targets for its future composition. These take into account the statutory requirements both with regard to the requirements placed on individual Supervisory Board members and with regard to the composition of the entire Supervisory Board and – unless expressly stated otherwise – the requirements of the German Corporate Governance Code. In particular, a skills profile is planned with regard to the overall body.

The Supervisory Board will take these targets into account in the case of nomination proposals and make sure that the candidates meet the respective requirements. The specific situation of the company must be taken into consideration.

Requirements for individual members

The company's Supervisory Board aims to ensure that each Supervisory Board member meet the following requirements:

General requirement profile

Each member of the Supervisory Board should have the requisite knowledge and experience to enable them to carefully monitor and advise the company and to assess any risks for the company's business. Moreover, the Supervisory Board will ensure that all its members have a personal profile that enables them to maintain the company's public reputation.

Time availability

All members of the Supervisory Board must have sufficient time to exercise their duties with due care throughout the entire period of office. In particular, the members of the Supervisory Board should observe the legal requirements and those of the German Corporate Governance Code regarding the permissible number of Supervisory Board mandates.

Conflicts of interest

Supervisory Board members should not engage in any other activities likely to cause frequent conflicts of interest. These include management positions with key competitors.

Age limit for Supervisory Board members

As a rule, members of the Supervisory Board should not have reached the age of 70 at the time of their election or re-election.

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No regular limit for duration of membership

There is no standard time limit to membership of the Supervisory Board – a recommendation of the current Corporate Governance Code – as the Supervisory Board believes that such a restriction is inappropriate compared to other criteria for nominating Supervisory Board members and that it is ultimately at the discretion of the Annual Shareholders' Meeting to elect those candidates to the Supervisory Board whom they believe are best suited to represent their interests.

Requirements regarding the composition of the Supervisory Board as a whole

In addition to the individual requirements for Supervisory Board members, the company's Supervisory Board aims to ensure that the Supervisory Board as a whole meets the following requirements:

Skills profile for the Supervisory Board as a whole

The members of the Supervisory Board must collectively have the knowledge, skills and professional experience necessary for them to carry out their tasks as required. The Supervisory Board strives to ensure that the Supervisory Board as a whole covers the widest possible range of knowledge and experience relevant to the company, and in particular meets the following requirements:

- In-depth knowledge and experience of the telecommunications and internet sector;
- Expertise or experience from other sectors of the economy;
- Entrepreneurial or operational experience;
- At least one member with several years of experience working abroad or working for a company with international activities;
- At least one member with special knowledge and experience in the application of accounting principles and internal control processes;
- In-depth knowledge and experience of controlling and risk management;
- In-depth knowledge and experience in the field of governance and compliance.

Diversity

The Supervisory Board aims to ensure that the Supervisory Board is composed of a wide variety of members so that the Supervisory Board as a whole has sufficient diversity of opinion and knowledge. In its nominations, the Supervisory Board will take into account the diversity concept established by the company.

Independence

The Supervisory Board aims to ensure that at least two of its three members are independent within the meaning of the criteria set out in Section 5.4.2 of the German Corporate Governance Code (GCGC).

Current composition of the Supervisory Board / implementation status

The company's Supervisory Board is of the opinion that the stated targets for the composition of the Supervisory Board are currently fulfilled. The Supervisory Board re-elected by the Annual Shareholders' Meeting 2015 continued to comprise the following three independent members – as defined by the criteria of Section 5.4.2 GCGC – in fiscal year 2017:

- Kurt Dobitsch, chair
- Michael Scheeren, deputy chair
- Kai-Uwe Ricke

Subject to the formation of short fiscal years, the current term of office of the Supervisory Board members ends on expiry of the Annual Shareholders' Meeting of the year 2020.

Management Board

Working procedures of the Management Board

The Management Board is the body charged with managing the Group's operations. In fiscal year 2016, it consisted of five persons (four persons as of October 1, 2017). The Management Board conducts operations in accordance with its legal and statutory obligations as well as the rules of procedure approved by the Supervisory Board and the corresponding recommendations of the German Corporate Governance Code – unless deviations are declared pursuant to Sec. 161 AktG.

It is responsible for preparing the interim and annual financial statements as well as for appointing key managers within the company.

Decisions of fundamental importance require the approval of the Supervisory Board. The Management Board reports to the Supervisory Board in accordance with the statutory provisions of Sec. 90 AktG and provides the Chairman of the Supervisory Board at least once a month with an oral overview – and at the request of the Chairman of the Supervisory Board also in writing – of the current status of relevant reporting items pursuant to Sec. 90a AktG. The Chairman of the Supervisory Board is thus informed without delay by the Chairman or Speaker of the Management Board, or the Chief Financial Officer, about important events that are essential for assessing the company's situation and development, as well as for the management of the company. Important items also include any substantial deviation from the budget or other forecasts of the company. The Chairman or Speaker of the Management Board, or Chief Financial Officer, shall also inform the Chairman of the Supervisory Board, in advance where possible otherwise immediately thereafter, about all ad hoc announcements of the company pursuant to Art. 17 MAR.

There is also an age limit of 70 for members of the Management Board. This requirement is also currently complied with in full.

The Management Board conducts the company's business with joint responsibility and according to common objectives, plans and policies. Irrespective of the joint responsibility of the Management Board, each member bears responsibility for his assigned division, but is required to subordinate the interests of his assigned division to the overall good of the company.

The full Executive Board regulates the division of responsibilities in a business distribution plan.

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The Management Board members inform each other about important events within their divisions. Matters of greater importance which are not approved in the budget must be discussed and decided by at least two Management Board members, whereby one of the two Management Board members must be responsible for the Finance division.

Irrespective of their areas of responsibility, all Management Board members constantly monitor those data which are crucial for the company's business development so they are always able to help avert potential disadvantages, or implement desirable improvements and expedient changes by drawing them to the attention of the full Management Board.

The full Management Board resolves on all matters of particular importance and scope for the company or its subsidiaries and investment companies.

Resolutions are adopted by the full Management Board with a simple majority. Should the vote result in a tie, the Chairman of the Management Board has a casting vote. The resolutions of the Management Board are recorded in the minutes.

The full Management Board meets regularly once a month and otherwise as required.

Each Management Board member immediately discloses any conflict of interest to the Supervisory Board.

Current composition of the Management Board

The Management Board of United Internet AG comprised the following five members in fiscal year 2017:

- Ralph Dommermuth, company founder and Chief Executive Officer
(with the company since 1988)
- Frank Krause, Chief Financial Officer
(with the company since 2015)
- Robert Hoffmann, Management Board member responsible for Business Applications
– until December 31, 2017 (with the company since 2006)
- Jan Oetjen, Management Board member responsible for Consumer Applications
(with the company since 2008)
- Martin Witt, Management Board member responsible for Access
– until September 30, 2017 (with the company since 2009)

Targets for the share of women on the Supervisory Board, Management Board and in management positions / implementation status

The "Law on Equal Participation of Men and Women in Private-Sector and Public-Sector Management Positions" (FührposGleichberG) of April 24, 2015 resulted in amendments to the German Stock Corporation Law and a number of other laws.

The new legislation has led to the following obligations in particular for United Internet AG:

- setting of targets by the Supervisory Board for the share of women on the Supervisory Board of United Internet AG
- setting of targets by the Supervisory Board for the share of women on the Management Board of United Internet AG
- setting of targets by the Management Board for the share of women on the first and second management levels below the Management Board of United Internet AG

The first targets had to be set by September 30, 2015 for a period ending no later than June 30, 2017, during which time the targets should be met. The following targets are to be set for a period of no more than five years.

After careful examination, the Supervisory Board and Management Board of United Internet AG adopted the following based on a resolution of May 18, 2017:

- The Supervisory Board sets the deadline for the attainment of the targets for the share of women on the Supervisory Board and Management Board as the expiry of the Annual Shareholders' Meeting that decides on the discharge of the Supervisory Board for the fiscal year 2019 (probably May 2020). The Supervisory Board is to be re-elected at this Annual Shareholders' Meeting.
- A target of "0" is set for the Supervisory Board. The Supervisory Board currently comprises only men. No personnel changes or expansion of the Supervisory Board are planned or envisaged.
- A target of "0" is set for the Management Board. The Management Board also currently comprises only men. No personnel changes or expansion of the Management Board are planned or envisaged. The Supervisory Board believes that the government's aim to raise the share of women is subordinate to the interests of the company to continue the successful work conducted by experienced Management Board members and a Management Board size which is tailored to the needs of the company.
- With regard to the share of women on the Supervisory Board and Management Board, the Supervisory Board reserves the right to resolve again on the target within the deadline period for attainment should there be any indication of a new appointment.

No target was set for the first and second management levels as United Internet AG does not have any management levels below the Management Board due to its holding structure.

The Supervisory Board and Management Board of United Internet AG regard the above mentioned targets as fulfilled without exemption at present.

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Diversity concept (Secs. 289f (2) No. 6, 315d HGB)

The company aims to ensure that the Management Board and Supervisory Board are composed of many different types of people and that the bodies as a whole have a sufficiently wide variety of opinions and knowledge. In particular, the following criteria should be taken into account:

- The members of the Management Board and Supervisory Board should complement each other within their respective committees with regard to their experience, education and professional background in order to develop a good understanding of the current status and the longer term opportunities and risks associated with the company's business activities.
- For the reference period up to the expiry of the Annual Shareholders' Meeting that decides on the discharge of the Supervisory Board for the fiscal year 2019 (probably May 2020), the Management Board and Supervisory Board have each set a target value of "0" for the share of women, since at present both bodies are composed exclusively of men. In principle, however, both sexes should be treated equally on the basis of their qualifications, and in the case of new appointments the aim is to achieve a balanced composition of the Management Board and Supervisory Board.
- With the exception of an age limit of 70, no differentiation is made according to age for the members of the Management Board and Supervisory Board, and the sole differentiation should be according to the required knowledge and experience.
- In view of the current size of the Management Board and Supervisory Board, each consisting of just three members, no targets have been set with regard to geographical origin. In order to ensure international experience, the Supervisory Board already stipulates that at least one member of the Supervisory Board should have several years of experience abroad or have gained operational experience with an internationally active company.

The Management Board and Supervisory Board believe that the above diversity requirements for the Management Board and Supervisory Board are currently fulfilled. The company considers additional or more specific criteria to be inappropriate. In view of the size of the Management Board and Supervisory Board, each consisting of three members at present, more or more specific diversity aspects would create considerable difficulties to fill the positions taking into account all diversity criteria.

Annual Shareholders' Meeting

The Annual Shareholders' Meeting is the body which formulates and expresses the interests of the shareholders of United Internet AG. At the ordinary Annual Shareholders' Meeting, the annual financial statements of the parent company and consolidated financial statements are presented to the shareholders. The shareholders decide on the appropriation of the balance sheet profit and vote on resolutions concerning other statutory topics, such as releasing the Management Board members from their responsibility for the past fiscal year and appointing external auditors. Each share entitles the owner to one vote. All shareholders who register in time and are listed in the Share Register on the day of the Annual Shareholders' Meeting are entitled to attend. Shareholders may also exercise their rights at the Annual Shareholders' Meeting by means of a proxy vote. The company provides a proxy who votes according to the shareholder's instructions, providing he receives the required order.

Compliance

Compliance is an integral component of corporate and management culture throughout the United Internet Group. For United Internet AG, compliance means ensuring its activities comply with all relevant laws for its business, as well as with its own principles and regulations.

This includes open and fair communication with our employees, customers, business partners, shareholders and the public. As an internet service provider with several million customers and a large number of business partners, United Internet's legally and ethically compliant behavior is vital for retaining the trust of its customers and business associates.

To ensure conduct in line with our corporate culture, the Management Board has created a binding framework for the company's ethical principles and values. Moreover, it has defined values and management guidelines, and compiled the most important rules of behavior in a Code of Conduct. This "culture of cooperation" provides guidance for employees in their everyday work and creates a secure framework for making the correct decisions. The framework applies equally to the Management Board, directors, managers and all employees.

The Management Board has established a Compliance Organization to ensure adherence to the legal and internal regulations.

The Compliance Organization is part of an holistic risk management system which not only includes the "GRC" functions Corporate Governance, Risk Management & Compliance, but also the Corporate Audit and Legal Department. These risk-mitigating functions are headed by the Group General Counsel, who reports directly to the CFO of United Internet AG.

The Compliance Organization is responsible for the creation of suitable structures and processes to support the implementation of compliance throughout the company and to align measures with the respective risks. The compliance processes include release procedures in the field of anti-corruption and trustworthy reporting paths that give employees the possibility to highlight possible misconduct or legal violations within the company.

The compliance organization is present and anchored in the business units via functional and local Compliance Managers (FCMs and LCMs). In addition to their normal functions, the FCMs and LCMs support the area of compliance.

The overarching element of the compliance system remains the responsibility of all managers for compliance. This includes acting as a role model, as enshrined in the company's management guidelines, and goes beyond this: all managers of the company must set an example with regard to compliance and ensure that decisions and actions in their area of responsibility are always in line with the relevant legal provisions and the company's own values and rules.

Financial disclosures / transparency

It is the declared aim of United Internet to inform institutional investors, private shareholders, financial analysts, employees and the public simultaneously and with equal treatment about the company's situation by means of regular, open and up-to-date communication.

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To this end, all important information, such as press releases, ad-hoc announcements and other mandatory disclosures (e.g. directors' dealings and notifications of voting rights), as well as all financial reports, are published in accordance with statutory regulations. In addition, United Internet provides extensive information on its corporate website (www.united-internet.de), where documents and information on Annual Shareholders' Meetings and other economically relevant facts can be found.



<https://www.united-internet.de>

United Internet provides shareholders, analysts and the press with four reports each fiscal year on the company's business development and its financial and earnings position. The publication dates of these reports are stated in a binding financial calendar, which the company posts on its website and regularly updates in accordance with legal obligations.

The Management Board also provides immediate information in the form of ad-hoc announcements about any events not known to the public which might significantly affect the share price.

As part of its investor relations activities, the company's management team regularly meets with analysts and institutional investors. We also hold analyst conferences to announce our semi-annual and annual figures, which investors and analysts can also participate in via telephone.

Accounting and auditing

The Group's accounts are drawn up according to the principles of the International Financial Reporting Standards (IFRS, as applicable in the EU) with consideration of Sec. 315e HGB. However, the annual financial statements of the parent company – relevant for all dividend and tax matters – are drawn up according to the rules of the German Commercial Code (HGB). The annual financial statements and the consolidated financial statements are audited by independent auditors. The respective auditing company is selected by the Annual Shareholders' Meeting. Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Eschborn/Frankfurt am Main, was elected to audit the annual financial statements for the fiscal year 2017. The Supervisory Board issues the auditing mandate, determines auditing focal points, approves the auditing fee and examines the independence of the auditors.

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft has audited the annual financial statements of United Internet AG and the Group since the fiscal year 2002. Mr. Andreas Grote has the responsible auditor since fiscal year 2012.

Remuneration of Management Board and Supervisory Board

The principles of remuneration for the Management Board and Supervisory Board are presented in section 8 of this Management Report. The disclosure of remuneration for members of the Management Board and Supervisory Board, according to person and its fixed and variable components (in line with legal regulations and the recommendations of the German Corporate Governance Code), is to be found in the Remuneration Report and section 41 of the notes to the consolidated financial statements.



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Stock option plans

The principles of the stock-based compensation plan of United Internet AG are described in the Remuneration Report in section 8 of this Management Report. Further details are provided in section 36 of the notes to the consolidated financial statements.

Declaration of conformity with regard to the recommendations of the German Corporate Governance Code in accordance with Sec. 161 German Stock Corporation Act (AktG)

The corporate governance of United Internet is based on the German Corporate Governance Code, which the Government Commission set up by the Federal Justice Minister in September 2001 published for the first time on February 26, 2002.

In addition to formulating current best practice with regard to corporate governance, the Code aims to make the German corporate governance system transparent and understandable. It strives to promote confidence in the management and supervision of listed German companies among international and national investors, customers, employees and the public.

The Government Commission reviews the Code annually to check whether it still complies with current corporate governance best practice and, where necessary, adjusts it accordingly.

On February 7, 2017, the 14th and current version of the German Corporate Governance Code was finalized and published on April 24, 2017 by the Federal Ministry of Justice and Consumer Protection in the Federal Gazette (<http://www.bundesanzeiger.de>).

The Code contains three different elements:

- regulations describing currently valid legal standards in Germany
- recommendations which comply with internationally and nationally recognized standards of good and responsible corporate governance
- suggestions which comply with internationally and nationally recognized standards of good and responsible corporate governance

German corporations are obliged to observe the legal regulations.

With regard to the recommendations, the German Stock Corporation Act (Sec. 161) requires listed companies to publish a declaration of conformity once per year.

Companies are allowed to deviate from the suggestions without the need for disclosure.

The recommendations and suggestions of the Code become valid on publication in the Federal Gazette.

On February 20, 2018, the Management Board and Supervisory Board of United Internet AG submitted their current annual declaration of conformity (presented below) in accordance with Sec. 161 AktG and immediately published it on the company's website (www.united-internet.de), as well as in the Federal Gazette.

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In accordance with Section 161 German Stock Corporation Act (AktG), the Management Board and Supervisory Board of United Internet AG declare that:

Since its last Declaration of Conformity issued on February 20, 2017, United Internet AG complied with the recommendations of the German Corporate Governance Code (the "Code") in the version dated May 5, 2015 with the stated exceptions, and will comply with the recommendations of the Code in the currently valid version dated February 7, 2017, which came into force with publication in the Federal Gazette on April 24, 2017, with the following exceptions:

Deductibles in the case of D&O insurance policies for Supervisory Board members (section 3.8 para. 3 of the Code)

The D&O insurance policy for Supervisory Board members does not include any deductible. This is also not planned in the future as United Internet AG does not generally believe that the motivation and responsibility with which the members of the Supervisory Board conduct their duties can be improved by such a deductible.

Capping Management Board compensation (section 4.2.3 para. 2 sentence 6 of the Code)

The agreements regarding Management Board compensation do not include payment caps for the total amount. Although provision is made for caps on variable components, these are not expressed as a total but as a percentage of a fixed amount. As the Supervisory Board believes that the general capping of Management Board compensation intended by the Code's recommendation is already suitably reflected by the provisions of the current compensation agreements, it does not intend to comply in full with the Code's recommendation acc. to section 4.2.3 para. 2 sentence 6 in the future.

Formation of committees (section 5.3 of the Code)

In view of its current size with only three members, the Supervisory Board has not formed any committees and fulfills all its duties as a whole. Under these circumstances, the Supervisory Board cannot recognize how the formation of committees would improve the efficiency of its work.

Targets for the composition of the Supervisory Board (section 5.4.1 para. 2 and 3 of the Code)

Following the resolution of past uncertainties in the regulatory environment, the Supervisory Board specified first concrete objectives regarding its composition in a resolution adopted on December 16, 2015 and will take these objectives into consideration when making election proposals at future Annual Shareholders' Meetings. It was decided not to set a regular limit for the duration of membership to the Supervisory Board as the Supervisory Board believes that such a limitation is not appropriate compared to other criteria for nominating Supervisory Board members and that it is ultimately at the discretion of the Annual Shareholders' Meeting to elect those candidates to the Supervisory Board whom they believe are best suited to representing their interests. The specific objectives of the Supervisory Board and the status of their implementation are published in the Company's Corporate Governance Report.

Consideration of the Deputy Chair when setting compensation for Supervisory Board members (section 5.4.6 para. 1 sentence 2 of the Code)

When setting compensation for Supervisory Board members, the position of the Deputy Chair of the Supervisory Board is not considered. The Deputy Chair of the Supervisory Board does not currently undertake any additional duties which would represent a greater burden compared to those of a regular Supervisory Board member.

8 REMUNERATION REPORT

Principles of the Management Board remuneration system

The Supervisory Board is responsible for determining the remuneration of Management Board members. The total compensation of individual members of the Management Board is determined by the Supervisory Board based on a performance assessment, taking into account any payments made by Group companies. Criteria for determining the appropriateness of remuneration are based on the responsibilities of the individual Management Board member, their personal performance, the economic situation, the performance and outlook of the company, as well as a review of the comparability of compensation with peer companies and the remuneration structure in place in other areas of the company.

The size of the remuneration components is regularly reviewed, whereby the Supervisory Board also takes account of Management Board remuneration in relation to compensation for senior management and the workforce of United Internet AG as a whole over time.

The remuneration received by the members of the Management Board of United Internet AG is performance-oriented and consists of fixed and variable elements.

The fixed remuneration component is paid monthly as a salary.

The size of the variable remuneration component depends on reaching certain, fixed financial targets agreed at the beginning of the fiscal year. These targets are based mainly on key sales and earnings figures. The target attainment corridor is generally between 90% to 120%. No bonus is paid below 90% of the agreed target and the bonus calculation is capped at 120% of the agreed target. There is no provision for subsequent amendment of the performance targets. No minimum payment of the variable remuneration component is guaranteed.

There is a component providing long-term incentives in the form of a compensation program based on virtual shares (SARs). The exercise hurdle of this program is 120% of the share price. Payment of value growth is capped at 100% of the calculated share price when the virtual options were granted.

Benefits granted (in €k)	Ralph Dommermuth CEO Since 2000				Frank Krause ⁽¹⁾ CFO Since June 1, 2015				Robert Hoffmann Business Applications Since Jan. 1, 2013 to Dec. 31, 2017			
	2016	2017	2017 (Min)	2017 (Max)	2016	2017	2017 (Min)	2017 (Max)	2016	2017	2017 (Min)	2017 (Max)
Fixed compensation	0	0	0	0	360	360	360	360	300	300	300	300
Fringe benefits	0	0	0	0	111	311	311	311	12	12	12	12
Total	0	0	0	0	471	671	671	671	312	312	312	312
One-year variable compensation	0	0	0	0	140	140	0	168	200	200	0	240
Multi-year variable compensation	0	0	0	0	465	0	0	0	0	0	0	0
SAR program V 2016 (6 years)					465							
Total	0	0	0	0	1,076	811	671	839	512	512	312	552
Service cost	0	0	0	0	0	0	0	0	0	0	0	0
Total compensation	0	0	0	0	1,076	811	671	839	512	512	312	552

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Fringe benefits generally include a company car commensurate with the respective position, which is taxable as a benefit in kind.

There are no retirement benefits from the company to members of the Management Board.

Management Board members do not receive compensation for seats on supervisory boards of subsidiaries.

With regard to severance pay for members of the Management Board, United Internet bases its regulations on the recommendations of the German Corporate Governance Code:

- Payments made to a Management Board member on premature termination of their contract, including fringe benefits, are limited to the value of two years' compensation (severance pay cap) and to the remaining term of the employment contract
- The severance pay cap is calculated on the basis of total compensation for the past fiscal year and the expected total compensation for the current fiscal year
- If the employment contract is terminated for a serious cause for which the Management Board member is responsible, no payments are made to the Management Board member

For the duration of the 12-month prohibition to compete on termination of the service contract, the respective Management Board member receives compensation up to the amount of their fixed remuneration.

As agreed with the Company's Supervisory Board, the CEO of United Internet AG, Mr. Ralph Dommermuth, has resolved to waive his claim to Management Board remuneration as of fiscal year 2016. As in the past, Mr. Ralph Dommermuth will continue to drive the Company's long-term development and value growth as CEO and participate in the Company's success as the major shareholder via dividends.

The following tables provide details on Management Board remuneration in accordance with the recommendations of the German Corporate Governance Code.

Jan Oetjen ⁽²⁾ Consumer Applications Since Oct. 1, 2014				Martin Witt ⁽²⁾ Access Since Oct. 1, 2014 to Sept. 30, 2017			
2016	2017	2017 (Min)	2017 (Max)	2016	2017	2017 (Min)	2017 (Max)
300	300	300	300	300	225	225	225
13	13	13	13	12	9	9	9
313	313	313	313	312	234	234	234
200	200	0	240	200	150	0	180
0	0	0	0	0	0	0	0
513	513	313	553	512	384	234	414
0	0	0	0	0	0	0	0
513	513	313	553	512	384	234	414

(1) The fringe benefits of Mr. Krause in 2016 and 2017 in each case result from the benefit in kind of a company car and a special payment of € 100,000 in 2016 and € 300,000 in 2017; the size of the maximum multi-year compensation (SAR program V 2016) for Mr. Krause is calculated (based on 100,000 SARs) from an issue price of € 36.27 and a theoretical share price of at least € 72.54 for the respective exercise period and distributed over a term of 5 years

(2) The Management Board members Jan Oetjen and Martin Witt received their compensation for 2016 and 2017 via subsidiaries of United Internet AG

Value of benefits granted for the reporting period

The table on the previous shows the value of benefits granted for the reporting period. It also shows the minimum and maximum values that can be achieved. For the one-year variable compensation, the target value (i.e. the value in the event of 100% target achievement) granted for the reporting period is stated. In addition, the multi-year variable compensation granted in the reporting period is broken down into different plans and the relevant periods of time are stated. For subscription rights and other share-based payments, the fair value at the time of granting is calculated.

Allocation for the reporting period

The following table contains the allocation for the reporting period (disbursement) for fixed compensation and the one-year variable compensation. The table also shows the allocation (disbursement) of multi-year variable compensation exercised in the reporting period. The amounts are broken down into different plans.

In fiscal year 2017, the following Management Board members exercised SARs: Mr. Frank Krause (50,000 SARs with a strike price of € 40.00), Mr. Robert Hoffmann (250,000 SARs with a strike price of € 16.06), Mr. Martin Witt (115,000 SARs with a weighted strike price of € 25.54) and Mr. Jan Oetjen (150,000 SARs with a strike price of € 31.15). In fiscal year 2016, the following Management Board members exercised SARs: Mr. Robert Hoffmann (325,000 SARs with a weighted strike price of € 15.13) and Mr. Martin Witt (125,000 SARs with a weighted strike price of € 24.47). In the reporting period 2016, Mr. Frank Krause was granted 100,000 SARs with a strike price of € 36.27.

Allocation (in €k)	Ralph Dommermuth CEO Since 2000		Frank Krause ⁽¹⁾ CFO Since June 1, 2015	
	2017	2016	2017	2016
Fixed compensation	0	0	360	360
Fringe benefits	0	0	311	111
Total	0	0	671	471
One-year variable compensation	0	0	140	139
Multi-year variable compensation	0	0	700	0
SAR program A 2011 (6 years)				
SAR program B 2011 (6 years)				
SAR program F 2012 (6 years)				
SAR program H 2012 (6 years)				
SAR program M 2014 (6 years)				
SAR program O 2015 (6 years)			700	
Other	0	0	0	0
Total	0	0	1,511	610
Service cost	0	0	0	0
Total compensation	0	0	1,511	610

(1) The fringe benefits of Mr. Krause in 2016 and 2017 in each case result from the benefit in kind of a company car and a special payment of € 100,000 in 2016 and € 300,000 in 2017

(2) The Management Board members Jan Oetjen and Martin Witt received their compensation for 2016 and 2017 via subsidiaries of United Internet AG; the exercise of SARs in fiscal year 2017 by Mr. Martin Witt took place after his departure from the Management Board of United Internet AG and during his subsequent position as Management Board member of the subsidiary 1&1 Drillisch AG

Company and Group profile	Risk, opportunity and forecast report	Declaration of corporate governance
Economic report	ICS and RMS	Remuneration report
Subsequent events	Disclosures required by takeover law	Dependent company report

In the IFRS consolidated financial statements of the United Internet Group, the following expenses were recognized for share-based payments to Management Board members: Mr. Ralph Dommermuth (€ 0k, prior year: € 0k), Mr. Frank Krause: € 466k (prior year: € 394k), Mr. Robert Hoffmann: € 114k (prior year: € 258k), Mr. Jan Oetjen: € 211k (prior year: € 341k), Mr. Martin Witt: € 227k (prior year: € 381k).

Further details on Management Board remuneration are provided in section 41.



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Principles of the Supervisory Board remuneration system

The members of the Supervisory Board of United Internet AG also served – in different constellations – on the supervisory boards of United Internet AG's most important subsidiaries, i.e. the supervisory boards of 1&1 Telecommunication SE, 1&1 Internet SE, 1&1 Mail & Media Applications SE and (until March 2017) United Internet Ventures AG (after renaming/change in legal form: United Internet Investments Holding GmbH) as well as (as of October 16, 2017) Drillisch AG (after renaming: 1&1 Drillisch AG). The Supervisory Board members each receive separate compensation for their work on behalf of the companies mentioned.

In each case, this compensation consists of a fixed element and an attendance fee. The fixed remuneration refers in each case to a full fiscal year. For parts of a fiscal year, compensation is paid on a prorated basis.

Robert Hoffmann Business Applications Since Jan. 1, 2013 to Dec. 31, 2017		Jan Oetjen ⁽²⁾ Consumer Applications Since Oct. 1, 2014		Martin Witt ⁽²⁾ Access Since Oct. 1, 2014 to Sept. 30, 2017	
2017	2016	2017	2016	2017	2016
300	300	300	300	225	300
12	12	13	13	9	12
312	312	313	313	234	312
200	199	200	199	150	199
4,015	4,917	2,314	0	2,315	1,681
					121
	902				
				199	199
4,015	4,015			402	402
		2,314		1,714	959
0	0	0	0	0	0
4,527	5,428	2,827	512	2,699	2,192
0	0	0	0	0	0
4,527	5,428	2,827	512	2,699	2,192

The remuneration system for the Supervisory Board of United Internet AG adopted by the Annual Shareholders' Meeting 2015 consists of a fixed remuneration component for an ordinary member and the Deputy Chairman of the Supervisory Board of € 15,000 each per full fiscal year and for the Chairman of the Supervisory Board of € 30,000 per full fiscal year. In addition, each member of the Supervisory Board receives a payment of € 1,000 for each meeting they attend in person, or via telephone, video conference or corresponding connection. There are no stock option plans for members of the Supervisory Board.

In the course of their duties for 1&1 Telecommunication SE, the fixed remuneration component for an ordinary member of the Supervisory Board is € 50,000 per full fiscal year, for the Deputy Chairman of the Supervisory Board € 55,000 per full fiscal year and for the Chairman of the Supervisory Board € 60,000 per full fiscal year. In addition, each member of the Supervisory Board receives a payment of € 1,000 for each meeting they attend in person, or via telephone, video conference or corresponding connection.

In the course of their duties for 1&1 Internet SE, the fixed remuneration component for an ordinary member and the Deputy Chairman of the Supervisory Board is € 30,000 each per full fiscal year, and for the Chairman of the Supervisory Board € 35,000 per full fiscal year. In addition, each member of the Supervisory Board receives a payment of € 1,000 for each meeting they attend in person, or via telephone, video conference or corresponding connection.

In the course of their duties for 1&1 Mail & Media Applications SE, the fixed remuneration component for an ordinary member of the Supervisory Board is € 15,000 per full fiscal year, and for the Deputy Chairman and Chairman of the Supervisory Board € 25,000 each per full fiscal year. In addition, each member of the Supervisory Board receives a payment of € 1,000 for each meeting they attend in person, or via telephone, video conference or corresponding connection.

In the course of their duties for United Internet Ventures AG (as of April 1, 2017 United Internet Investments Holding GmbH), the fixed remuneration component for an ordinary member and the Deputy Chairman of the Supervisory Board is € 10,000 each per full fiscal year, and for the Chairman of the Supervisory Board € 15,000 per full fiscal year. In addition, each member of the Supervisory Board receives a payment of € 1,000 for each meeting they attend in person, or via telephone, video conference or corresponding connection.

The remuneration system for the Supervisory Board of Drillisch AG adopted by the Annual Shareholders' Meeting 2013 consists of a fixed remuneration component for an ordinary member of € 25,000 each per full fiscal year, € 37,500 per full fiscal year for the Deputy Chairman of the Supervisory Board and Chairman of the Audit Committee, and € 50,000 per full fiscal year for the Chairman of the Supervisory Board. Insofar as a member of the Supervisory Board performs several functions, only the highest fixed remuneration is payable. Supervisory Board members who only belong to the Supervisory Board for part of the fiscal year or who chair the Supervisory Board or chair the Audit Committee receive the fixed compensation pro rata temporis, rounded up to full months. In addition, an attendance fee of € 2,000 is paid for each personal and physical attendance at a seated meeting of the Supervisory Board and as a member of its committees. For the Chairman of the Supervisory Board and for the chairman of a committee, the attendance fee is € 3,000. If several meetings take place on one day, only the two highest-paid attendance fees are payable.



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Specific details on Supervisory Board compensation is provided in section 41 of the notes to the consolidated financial statements.

MANAGEMENT REPORT	FINANCIAL STATEMENTS	MISCELLANEOUS
Company and Group profile	Risk, opportunity and forecast report	Declaration of corporate governance
Economic report	ICS and RMS	Remuneration report
Subsequent events	Disclosures required by takeover law	Dependent company report

Employee stock ownership plans

Virtual stock option program for management (SAR)

For many years now, United Internet AG has operated a stock-based compensation plan which enables its managers to participate in the company's success and is aimed at enhancing staff loyalty. The plan takes the form of a virtual stock option program.

Virtual stock options, or Stock Appreciation Rights (SARs), refer to the commitment of United Internet AG to pay the beneficiary a cash amount equivalent to the difference between the share price on the date of granting the option and the share price on exercising the option. The exercise hurdle is 120% of the share price, which is calculated as the average closing price in electronic trading (Xetra) of the Frankfurt Stock Exchange over the ten days preceding issuance of the option. Payment of value growth to the entitled person is limited to 100% of the calculated share price when the virtual options were granted.

An SAR corresponds to a virtual subscription right for one share of United Internet AG. However, it is not a share right and thus not a (genuine) option to acquire shares of United Internet AG. United Internet AG retains the right to fulfill its commitment to pay the SAR in cash by also transferring United Internet AG shares from its stock of treasury shares to the beneficiary, at its own discretion. Employees may exercise their option rights after expiry of certain minimum retention periods. The increase in value represents a taxable gain for employees. The SARs have a maturity of no more than six years.

Option rights can be exercised as follows: up to 25% of the option right may be converted at the earliest 24 months after the date of issue of the option; up to 50% at the earliest 36 months after the date of issue of the option; a total of up to 75% may be exercised at the earliest 48 months after the date of issue of the option; the full amount may be exercised at the earliest 60 months after the date of issue of the option.

Stock-based compensation for employees

In addition to its long-standing employee stock ownership program for management, United Internet AG introduced a wide-ranging program for its employees in Germany in the fiscal year 2016.

With the aid of this program, United Internet aims to

- involve its employees more directly in the development of the company and its share,
- raise staff motivation and performance,
- honor the loyalty of staff to the United Internet Group,
- and at the same time support the development of the company.

Against this backdrop, the new employee stock ownership program ("ESOP") was designed in the form of a stock-based compensation plan. The program consists of two components:

- Firstly, qualifying employees received the option to buy a specific number of shares in United Internet AG at a reduced price, which they must then hold for a period of two years (vesting period).
- On completion of the vesting period, participants are granted further shares for free, provided they are still working for the company – whereby employees of companies participating in "performance matching" receive additional shares if certain pre-defined targets are reached.

Both the discounted acquisition of the shares and the free allocation of additional shares after the end of the vesting period represent a taxable non-cash benefit.

Employees at international locations were offered a different (non-stock-based) incentive system for tax reasons.



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Further details on employee stock ownership plans are provided in section 36 of the notes to the consolidated financial statements.

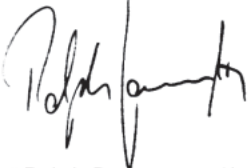
MANAGEMENT REPORT	FINANCIAL STATEMENTS	MISCELLANEOUS
Company and Group profile	Risk, opportunity and forecast report	Declaration of corporate governance
Economic report	ICS and RMS	Remuneration report
Subsequent events	Disclosures required by takeover law	Dependent company report

9 DEPENDENT COMPANY REPORT

In compliance with Sec. 312 (1) AktG, the Management Board declares that the company received adequate compensation (quid pro quo) for all legal transactions and measures listed in the report on relations with affiliated companies, in accordance with the circumstances known at the time when such transactions or measures were carried out, or the measure involved was executed or omitted, and that the company was not disadvantaged by such measures being executed or omitted.

Montabaur, March 16, 2018

The Management Board



Ralph Dommermuth



Frank Krause



Jan Oetjen

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BALANCE SHEET

as of December 31, 2017 in €k

	Notes	December 31, 2017	December 31, 2016
ASSETS			
Current assets			
Cash and cash equivalents	17	238,522	101,743
Trade accounts receivable	18	289,995	228,025
Inventories	19	44,672	39,490
Prepaid expenses	20	92,291	111,172
Other financial assets	21.1	100,270	21,536
Other non-financial assets	21.2	58,166	129,427
		823,916	631,393
Non-current assets			
Shares in associated companies	22	418,048	755,546
Other financial assets	23	333,699	287,688
Property, plant and equipment	24	747,423	655,006
Intangible assets	25, 27	1,393,339	369,470
Goodwill	26, 27	3,579,780	1,087,685
Trade accounts receivable	18	53,576	55,841
Prepaid expenses	28	100,880	127,974
Deferred tax assets	14	155,151	103,131
		6,781,896	3,442,341
Total assets		7,605,812	4,073,734

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	Notes	December 31, 2017	December 31, 2016
LIABILITIES AND EQUITY			
LIABILITIES			
Current liabilities			
Trade accounts payable	29, 35	399,898	373,710
Liabilities due to banks	30, 35	248,185	422,236
Advance payments received	35	10,901	12,326
Income tax liabilities	31, 35	130,195	64,145
Deferred revenue	32, 35	262,480	235,503
Other accrued liabilities	33, 35	49,412	13,237
Other financial liabilities	34.1, 35	135,658	114,748
Other non-financial liabilities	34.2, 35	47,753	33,528
		1,284,482	1,269,433
Non-current liabilities			
Liabilities due to banks	30, 35	1,707,596	1,338,417
Deferred tax liabilities	14	390,734	94,211
Trade accounts payable	29, 35	9,023	9,479
Deferred revenue	32, 35	32,397	33,820
Other accrued liabilities	33, 35	33,485	39,671
Other financial liabilities	34.3, 35	97,537	90,891
		2,270,772	1,606,489
Total liabilities		3,555,254	2,875,922
EQUITY			
Capital stock	37	205,000	205,000
Capital reserves	38	2,709,203	377,550
Accumulated profit	38	1,204,603	724,213
Treasury stock		-189,384	-122,493
Revaluation reserves	38	74,923	30,988
Currency translation adjustment	38	-13,120	-17,794
Equity attributable to shareholders of the parent company		3,991,226	1,197,464
Non-controlling interests	39	59,332	348
Total equity		4,050,559	1,197,812
Total liabilities and equity		7,605,812	4,073,734

NET INCOME

from January 1 to December 31, 2017 in €k

	Notes	2017 January – December	2016 January – December*
Sales	5	4,206,302	3,808,131
Cost of sales	6, 10, 11	-2,689,100	-2,461,757
Gross profit		1,517,202	1,346,374
Selling expenses	7, 10, 11	-638,313	-521,177
General and administrative expenses	8, 10, 11	-185,106	-182,938
Other operating expenses	9.1	-100,632	-57,470
Other operating income	9.2	365,796	57,870
Operating result		958,947	642,659
Financial expenses	12	-44,245	-31,175
Financial income	13	3,428	4,802
Amortization of financial assets	23	-19,757	-254,905
Result from associated companies	22	-7,388	1,248
Pre-tax result		890,986	362,629
Income taxes	14	-242,497	-186,870
Net income		648,489	175,759
Net income after taxes from discontinued operations	4.2	38,578	3,403
Net income (after discontinued operations)		687,067	179,162
Attributable to			
non-controlling interests		36,651	164
shareholders of United Internet AG		650,416	178,998

	Notes	2017 January – December	2016 January – December*
Result per share of shareholders of United Internet AG (in €)			
- basic	15	3.25	0.88
- diluted	15	3.25	0.88
thereof result per share (in €) – from continued operations			
- basic	15	3.06	0.86
- diluted	15	3.05	0.86
thereof result per share (in €) – from discontinued operations			
- basic	15	0.19	0.02
- diluted	15	0.19	0.02
Weighted average of outstanding shares (in million units)			
- basic	15	199.86	203.26
- diluted	15	200.35	203.84
Reconciliation to total comprehensive income			
Net result		687,067	179,162
Items that may be reclassified subsequently to profit or loss			
Currency translation adjustment – unrealized	38	-1,103	-14,136
Currency translation adjustment – realized	38	-312	0
Market value changes of available-for-sale financial instruments before taxes – unrealized	38	46,203	21,059
Tax effect	38	0	38
Market value changes of available-for-sale financial instruments before taxes – realized	38	0	106,873
Tax effect	38	0	0
Items that are not reclassified subsequently to profit or loss			
Share in other comprehensive income of associated companies		483	-961
Other comprehensive income		45,271	112,873
Total comprehensive income		732,338	292,035
Attributable to			
non-controlling interests		35,983	164
shareholders of United Internet AG		696,355	291,871
- continued operations		657,824	288,622
- discontinued operations		38,531	3,249

 > diluted

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* Prior year figures adjusted due to discontinued operations; please refer to note 4.2

CASH FLOW

from January 1 to December 31, 2017 in €k

	Notes	2017 January – December	2016 January – December*
Cash flow from operating activities			
Net income (from discontinued operations)		38,578	3,403
Net income (from continued operations)		648,489	175,759
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization of intangible assets and property, plant and equipment	10	187,512	146,809
Depreciation and amortization of assets resulting from company acquisitions	10	107,579	46,669
Amortization of financial assets	23	19,757	254,905
Share-based payment expense	36	5,180	4,433
Share of profit of associated companies	22	7,388	-1,247
Dividends received from associated companies	22, 45	19,823	19,309
Other non-cash items from tax adjustments	14	-31,350	1,459
Other non-tax items		-346,562	-7,296
Operative cash flow		656,394	644,203
Change in assets and liabilities			
Change in receivables and other assets		-54,792	-41,784
Change in inventories		1,245	3,019
Change in deferred expenses		52,520	-53,358
Change in trade accounts payable		-44,050	-16,715
Change in advance payments received		-543	-2,758
Change in other accrued liabilities		1,232	-3,586
Change in income tax liabilities		46,211	-65,441
Change in other liabilities		-7,128	9,028
Change in deferred income		4,617	14,375
Change in assets and liabilities, total		-688	-157,220
Cash flow from operating activities (before capital gains tax payments)		655,706	486,983
Capital gains tax refund		70,293	0
Cash flow from operating activities		725,999	486,983

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	Notes	2017 January – December	2016 January – December*
Cash flow from investing activities			
Capital expenditure for intangible assets and property, plant and equipment		-233,480	-168,861
Payments from disposals of intangible assets and property, plant and equipment		2,205	4,894
Payments for company acquisitions less cash received	4.1	-528,125	309
Payments from company disposals less cash sold	4.2	-2,183	0
Purchase of shares in associated companies	4.1, 22	-127,949	-266,384
Investments in other financial assets	23	-8,156	0
Payments for loans granted		0	-657
Payments for the repayment of loans		0	3,548
Payments from the sale of financial assets		0	4,464
Cash flow from investment activities		-897,688	-422,687
Cash flow from financing activities			
Purchase of treasury stock	37	-77,214	-112,167
Sale of treasury stock in connection with an employee stock ownership plan	37	0	6,964
Taking out loans	30	615,294	360,000
Repayment of loans	30	-476,716	-135,849
Redemption of finance lease liabilities	44, 45	-16,684	-18,178
Dividend payments	16	-159,703	-142,857
Dividend payments to non-controlling interests		-164	-354
Payments from/to minority interests		427,337	-717
Cash flow from financing activities		312,150	-43,158
Net increase in cash and cash equivalents		140,461	21,138
Cash and cash equivalents at beginning of fiscal year		101,743	84,261
Currency translation adjustments of cash and cash equivalents		-3,681	-3,656
Cash and cash equivalents at end of fiscal year		238,523	101,743

* Prior year figures adjusted due to discontinued operations; please refer to note 4.2



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CONSOLIDATED STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY ACC. TO IFRS

for the fiscal year 2017 and 2016 in €k

Note	Capital stock		Capital reserves	Accumulated profit	Treasury shares	
	37		38	38	37	
	Share	€k	€k	€k	Share	€k
Balance as of January 1, 2016	205,000,000	205,000	372,203	695,799	917,859	-26,318
Net income				178,998		
Other comprehensive income						
Total comprehensive income				178,998		
Purchase of treasury shares					3,000,000	-112,167
Issue of treasury shares			914	-9,942	-546,916	15,992
Employee stock ownership program			4,433			
Dividend payments				-142,857		
Profit distributions						
Other				2,215		
Balance as of December 31, 2016	205,000,000	205,000	377,550	724,213	3,370,943	-122,493
Balance as of January 1, 2017	205,000,000	205,000	377,550	724,213	3,370,943	-122,493
Net income				650,416		
Other comprehensive income						
Total comprehensive income				650,416		
Purchase of treasury shares					2,000,000	-77,214
Issue of treasury shares				-10,323	-277,654	10,323
Employee stock ownership program			8,886			
Dividend payments				-159,703		
Profit distributions						
Transactions with shareholders			2,322,767			
Balance as of December 31, 2017	205,000,000	205,000	2,709,203	1,204,603	5,093,289	-189,384

Balance sheet

Notes

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Revaluation reserves	Currency translation difference	Equity attributable to shareholders of United Internet AG	Non-controlling interests	Total equity
38	38		39	
€k	€k	€k	€k	€k
-96,021	-1,443	1,149,220	538	1,149,758
		178,998	164	179,162
127,009	-14,136	112,873		112,873
127,009	-14,136	291,871	164	292,035
		-112,167		-112,167
		6,964		6,964
		4,433		4,433
		-142,857		-142,857
		0	-354	-354
	-2,215	0		0
30,988	-17,794	1,197,464	348	1,197,812
30,988	-17,794	1,197,464	348	1,197,812
		650,416	36,651	687,067
46,686	-747	45,939	-668	45,271
46,686	-747	696,355	35,983	732,338
		-77,214		-77,214
		0		0
		8,886	1,466	10,352
		-159,703		-159,703
		0	-164	-164
-2,750	5,421	2,325,438	21,699	2,347,137
74,923	-13,120	3,991,226	59,332	4,050,559

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

1. General information on the company and accounting

United Internet AG (hereinafter referred to as the "United Internet Group" or the "Company") is Europe's leading internet specialist with its two business segments Access (landline and mobile internet access products) and Applications (applications for using the internet).

The Company is registered in 56410 Montabaur, Elgendorfer Straße 57, Germany and is registered there at the District Court under HRB 5762. The Company has numerous branches and subsidiaries in Germany and around the world.

The consolidated financial statements of United Internet AG were prepared in accordance with International Financial Reporting Standards (IFRS) as adopted by the European Union (EU) and the relevant supplementary regulations of Section 315a (1) German Commercial Code (HGB).

The reporting currency is euro (€). Amounts stated in the notes to the consolidated financial statements are in euro (€), thousand euro (€k) or million euro (€m). The consolidated financial statements are always drawn up on the basis of historical costs. The exception to this rule are derivative financial instruments and available-for-sale financial assets, which are stated at fair value.

The balance sheet date is December 31, 2017.

The Supervisory Board approved the consolidated financial statements for 2016 at its meeting on March 22, 2017. The consolidated financial statements were published in the German Federal Gazette ("Bundesanzeiger") on May 2, 2017.

The consolidated financial statements for 2017 were prepared by the Company's Management Board on March 16, 2018 and subsequently submitted to the Supervisory Board. The consolidated financial statements will be presented to the Supervisory Board for approval on March 21, 2018. Theoretically, there may still be changes until the consolidated financial statements are approved and released for publication by the Supervisory Board. However, the Management Board expects that the consolidated financial statements will be approved in the present version. They are to be published on March 22, 2018.

2. Accounting and valuation principles

This section first presents all accounting policies which have been applied consistently in the periods presented in these consolidated financial statements. Following this, those accounting standards applied for the first time in these financial statements are explained, as are those accounting standards recently published but not yet applied.

FINANCIAL STATEMENTS		MISCELLANEOUS	
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2.1 Explanation of main accounting and valuation methods

Consolidation principles

The consolidated group comprises United Internet AG and all domestic and foreign subsidiaries (majority shareholdings) controlled by it. According to IFRS 10, control exists if an investor has the power to make decisions, is exposed to variable returns, and is able to use power to affect the amount of variable returns. The annual financial statements of subsidiaries are prepared as to the same balance sheet date and using the same standardized accounting and valuation methods as those applied by the parent company.

All intercompany balances, transactions, income, expenses, profits and losses from intercompany transactions contained in the carrying value of assets are fully eliminated.

Subsidiaries are fully consolidated from the point of acquisition, i.e. from the date on which the Company gained control. Consolidation ends as soon as the parent company no longer has control over the subsidiary.

Upon loss of control, a gain or loss from the disposal of the subsidiary is recognized in the consolidated statement of comprehensive income in the amount of the difference between the (i) proceeds from the disposal of the subsidiary, the fair value of the remaining shares, the carrying amount of the non-controlling interests, and the cumulative amounts of other comprehensive income attributable to the subsidiary, and (ii) the carrying amount of the subsidiary's net assets to be disposed of.

Non-controlling interests represent the proportion of the result and net assets which is not attributable to the Group. Non-controlling interests are disclosed separately in the consolidated balance sheet. They are disclosed in the consolidated balance sheet as part of shareholders' equity, but separate to the equity capital attributable to the shareholders of United Internet AG. For purchases of shares without a controlling influence (minority shareholding) or disposals of shares with a controlling influence but without loss of the controlling influence, the carrying values of shares with or without a controlling influence are adjusted to reflect the change in the respective shareholding. The amount by which compensation paid or received for the change in shareholding exceeds the carrying value of the respective share without a controlling influence is recognized directly in equity as a transaction with the shareholders.

Revenue recognition

Revenue is recognized separately for each of the Group's different segments (see also explanations on segment reporting in note 5).



see page 186

Revenue is recognized when it is probable that the Group will receive an economic benefit and the amount of revenue can be reliably determined. Revenue is measured at the fair value of the compensation received. Sales tax or other charges are not considered. The recognition of revenue must also fulfill the measurement criteria described below.

Revenues in the separate segments are recognized according to the following principles:

Access segment

The Access segment mainly comprises the product lines DSL connections and mobile internet.

In these product lines, the Company generates revenue from the provision of the aforementioned access products, as well as from additional services such as internet and mobile telephony. Revenue consists of fixed monthly basic fees, as well as variable additional usage fees for certain services (e.g. for foreign calls and mobile phone connections not covered by any flat-rate), and proceeds from the sale of the respective hardware.

Revenue is recognized according to service provision, which generally corresponds to the receipt of monthly fees paid by customers (usage charges and basic fees). Revenue from the sale of hardware is recognized on transfer of risk at the invoiced amount. Payments on account received from customers are carried as deferred income.

The segment also includes revenues from various telecommunication products for business and wholesale customers. In addition to the provision of classic landline connections (DSL and ISDN), telecommunication services comprise broadband services, network solutions as telecommunications infrastructure (so-called leased lines) or VPNs, value-added services, interconnection and IP services. Certain products are provided on a leasing basis. In the case of such leases, the present value of the minimum lease payments from this economic sale is recognized as revenue from the beginning of the lease term if all material risks and rewards are transferred to the lessee; in subsequent accounting for the finance lease receivables, interest income is recognized in subsequent periods. The leased assets are derecognized through cost of sales. Provision fees are deferred over the lease term.

Applications segment

The Applications segment comprises United Internet's application business – whether ad-financed or via fee-based subscriptions. These applications include domains, home pages and e-shops, Personal Information Management applications (e-mail, to-do lists, appointments, addresses), group work, online storage and office software. The Company also offers its customers performance-based advertising and sales possibilities via Sedo and affilinet.

In the field of fee-based subscriptions, revenue is mainly generated from fixed monthly fees for the usage, administration and storage of the above applications, as well as income from the brokerage and administration of domains. In addition to fixed monthly fees, one-off fees such as set-up services, SMS charges, and income from affiliate programs are also generated.

Customers generally pay in advance for a contractually fixed time period for the services to be provided by the Company. Revenue is recognized pro rata over the period of service provision.

In the field of ad-financed applications (generally free e-mail solutions from GMX and WEB.DE), the Company generates advertising income and e-commerce commission via the WEB.DE, 1&1, GMX and smartshopping portals. This business is based on the frequent use of free applications and the correspondingly high number of hits for the portals. In the field of online advertising, space is offered on the websites of portals. Realized revenues depend on the placing of advertising and number of screenings or according to click rates. In its e-commerce business, the Company receives commission for the sale of products or brokerage of customers.

Revenues are realized according to services rendered. Advance customer payments are carried as deferred income.

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In addition to application revenues, the segment also generates revenue from the performance-based advertising format Domain Marketing.

In Domain Marketing, United Internet operates (via Sedo GmbH) a trading platform for the secondary domain market (domain trading). At the same time, the Company offers domain owners the possibility to market unused domains to advertisers (domain parking). In addition to these customer domains, the Company also holds its own portfolio of marketable and salable domains. In domain trading, the Company receives sales commission from the successful sale of domains via the platform and also generates revenue from services relating to domain value assessments and transfers. The sales commissions and services are generally based on a percentage of the sales price achieved, whereas fixed prices are generally charged for the other services. In domain parking, domains are mainly marketed using text links, i.e. links on the parked domains to offers of the advertisers (primarily via cooperation agreements with search engines). The Company receives performance-based payment on a monthly basis from the cooperation partner on a pay-per-click basis, according to the number of clicks registered by the cooperation partner.

The Company recognizes sales commissions as revenue when the service is rendered. Revenue is thus recognized on completion of the transaction or provision of the service. In the case of domain parking, the monthly payments credited by cooperation partners are recognized as revenue.

Until its contribution to Awinq, United Internet operated an internet platform for Affiliate Marketing via the company affilinet GmbH. In the fiscal year 2017 and in the previous year, affilinet is carried as a discontinued operation. Please refer to note 4.2. An affiliate program (partner program) is an internet-based sales solution whereby a merchant (the advertiser) pays a performance-oriented commission to his sales partner (the affiliate). The advertiser places the respective advertising message on the platform, which the affiliate can then use on his website to promote the advertiser's offer.

The advertiser recruits, controls and remunerates affiliates via the common platform. As the platform operator, affilinet is compensated by the advertiser for the use of administration and management tools provided on the platform, as well as for the calculation of transactions and the monthly payments to affiliates. Invoicing is based on the commission to be paid to the affiliate. This can be on a cost-per-click, cost-per-action or cost-per-sale basis, or a mixture of these three.

Revenue is recognized on completion of performance. Amounts invoiced in advance are recognized less performance completed as advance payments received.

Disclosure of disposal gains and losses from the sale of investments

Insofar as they concern effects on the income statement, regular carrying amounts and valuations, especially of investments in associated companies and available-for-sale shares, are disclosed in the financial result (see explanations on the financial result).

Gains from the sale of such investments are always disclosed under other operating income, losses under other operating expenses.

Foreign currency translation

The consolidated financial statements are prepared in euro, the Company's functional and presentation currency. Each company within the Group determines its own functional currency. The items in the annual financial statements of the respective company are valued using this functional currency. Foreign currency transactions are initially translated to the functional currency at the prevailing spot rate on the day of transaction. Monetary assets and liabilities in a foreign currency are translated to the functional currency on every balance sheet date using the closing rate. All currency differences are expensed in the income statement. The exception to this rule are currency differences resulting from foreign currency loans, providing they are used to hedge against a net investment in a foreign operation. These are recognized directly in equity until the net investment is sold and only recognized in profit or loss on disposal. Deferred taxes arising from such currency differences are also recognized directly in equity. Non-monetary items valued at historical cost in a foreign currency, are translated at the exchange rate prevailing on the day of the transaction. Non-monetary items stated at fair value in a foreign currency are translated at the exchange rate prevailing at the time fair value was assessed. All goodwill items resulting from the acquisition of a foreign operation and all adjustments to fair value of the carrying values of assets and liabilities resulting from the acquisition of this foreign operation, are carried as assets and liabilities of the foreign operation and translated at the closing rate.

The assets and liabilities of foreign operations are translated into euro at the closing rate. Income and expenditure is translated at the exchange rate prevailing on the date of the transaction (for practical considerations, a weighted average rate is used for translation). The resulting translation differences are recognized separately in equity. The cumulative amount for a foreign operation which is stated in equity is reversed with an effect on the income statement when the foreign operation is sold.

The exchange rates of major currencies developed as follows:

(in relation to 1 euro)	Closing rate		Average rate	
	Dec. 31, 2017	Dec. 31, 2016	2017	2016
US dollar	1.199	1.054	1.13	1.107
UK pound	0.887	0.856	0.877	0.819

Property, plant and equipment

Property, plant and equipment is always carried at cost less cumulative scheduled depreciation.

Items of property, plant and equipment are eliminated either on their disposal or when no further economic use is expected from the continued use or sale of the asset. Gains and losses from the disposal of an asset are recognized in the income statement.

The residual values, useful lives and depreciation methods are reviewed at the end of each fiscal year and adjusted where necessary.

Property, plant and equipment assets are depreciated over their expected economic useful life using the straight-line method.

The useful life periods can be found in the following summary:

	Useful life in years
Leasehold improvements	Up to 10
Buildings	10 or 50
Vehicles	5 to 6
Telecommunication equipment	7 to 10
Distribution networks	20
Other operational and office equipment	3 to 10
Office furniture and fixtures	5 to 13
Servers	3 to 5

For property, plant and equipment acquired in connection with company acquisitions, the applicable remaining useful life is determined primarily on the basis of the aforementioned useful lives and the useful lives elapsed at the time of acquisition.

Impairment tests and the recognition of impairment losses or reversals are conducted in the same way as for intangible assets with limited useful lives (see below).

Borrowing costs

Borrowing costs are expensed in the period in which they are incurred, unless they are connected with the production or purchase of a qualifying asset. As in the previous year, there was no need to capitalize borrowing costs during the reporting period.

Business combinations and goodwill

Business combinations are accounted for using the purchase method. This involves the recognition of all identifiable assets and liabilities of the acquired operation at fair value.

Goodwill arising from a business combination is initially measured at cost, being the excess of the acquisition cost of the operation over the fair value of the identifiable assets, liabilities and contingent liabilities acquired. Following initial recognition, goodwill is valued at amortized cost. Goodwill is subjected to an impairment test at least once annually or whenever there is any event or change in circumstances which might indicate impairment.

In order to test whether there is any impairment, goodwill acquired in the course of a business combination must be allocated from the date of acquisition to each of the cash-generating units of the Group which are to profit from the synergy effects of the combination. This does not depend on whether other assets and liabilities of the Group are already allocated to these cash-generating units.

The impairment need is determined by comparing the recoverable amount of the cash-generating units to which goodwill refers with their carrying value. The recoverable amount of an asset, or a cash-generating unit, is the higher of fair value of the asset or cash-generating unit less transaction costs and its value-in-use. In order to determine the value-in-use, expected future cash flows are discounted to their present value using a pre-tax discount rate which reflects current market expectations regarding the interest effect and the specific risks of the asset. A suitable valuation model is used to determine fair value less sales costs. This is based on DCF models, valuation multipliers, the share prices of listed subsidiaries or other available indicators for fair value. If the carrying amount of an asset, or cash-generating unit, exceeds its recoverable amount, the asset, or cash-generating unit, is regarded as impaired and is written down to the recoverable amount. An impairment loss recognized for goodwill may not be reversed in the following reporting periods. The Group performs its annual impairment test for goodwill on the balance sheet date.

Intangible assets

Individually acquired intangible assets are carried at cost on initial recognition. The acquisition cost of intangible assets resulting from the business combination corresponds to its fair value at the time of acquisition. In the following periods, intangible assets are valued at cost less cumulative amortization and cumulative impairment charges. With the exception of those development costs which can be capitalized, costs for internally generated intangible assets are expensed in the period incurred.

A difference is made between intangible assets with limited and those with indefinite useful lives.

Intangible assets with limited useful lives are amortized over their economic useful life using the straight-line method and tested for possible impairment if there is any indication that the asset may be impaired. The impairment test is conducted in the same way as for goodwill. The useful lives and amortization methods of intangible assets with limited useful lives are reviewed at least at the end of each fiscal year. Necessary changes to the depreciation method and useful life are treated as changes to assumptions. Amortization of intangible assets with limited useful lives are recognized in the income statement under the expense category corresponding to the function of the intangible asset in the Company.

Intangible assets with indefinite useful lives are not amortized in scheduled amounts. Instead, an impairment test is performed at least once annually on the balance sheet date for the individual asset or on the level of the cash-generating unit. The impairment test is conducted in the same way as for goodwill. The useful life of an intangible asset with an indefinite useful life is reviewed annually to ascertain whether the assumption of an indefinite useful life is still justified. If this is not the case, a prospective change is made from indefinite useful life to limited useful life.

The useful life periods can be found in the following summary:

	Useful life in years
Trademarks	Indefinite*
Customer base	4 to 25
Licenses and other rights	2 to 15
Software	3 to 5

* In deviation from the general principle, the Strato brand has an expected remaining useful life of 1.5 years

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A review is also conducted on each balance sheet date to determine whether there is any indication that a previously recognized impairment loss no longer exists or has decreased in size. In the case of such an indication, the Company makes an estimate of the recoverable amount. A previously recognized impairment loss is only reversed if there has been a change in the assumption used to determine the recoverable amount since recognition of the last impairment loss. If this is the case, the asset's carrying value is raised to its recoverable amount. This amount may not exceed the carrying amount, less depreciation, that would have been determined had no impairment loss been recognized for the asset in prior years.

Investments in associated companies

Investments in associated companies are valued according to the equity method. An associated company is an entity over which the Group has significant influence and that is neither a subsidiary nor an interest in a joint venture.

In the case of successive acquisition of company shares, the carrying value is measured using the equity method as of the date on which the prerequisites for accounting as an associated company are met. United Internet measures the old shares in the case of successive share purchases according to the retrospective method (cost-based approach). The original purchase cost of the old shares is included as acquisition cost using the equity method. Unrealized gains or losses previously recognized in the revaluation reserve are not considered.

Using the equity method, investments in associated companies are carried in the balance sheet at cost as adjusted for post-acquisition changes in the Company's share of the net assets of the associated company. Goodwill connected with an associated company is included in the carrying value of the investment and not subjected to scheduled amortization. The income statement includes the Company's portion of the success of the associated company. Changes recognized directly in the equity capital of the associated company are recognized by the Company in proportion to its shareholding and – where applicable – reported in "Changes in shareholders' equity". Profits and losses from transactions between the Company and the associated company are eliminated in proportion to the shareholding in the associated company.

Upon loss of significant influence, a gain or loss from the disposal of the associated company is recognized in the amount of the difference between the (i) proceeds from the disposal of the shares, the fair value of the remaining shares, and the cumulative amounts of other comprehensive income attributable to the associated company, and (ii) the carrying amount of the investment to be disposed of.

The annual financial statements of the associated company are generally prepared as to the same balance sheet date as those of the parent company. Where necessary, adjustments are made to bring the methods in line with standard group-wide accounting and valuation methods.

On application of the equity method, the Company ascertains whether it is necessary to recognize an additional impairment loss for the Company's investments in associated companies. On each balance sheet date, the Company assesses whether there are objective indications for the impairment of an investment in an associated company. With regard to the underlying criteria, please refer to the comments on impairment of financial assets. Impairment tests and the recognition of impairment losses or reversals are conducted in the same way as for intangible assets with limited useful lives.

Fair value measurement

In some cases, assets and liabilities are measured either on initial recognition or during subsequent valuations at fair value.

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. The fair value measurement is based on the presumption that the transaction to sell the asset or transfer the liability takes place either:

- In the principal market for the asset or liability, or
- In the absence of a principal market, in the most advantageous market for the asset or liability.

The principal or the most advantageous market must be accessible for the Group.

The fair value of an asset or a liability is measured using the assumptions that market participants would use when pricing the asset or liability, assuming that market participants act in their economic best interest.

A fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use.

The Group uses valuation techniques that are appropriate in the circumstances and for which sufficient data are available to measure fair value, maximizing the use of relevant observable inputs and minimizing the use of unobservable inputs.

All assets and liabilities for which fair value is measured or disclosed in the financial statements are categorized within the fair value hierarchy, described as follows, based on the lowest level input that is significant to the fair value measurement as a whole:

- **Level 1** – quoted (unadjusted) market prices in active markets for identical assets or liabilities
- **Level 2** – valuation techniques for which the lowest level input that is significant to the fair value measurement is directly or indirectly observable
- **Level 3** – valuation techniques for which the lowest level input that is significant to the fair value measurement is unobservable

For assets and liabilities that are recognized in the financial statements on a recurring basis, the Group determines whether transfers have occurred between levels in the hierarchy by re-assessing categorization (based on the lowest level input that is significant to the fair value measurement as a whole) at the end of each reporting period.

For the purpose of fair value disclosures, the Group has determined classes of assets and liabilities on the basis of the nature, characteristics and risks of the asset or liability and the level of the fair value hierarchy as explained above.

Leases

The determination of whether an arrangement contains a lease is based on the economic substance of the arrangement at the time of signing and requires an assessment of whether the fulfillment of the arrangement is dependent on the use of a specific asset or assets and the arrangement conveys a right to use the asset.

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■ Group as lessee

Finance leases, which transfer to the Company substantially all the risks and benefits incidental to ownership of the leased item, are capitalized at the inception of the lease period. The leased property is carried at fair value or, if lower, at the present value of the minimum lease payments. Lease payments are apportioned between the finance charges and reduction of the lease liability so as to achieve a constant rate of interest on the remaining balance of the liability. Finance expenses are charged directly against income.

Capitalized leased assets are fully depreciated over the shorter of the estimated useful life of the asset and the lease term, if there is no reasonable certainty that the Company will obtain ownership by the end of the lease term.

Significant agreements classified as finance leases relate to IRU agreements (Indefeasible Rights of Use) and the use of leased city networks of the Versatel Group. IRUs are amortized over the contract term or, if there is a favorable purchase option, over their economic useful life.

Operating lease payments are recognized as an expense in the income statement on a straight-line basis over the lease term.

■ Group as lessor

In those cases where Group companies agree finance leases as the lessor, a receivable is recognized at an amount equal to the net investment in the lease. The lease payments are apportioned between repayment of principal and finance income.

If the Group bears all substantial risks and rewards (operating lease), the leased asset is recognized in the balance sheet by the lessor. Measurement of the leased asset is then based on the accounting policies applicable to that asset. The lease payments are recognized in profit or loss by the lessor.

Financial instruments – financial assets

The Group's financial assets comprise cash and short-term deposits, trade receivables, receivables from loans and other receivables, as well as listed and non-listed financial instruments.

Financial assets are carried at fair value on initial recognition. In the case of other financial investments than those classified as held at fair value through profit or loss, transaction costs directly attributable to the acquisition of the asset are also considered.

Financial assets are classified according to the valuation categories

- loans and receivables
- available-for-sale financial assets

at the moment of initial recognition.

All standard market purchases and sales of financial assets are recognized on the trading day, i.e. on the day on which the Company entered into the obligation to purchase the asset.

Standard market purchases and sales are purchases and sales of financial assets which prescribe the delivery of the assets within a period specified by market regulations or conventions.

Loans and receivables are non-derivative financial assets with fixed or determinable payments, which are not quoted in an active market. Following initial recognition, loans and receivables are carried at amortized cost using the effective interest method less allowances for impairment. Profits and losses are recognized in the period when the loans and receivables are eliminated or impaired or as part of amortization.

Available-for-sale financial assets are non-derivative financial assets which are classified as being available for sale and which have not been assigned to any other category. After initial recognition, available-for-sale financial assets are carried at fair value, unless there is significant uncertainty in the estimation of value. Non-realized profits or losses are recognized directly in equity in the revaluation reserve. Impairment is recognized in profit or loss. On disposal of available-for-sale financial assets, the cumulative profit or loss previously recognized in equity is reclassified to the income statement. If the fair value of available-for-sale financial assets cannot be reliably calculated, they are measured at amortized cost. If they were previously classified as financial assets held at fair value through profit or loss, they are reclassified correspondingly in the case of significant uncertainty in the estimation of value. Fair value at this moment represents the acquisition cost under the new valuation category.

Financial instruments – impairment of financial assets

On each balance sheet date, the Company assesses whether there has been any impairment of a financial asset or group of financial assets.

If there is an objective indication that **financial assets carried at amortized cost** are impaired, the loss is calculated as the difference between the asset's carrying value and the present value of the expected future cash flows (with the exception of expected future credit losses not yet occurred), discounted with the original effective interest rate of the financial asset (i.e. the effective interest rate on initial recognition). Allowances for trade receivables are made on the basis of experience values by classifying receivables according to age and on the basis of other information regarding the impairment of customer-specific receivables. The asset's carrying value is reduced using an impairment account. The impairment loss is recognized in the income statement. If the scale of the impairment is reduced in one of the following reporting periods and this reduction can be objectively attributed to an event occurring after recognition of impairment, the allowance is reversed. This write-back is limited in scale to amortized cost at the time of the write-back. The write-back is recognized in the income statement.

If the value of an **available-for-sale financial asset** is impaired, an amount recognized in equity amounting to the difference between acquisition cost (less any redemption and amortization) and current fair value of this financial asset is reclassified to the income statement.

In order to ascertain impairment requiring recognition, information concerning all adverse changes in the technological, market-related, economic or legal environment is considered. A significant or persistent decrease in the fair value of an equity instrument below its acquisition cost is also an objective indication of impairment.

A significant decrease is assumed if the decline in fair value of an equity instrument at the end of the reporting period is more than 25% below its average cost. This does not apply if the prevailing circumstances and situation in exceptional cases clearly indicate that there is no impairment.

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If an impairment is recognized for an available-for-sale financial asset, all further declines in the fair value in subsequent periods must also be recognized as impairments. Consequently, in the case of available-for-sale financial assets, an impairment charge equal to the difference between the fair value and the original costs less impairment charges of previous periods must be recognized at the end of each reporting period.

Impairment charges recognized in profit or loss for available-for-sale equity instruments may not be reversed in profit or loss, but are reclassified from equity to the income statement as soon as the equity instrument is sold.

Write-backs of debt instruments classified as available-for-sale, are recognized in the income statement if the increase in the instrument's fair value objectively results from an event which occurred after recognizing an impairment charge.

Financial instruments – financial liabilities

The Group's financial liabilities mainly comprise trade accounts payable, liabilities due to banks, and liabilities from finance leases.

Financial liabilities are initially recognized at the fair value of the consideration received less transaction costs relating to the loan. Liabilities from finance leases are initially recognized at the present value of the minimum lease payments.

After initial recognition, they are measured at amortized cost using the effective interest method.

Financial instruments – derivative financial instruments and hedging relationships

The Group occasionally uses derivative financial instruments in order to hedge against interest and exchange rate risks. Derivative financial instruments are recognized at fair value on the date of the agreement and carried at fair value in the subsequent periods. The fair value of interest derivatives is calculated on the basis of present value models using market information (interest rate curves) as well as – where material – the individual credit risk of the Company. Derivative financial instruments are recognized as assets if their fair value is positive and as liabilities if their fair value is negative. Profit or loss resulting from changes in the fair value of derivative financial instruments which do not meet the criteria for recognition as hedging relationships are recognized immediately in the income statement.

When entering into a **hedging relationship** to hedge against the risk of cash flow fluctuations, certain derivatives are allocated to underlying transactions which can be attributed to a risk connected with a recognized asset or liability or the risk connected with the intended transaction (cash flow hedge). The hedging instruments in a hedge are also carried at market values. However, changes in value relating to the effective portion are recognized in the cash flow hedge reserve, a separate item under equity ("Cash flow hedge reserve"). Any ineffectiveness is recognized in profit or loss. Effectiveness is measured as at the end of the reporting period using the hypothetical derivative method. The amounts recognized in equity are reclassified to the statement of comprehensive income in the period in which the hedge influences the period result, e.g. when hedged financial income or expenses are recognized or when an expected sale is made.

Inventories

Inventories are valued at the lower of cost and net realizable value. Net realizable value comprises the estimated sales proceeds less estimated necessary selling costs. Adequate valuation allowances for excess inventories are made to provide for inventory risks.

Valuation is also based in part on time-related write-downs for inventories. Both the size and distribution over time of such write-downs represents a best-possible estimation of net realizable value and are thus subject to uncertainties. On indication of decreased net realizable value, inventories are corrected by recognizing suitable impairment charges.

Treasury shares

Treasury shares are deducted from shareholders' equity. The purchase, sale, issue or retirement of treasury shares is not recognized in the income statement.

The cancellation of treasury shares results in the pro rata reversal of the item "Treasury shares" disclosed in shareholders' equity at the expense of the remaining shareholders' equity. The Group uses the following application sequence:

- The cancellation of treasury shares is always deducted from share capital in the amount of the par value.
- The amount exceeding par value is first derecognized in the amount of the value contribution from employee stock ownership plans (SARs and convertible bonds) against capital reserves.
- Any amount exceeding the value contribution from employee stock ownership plans is derecognized against accumulated profit.

Cash and cash equivalents

Cash and cash equivalents consist of bank balances, other investments, checks and cash in hand, which all have a high degree of liquidity and maturities of less than 3 months – calculated from the date of purchase.

Pensions and other post-employment benefits

Payments to defined contribution retirement benefit plans are expensed on payment of salary to the employee.

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Provisions

Provisions are formed if the Group has a current (legal or actual) obligation resulting from a past event which will probably give rise to the outflow of resources with an economic benefit to fulfill the obligation, provided that the level of the obligation can be reliably estimated. Such estimates are subject to significant uncertainties. If the Group expects at least partial compensation for a recognized provision (e.g. in the case of an insurance policy), this compensation is recognized as a separate asset if the reimbursement is virtually certain. The expense from forming the provision is recognized in the income statement after deducting the reimbursement. If the interest effect from discounting is significant, provisions are discounted at a pre-tax interest rate which reflects the specific risk of the debt, if so required by the individual case. In the event of a discount, the increase in provisions caused by the passage of time is recognized as a financial expense.

Share-based payment

Group employees receive share-based payments as remuneration for their work in the form of equity instruments and the granting of value growth rights, which may be settled in cash or via equity instruments at the Company's discretion. As the United Internet Group has no agreements with a current obligation for cash settlement, all share-based payment transactions are carried in the balance sheet as equity-settled payment transactions.

The cost of granting equity instruments is measured using the fair value of such equity instruments on the date of granting. Fair value is measured using a suitable option price model. With the aid of the respective valuation process, the value component is determined at the time of granting, also for subsequent valuation until the end of the term. On every valuation date, however, the expected exercise volume is to be reassessed with a corresponding adjustment of the additional amount under consideration of additions already made. Any necessary adjustment bookings are to be made in the period in which new information about the exercise volume becomes available. The measurement of cost from the granting of equity instruments and the corresponding increase in equity occurs over the period in which the vesting or performance conditions have to be satisfied (the so-called vesting period). This period ends after the vesting date, i.e. the date on which the employee concerned has gained irrevocable entitlement. The cumulative expenses recognized on each balance sheet date for equity-settled transactions until the vesting date reflect the extent to which the vesting period has expired and the number of equity instruments which, according to the Group's best-possible estimate, will actually be vested after the vesting period. The income or expense recognized in the income statement represents the development of cumulative expenses recognized at the beginning and end of the reporting period. No expense is recognized for payment rights which are not vested.

Earnings per share

Undiluted or basic earnings per share are calculated by dividing the result attributable to the holders of registered shares by the weighted average number of shares outstanding during the period.

Diluted earnings per share are calculated similarly to basic earnings per share with the exception that the average number of shares outstanding increases by the portion which would result if the exercisable subscription rights resulting from employee stock participation programs had been exercised.

In addition, undiluted and diluted earnings per share are disclosed separately for continued and discontinued operations.

Financial income

Interest income is recognized as interest accrues (using the effective interest rate, i.e. the rate which discounts estimated future cash receipts through the expected life of the financial instrument to the net carrying amount of the financial asset). Dividend income is recognized with the inception of the legal right to payment.

Government grants

Government grants are recognized where there is reasonable certainty that the grant will be received and the Company will satisfy all attaching conditions. Where the grants relate to an expense item, they are recognized as income in scheduled amounts over the period necessary to match the grants to the costs they are intended to compensate. Grants relating to an asset item reduce the carrying value of that item.

Current income tax and deferred taxes

The tax expense for a period comprises current taxes and deferred taxes. Taxes are recognized in the income statement, unless they relate to transactions that are recognized in other comprehensive income or directly in equity. In these cases, taxes are recognized accordingly in other comprehensive income or directly in equity.

Current taxes are valued at the amount at which a refund from the tax authorities or a payment to the tax authorities is expected. The amount is calculated on the basis of the tax rates and tax laws applicable on the reporting date.

The liability method is used to create deferred taxes on all temporary differences existing on the reporting date between the carrying value of an asset or a liability in the balance sheet and the fiscal carrying value.

Deferred tax liabilities are recognized for all taxable temporary differences, except:

- where the deferred tax liability from initial recognition of goodwill or of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the profit according to IFRS nor taxable profit or loss, and
- in respect of taxable temporary differences associated with investments in subsidiaries, associated companies and interests in joint ventures, where the timing of the reversal of the temporary differences can be controlled and it is probable that the temporary differences will not reverse in the foreseeable future.

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Deferred tax assets are recognized for all deductible temporary differences, carryforward of unused tax credits and unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences, and the carryforward of unused tax credits and unused tax losses can be utilized, except:

- where the deferred tax asset relating to the deductible temporary difference arises from the initial recognition of an asset or liability in a transaction that is not a business combination and, at the time of the transaction, affects neither the profit or loss according to IFRS nor taxable profit or loss, and
- in respect of taxable temporary differences associated with investments in subsidiaries, associated companies and interests in joint ventures, deferred tax assets are recognized only to the extent that it is probable that the temporary differences will reverse in the foreseeable future and taxable profit will be available against which the temporary differences can be utilized.

The carrying value of deferred tax assets is reviewed at each balance sheet date and reduced to the extent that it is no longer probable that sufficient taxable profit will be available to allow all or part of the deferred tax asset to be utilized. Unrecognized deferred tax assets are reassessed at each balance sheet date and are recognized to the extent that it has become probable that future taxable profit will allow the deferred tax asset to be recovered.

Deferred tax assets and liabilities are measured at the tax rates that are expected to apply to the year when the asset is realized or the liability is settled, based on tax rates (and tax laws) that have been enacted as of the balance sheet date.

Deferred tax assets and deferred tax liabilities are offset, if a legally enforceable right exists to set off current tax assets against current tax liabilities and the deferred taxes relate to the same taxable entity and the same taxation authority.

Discontinued operations

Discontinued operations are business fields that are either held for sale or have already been sold and that can be clearly separated from other business activities from a business perspective as well as for the purposes of financial reporting. In addition, the discontinued operation must represent a separate significant business field or geographical area of the Group. Non-current assets that are held for sale individually or together in a disposal group or that belong to a discontinued operation no longer undergo scheduled depreciation. They are carried at the lower of carrying amount and fair value less selling costs to be incurred. If this amount is below the carrying amount, an impairment cost is charged. The result from the measurement of divested business fields and the gains and losses from the disposal of discontinued operations, as well as the result from ordinary operations of these business fields, are disclosed separately in the consolidated income statement as the result from discontinued operations. Prior-year figures of the income statement are adjusted accordingly. The respective assets and liabilities are disclosed in a separate balance sheet item. Cash flows from discontinued operations are reported separately in the cash flow statement, and prior-year figures adjusted accordingly. However, the balance sheet of the previous year is not adjusted.

2.2 Summary of measurement principles

The Group's measurement principles can be summarized and simplified as follows – providing there is no impairment:

Balance sheet item	Measurement
ASSETS	
Intangible assets	
with limited useful lives	Amortized cost
with indefinite useful lives	Impairment-only recognition
Property, plant and equipment	Amortized cost
Shares in associated companies	Equity method
Available-for-sale financial assets	Fair value through other comprehensive income
Trade accounts receivable	Amortized cost
Inventories	Lower of cost and net realizable value
Prepaid expenses	Amortized cost
Other financial assets	Amortized cost
Other non-financial assets	Amortized cost
Deferred tax assets	Undiscounted valuation at tax rates valid in the period in which an asset is realized or a liability settled
LIABILITIES	
Liabilities due to banks	Amortized cost
Deferred tax liabilities	Undiscounted valuation at tax rates valid in the period in which an asset is realized or a liability settled
Income tax liabilities	Expected payment to the tax authorities based on tax rates applicable on the reporting date or in the near future
Trade accounts payable	Amortized cost
Deferred revenue	Amortized cost
Other accrued liabilities	Expected discounted amount that will lead to outflow of resources
Other financial liabilities	Amortized cost
Other non-financial liabilities	Amortized cost

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2.3 Effects of new or amended IFRS standards

The following standards and interpretations amended or published by the IASB were mandatory in fiscal year 2017:

■ IAS 12 Recognition of Deferred Tax Assets for Unrealised Losses

The amendments to IAS 12 are mainly aimed at clarifying accounting for deferred tax assets arising from unrealized losses on assets carried at fair value. The initial application of these amendments has no significant impact on the consolidated financial statements.

■ IAS 7 Disclosure Initiative

The amendments have the objective that an entity should provide disclosures that allow users of financial statements to evaluate changes in liabilities from financing activities. The initial application of these amendments resulted in additional disclosures in the notes to the consolidated financial statements.

■ Annual Improvements 2014–2016

The amendment clarifies the scope of the disclosure requirements of IFRS 12 relating to interests in subsidiaries, joint ventures or associates classified as held for sale. The clarification has no impact on the consolidated financial statements.

2.4 Accounting standards already published but not yet mandatory

Apart from the IFRSs mentioned above whose application is mandatory, the IASB has also published further IFRSs and IFRICs which have already partly received EU endorsement but which will not become mandatory until a later date. United Internet AG will probably only implement these standards when their adoption becomes mandatory.

Standard		Mandatory for fiscal years beginning on or after	Endorsed by EU Commission
IFRS 2	Classification and Measurement of Share-based Payment Transactions	Jan. 1, 2018	No
IFRS 9	Financial Instruments	Jan. 1, 2018	Yes
IFRS 9	Amendment: Prepayment Features with Negative Compensation	Jan. 1, 2019	No
IFRS 15	Revenue from Contracts with Customers (and amendment of initial date of application)	Jan. 1, 2018	Yes
IFRS 15	Clarifications to IFRS 15 Revenue from Contracts with Customers	Jan. 1, 2018	Yes
IFRIC 22	Foreign Currency Transactions and Advance Consideration	Jan. 1, 2018	No
IFRS 1, IAS 28	Annual Improvements 2014–2016	Jan. 1, 2018	No
IAS 12, IAS 28, IFRS 3	Annual Improvements 2015–2017	Jan. 1, 2019	No
IFRS 16	Leases	Jan. 1, 2019	Yes
IFRIC 23	Uncertainty over Income Tax Treatments	Jan. 1, 2019	No
IAS 28	Classification on IAS 28 Investments in Associates and Joint Ventures	Jan. 1, 2019	No
IFRS 10 / IAS 28	Sale or Contribution of Assets between an Investor and its Associate or Joint Venture	Postponed until further notice	

In July 2014, the IASB issued the final version of **IFRS 9** – Financial Instruments which replaces IAS 39 – Financial Instruments: Recognition and Measurement and all previous versions of IFRS 9. IFRS 9 combines the three project phases of accounting for financial instruments “Classification and Measurement”, “Impairment”, and “Hedge Accounting”. IFRS 9 is mandatory for the first time in fiscal years beginning on or after January 1, 2018. Apart from Hedge Accounting, the standard is to be applied retroactively. However, the disclosure of comparative information is not required. The regulations concerning Hedge Accounting are generally to be used prospectively, with a few exceptions. United Internet has analyzed the effects on the presentation of its financial position and performance or cash flows. The assessment is based on currently available information and may change as a result of further reasonable and reliable information that the Group will become aware of in the fiscal year 2018 when IFRS 9 is first applied. All in all, the Group does not expect any significant impact on its balance sheet and equity.

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The main impact for the United Internet Group is expected to be from the classification and measurement of assets currently classified as "available-for-sale". The Company assumes that all financial assets held at fair value will continue to be measured at fair value. Assets that are currently held as "available-for-sale" and whose gains or losses are recognized in other comprehensive income are measured, on a case-by-case basis, either at fair value through profit or loss or recognized directly in equity and in other comprehensive income, but later no longer reclassified to profit or loss. Recognition through profit or loss increases the volatility of the reported profit or loss. The reserve for "available-for-sale" financial assets currently disclosed in accumulated other comprehensive income is reclassified to retained earnings insofar as it is measured at fair value through profit or loss in the future.

IFRS 15 - Revenue from Contracts with Customers was published in May 2014 and revised in April 2016. The standard introduces a five-step model for the accounting of revenue from contracts with customers.

IFRS 15 - Revenue from Contracts with Customers provides a single, principles-based five-step model for the determination and recognition of revenue to be applied to all contracts with customers. The new standard replaces the previous standards IAS 18 - Revenue and IAS 11 - Construction Contracts. For fiscal years beginning on or after January 1, 2018, either full or modified retroactive application is required. Premature application is permitted. In the fiscal year 2016, the Group made a preliminary assessment of IFRS 15, which was supplemented by a more detailed investigation continued in the fiscal year 2017.

The United Internet Group will exercise its right to use the modified retrospective transitional method. The prior-year figures in the consolidated financial statements for fiscal year 2018 will not therefore be adjusted. As of January 1, 2018, the conversion effects will be recognized in equity.

The application of IFRS 15 will have a significant impact on the financial position and performance of the United Internet Group. The effects mainly concern the accounting of so-called multiple-element arrangements. Whereas under the previous regulations, revenue from sales of hardware supplies as part of a multiple-element arrangement was only recognized in the amount billed to the customer, the new regulations require a separation of the total price for the customer contract based on the relative standalone selling prices of the individual elements. The resulting revenue share allocated to hardware is recognized on delivery to the customer. As the allocated revenue share generally exceeds the amount charged to the customer, the new regulations lead to accelerated revenue recognition. At the same time, the revenue share attributable to hardware rises at the expense of revenues from the services rendered. Within the context of initial application of IFRS 15, pro-rata revenues for all current service contracts on January 1, 2018 with previously supplied subsidized hardware are recognized directly in equity. However, the revenue from the respective service contract is reduced by the revenue share allocated for hardware.

Moreover, the new regulations require the capitalization of contract costs. Provided that certain conditions are met, the costs of contract completion (e.g. provision fees, expected termination fees) and the costs of contract acquisition (e.g. sales commissions) must also be capitalized in future and spread over the estimated period of use.

Customer acquisition costs were previously recognized immediately as an expense in the statement of comprehensive income. In the course of initial recognition, contract completion and contract acquisition costs are capitalized for all service contracts running on January 1, 2018, thus leading to future depreciation charges. Consequently, during the transitional period, customer acquisition costs already expensed under IAS 18 are expensed again in part due to IFRS 15.

The effects of applying IFRS 15 were analyzed as part of a Group-wide project.

The United Internet Group currently expects an effect of approx. half a billion euros (before deferred taxes) on the Group's equity from the transition to IFRS 15. The effect mainly results from the initial recognition of contractual assets, customer acquisition costs, and accrued contract completion costs. The contractual assets mainly result from the early recognition of revenue for hardware. The customer acquisition costs mainly comprise sales commissions and similar items. The accrued contract completion costs include the provision fees, changer fees, termination fees etc.

The accounting standard **IFRS 16** – Leases revises lease accounting and obliges lessees to disclose all leases in the balance sheet. No basic difference is made in future between an asset which is leased and one which is acquired on credit terms. IFRS 16 applies for the first time in fiscal years beginning on or after January 1, 2019. The new regulation will lead to an increase in non-current assets in the consolidated balance sheet (for right of use), and at the same time an increase in financial liabilities (due to the payment obligation). As a result, every leasing or rental arrangement is disclosed in the balance sheet. In the income statement, this leads to increased depreciation and interest expense. In turn, this results in increased EBITDA. However, as financial liabilities increase at the same time, the ratio of net financial liabilities to adjusted EBITDA (relative indebtedness) may change although there has been no economic change.

Leasing or rental arrangements with terms up to twelve months and low-value contracts are exempted from the recognition obligation.

In the field of operating leases, United Internet AG is predominantly a lessee at present, but is active as both lessor and lessee in the field of finance leases. The Group's operating leases mainly refer to rental obligations for network infrastructure, including subscriber lines, buildings, technical equipment and vehicles. The effects of IFRS 16 on the consolidated financial statements of United Internet AG are therefore likely to be mainly in the amount of operating leases and the resulting depreciation and interest effects, which will replace the current operating lease expenses (see note 44).



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No significant impact is expected from the other IFRS amendments.

3. Significant accounting judgments, estimates and assumptions

The application of accounting and valuation methods in preparing the consolidated financial statements requires management to make certain accounting judgments, estimates and assumptions. These have an effect on the disclosed amounts of earnings, expenditure, assets and liabilities, as well as contingent liabilities, as of the balance sheet date. Actual amounts may differ from these estimates and assumptions, which may lead in future to significant adjustments to the carrying values of the assets and liabilities concerned.

Accounting judgments

In the application of accounting and valuation methods, management made the following accounting judgments which significantly affect amounts in the annual financial statements.

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The consolidated financial statements are affected in particular by IRUs (Indefeasible Rights of Use). With this form of lease, management assesses whether all substantial risks and rewards related to the asset are transferred. If management concludes that all risks and rewards from usage are transferred to the Group company or to the customer, the contract is accounted for in accordance with IAS 17 as a finance lease. The carrying value of liabilities from finance leases amounted to € 91,787k as of December 31, 2017 (prior year: € 99,189k).

Determining whether the definition of a discontinued operation pursuant to IFRS 5 is met is a fundamentally discretionary decision as it must be a significant business division, among other things. In the course of the merger between affilinet and Awin, management has assessed affilinet GmbH as a significant business division and adjusted the statement of comprehensive income for the current and previous year. Furthermore, it was decided not to eliminate the deconsolidation result according to the equity interest in Awin.

Estimates and assumptions

The most important forward-looking assumptions and other major sources of uncertainty as of the balance sheet date, which involve the risk of significant adjustments to the carrying values of assets and liabilities in the coming fiscal year, are explained below.

Impairment of non-financial assets

Goodwill and other intangible assets with undefined useful lives are assessed at least once a year or on indication of impairment. Other non-financial assets are tested for impairment if there is any indication that the carrying value exceeds the recoverable amount. The recoverable value of the respective cash-generating unit to which the goodwill or intangible assets have been allocated is calculated either as "value-in-use" or fair value less cost of sell.

In order to estimate value-in-use or fair value less cost of sell, management must estimate expected future cash flows of the asset or cash-generating unit and select a suitable discount rate to assess the present value of these cash flows. Further details, including a sensitivity analysis of significant assumptions, are presented in the note "Impairment of goodwill and intangible assets with indefinite useful lives".

The most important management assumptions for the measurement of the recoverable value of cash-generating units include assumptions regarding the development of sales, margins and the discount rate.

Carrying amounts and impairment test for investments in associated companies

As of the balance sheet date, the United Internet Group holds investments in various associated companies. If the consideration for the acquisition of the shares is made by contributing a subsidiary or other investment, the acquisition costs of the associated company are to be determined by means of a company valuation. This valuation is closely related to the assumptions and estimates made by management with respect to the future development of the respective company and the applicable discount rate.

In accordance with IAS 28.31, the Company examines on the balance sheet date whether the net investment of the United Internet Group in the respective associated company requires an additional impairment charge.

The carrying amount for shares in associated companies is measured on the basis of their prorated annual results. If the annual results for the fiscal year are not known, an estimate is made on the basis of the latest publicly available financial information of the respective associated company.

The recoverable amounts of listed associated companies is based on the respective share price. The recoverable amounts of non-listed companies consider both the available past experience for the respective company and expectations of its future development. As these expectations are based on numerous assumptions, the calculation of recoverable amounts depends on discretionary factors. As of December 31, 2017, the carrying value of investments in listed associated companies amounted to € 322,891k (prior year: € 724,921k). The carrying value of investments in non-listed associated companies as of December 31, 2017 amounted to € 95,157k (prior year: € 30,625k).

Share-based payments

The Group measures the cost of granting equity instruments to employees by using the fair value of these equity instruments at the moment they were granted. A suitable valuation model must be used to estimate fair value when granting equity instruments; this depends on the contractual terms. Suitable data must also be chosen for the valuation process, including the expected option term, volatility, exercise behavior and dividend yield, as well as the corresponding assumptions.

In the reporting period, expenses for share-based remuneration (stock appreciation rights and employee stock ownership plan) amounted to € 5,161k (prior year: € 4,433k).

Taxes

Uncertainties exist with respect to the interpretation of complex tax regulations and the amount and timing of future taxable income. Given the complexity of existing contractual agreements, differences arising between the actual results and the assumptions made, or future changes to such assumptions, could necessitate future adjustments to tax income and expense already recorded. The Group establishes provisions, based on reasonable estimates, for possible consequences of audits by the tax authorities of the respective countries in which it operates.

The amount of such provisions is based on various factors, such as experience of previous tax audits and differing interpretations of tax regulations by the taxable entity and the responsible tax authority. Such differences of interpretation may arise on a wide variety of issues depending on the conditions prevailing in the respective Group company's domicile. The carrying value of income tax liabilities as of December 31, 2017 amounted to € 130,195k (prior year: € 64,145k).

Trade accounts receivable

Trade accounts receivable are carried in the balance sheet less impairment charges made. Allowances for doubtful claims are made on the basis of a systematic review as well as valuations conducted as part of credit monitoring. Assumptions concerning the payment behavior and creditworthiness of customers are subject to significant uncertainties. The carrying value of trade receivables amounted to € 343,571k as of December 31, 2017 (prior year: € 283,866k).

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Inventories

Inventories are valued at the lower of cost and net realizable value. Net realizable value comprises the estimated sales proceeds less the necessary expected costs up to the time of sale. Valuation is also based in part on write-downs for inventories. The size of such write-downs represents a best-possible estimation of net realizable value and is thus subject to uncertainties. The carrying values of inventories as of the balance sheet date amounted to € 44,672k (prior year: € 39,490k). Please refer to note 19 for further information.

Property, plant and equipment and intangible assets

Property, plant and equipment and intangible assets are valued at cost on initial recognition. After initial recognition, property, plant and equipment and intangible assets with limited useful lives are depreciated over their expected economic useful lives using the straight-line method. Expected useful lives are based on historical experience and thus subject to significant uncertainties, especially with regard to unforeseen technological developments. The carrying value of tangible and intangible assets amounted to € 1,954,761k as of December 31, 2017 (prior year: € 892,672k).

Accounting for business combinations

Business combinations are accounted for using the purchase method. Goodwill arising from a business combination is initially measured at cost, being the excess of the acquisition cost of the operation over the fair value of the identifiable assets, liabilities and contingent liabilities acquired. Costs accrued in the course of the business combination are recognized under other operating expense.

However, assumptions made to determine the respective fair value of the acquired assets and liabilities as of the date of acquisition are subject to significant uncertainties. For the identification of intangible assets, depending on the type of intangible asset and complexity of determining its fair value, the Company either uses independent appraisals of external assessors or fair value is determined internally using a suitable assessment technique for the respective intangible asset, generally based on a forecast of total expected future cash flow generation. These valuations are closely related to assumptions and estimates which management has made about the future development of the respective assets and the applicable discounted interest rate.

The carrying values of goodwill as of the balance sheet date amounted to € 3,579,780k (prior year: € 1,087,685k).

Provisions

Provisions are formed if the Group has a legal or actual obligation resulting from a past event which will probably give rise to the outflow of resources with an economic benefit to fulfill the obligation, provided that the level of the obligation can be reliably estimated. Such estimates are subject to significant uncertainties. The carrying value of provisions amounted to € 82,897k as of December 31, 2017 (prior year: € 52,908k).

4. Business combinations and investments

4.1. Business combinations in the fiscal year

Acquisition of the Drillisch Group

On May 12, 2017, the Management Boards of United Internet AG and Drillisch AG (each with the approval of their respective Supervisory Boards) entered into a business combination agreement governing the step-by-step acquisition of 1&1 Telecommunication SE by the former Drillisch AG (now 1&1 Drillisch AG) under the umbrella of United Internet.

The aim of the overall transaction (now completed) was to contribute 1&1 Telecommunication SE to Drillisch and thus create a more powerful full-service telecommunications provider under the umbrella of United Internet with considerable potential for synergies and growth. The combination of the two companies has now created a strong fourth player in the German telecommunications market alongside the three major full-service providers (Deutsche Telekom, Vodafone and Telefónica).

The merger of 1&1 Telecommunication and Drillisch was completed in two steps:

In the first step, United Internet contributed 9,372 shares of 1&1 Telecommunication SE (corresponding to around 7.75% of the share capital of 1&1 Telecommunication) to Drillisch in the course of a capital increase for non-cash contribution from approved capital under the exclusion of subscription rights conducted by Drillisch. In return, United Internet received 9,062,169 new Drillisch shares.

In a second step, the remaining 111,628 shares in 1&1 Telecommunication SE held by United Internet (corresponding to around 92.25% of the share capital of 1&1 Telecommunication) were contributed to Drillisch in return for the issue of 107,937,831 new Drillisch shares in total. This step required the approval of an Extraordinary General Meeting of Drillisch, which was held on July 25, 2017. At this general meeting, 97.85% of share capital represented voted in favor of the proposed capital increase for non-cash contribution. The majority of 75% required for approval was thus reached.

The transaction was accompanied by a voluntary public tender offer submitted by United Internet AG for all outstanding shares of Drillisch AG. United Internet offered to purchase the no-par value bearer shares, each representing a proportionate amount of Drillisch AG share capital of €1.10, from the current Drillisch shareholders. As compensation, United Internet offered to pay € 50 per no-par share – which is 8.2% more than the volume-weighted average domestic share price of Drillisch shares over the past three months as of May 11, 2017 (€ 46.18). The cash offer was made in accordance with the condition specified in the offer document published on May 26, 2017 regarding anti-trust approval. This condition was met with the approval of the German Federal Cartel Office (“Bundeskartellamt”) on June 9, 2017. There was no minimum acceptance threshold for the tender offer.

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With the registration of the capital increase for non-cash contribution in the Commercial Register on September 8, 2017, Drillisch acquired the remaining stake of approx. 92.25% in 1&1 Telecommunication. The capital increase had been approved by the Extraordinary General Meeting of Drillisch on July 25, 2017. 1&1 Telecommunication is thus a wholly-owned subsidiary of Drillisch. In return, United Internet received 107,937,831 new Drillisch shares, increasing United Internet's stake in Drillisch to 73.29%. As a result, Drillisch has been consolidated in the financial statements of United Internet since the date of acquisition (September 8, 2017). Initial consolidation of Drillisch AG is made in accordance with IFRS 3 – Business Combinations using the acquisition method.

The measurement basis for the goodwill is calculated as follows:

Valuation basis goodwill Drillisch AG acquisition	€k
Pro-rated transfer of shares in 1&1 Telecommunication as part of non-cash capital increase Drillisch (September 8, 2017)	1,280,731
Existing shares in Drillisch valued at stock exchange price	1,248,154
Sub-total	2,528,885
Non-controlling interests at fair value of Drillisch net assets	167,150
Valuation basis for goodwill	2,696,035

The fair value of existing shares in Drillisch (including shares from the capital increase in May 2017) amounted to € 1,248,154k. Income from the revaluation of shares on the acquisition date amounted to € 302,951k.

Net cash inflow from the acquisition was as follows:

Cash flow from investing activity	€k
Assumed cash and cash equivalents	33,125
Net cash inflow	33,125

Total transaction costs of € 13,657k were expensed in the course of the business combination.

The assets and liabilities of Drillisch AG were recognized on the basis of purchase price allocation. Goodwill of € 2,070 million resulted from the purchase price allocation. The fair value of other intangible assets amounts to € 905.6 million. These mainly comprise customer relationships (€ 742 million), trademarks (€ 56 million) and a favorable purchasing contract (€ 71 million). Customer relationships were valued using the so-called MEEM approach (Multi-period Excess Earnings Method); an asset's fair value is derived from the calculation of the present value of post-tax earnings attributable to the asset. The valuation of the favorable purchasing contract is based on a comparison of the purchasing terms of Drillisch with those of a market participant. Trademarks are valued using the relief-from-royalty method.

The following table shows the assets and liabilities recognized using purchase price allocation (PPA):

ASSETS	€k
Current	
Cash and cash equivalents	33,125
Trade accounts receivable	64,604
Inventories	6,427
Other financial assets	27,280
Other non-financial assets	38
Non-current	
Other financial assets	1,095
Property, plant and equipment	7,532
Intangible assets	905,606
Deferred tax assets	42,536
Total assets	1,088,243
LIABILITIES	
Current	
Trade accounts payable	79,399
Advance payments received	3,267
Income tax liabilities	20,007
Other accrued liabilities	26,031
Other financial liabilities	22,372
Non-current	
Liabilities to banks	53,116
Deferred tax liabilities	255,805
Other accrued liabilities	1,993
Other financial liabilities	457
Total liabilities	462,447
Total identifiable net assets	625,796
Valuation basis for goodwill	2,696,035
Total identifiable net assets	-625,796
Goodwill from business acquisition	2,070,239

The non-controlling interests of 26.71% amount to € 167 million on the acquisition date and are valued with the corresponding share of the amount recognized for the purchased net assets (without goodwill).

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The gross trade accounts receivable amounted to € 91.4 million. The fair value of assumed trade accounts receivable and expected cash flow amounted to € 64.6 million.

Non-tax-deductible goodwill is allocated above all to non-separable assets, such as expected synergy effects, strategic benefits, and employee know-how. No allocation to the benefiting cash-generating units has been made.

Due to the ongoing valuation of the favorable purchasing contract, the purchase price allocation of the Drillisch Group has not been completed yet. As a result of the short period since the company acquisition, goodwill has not yet been allocated to the cash-generating units Drillisch and 1&1 Access.

As a result of the initial consolidation of the Drillisch Group, sales revenue increased by € 221.1 million and earnings decreased by € 25.8 million in the fiscal year 2017. If the Drillisch Group had already been included in the consolidated group of the United Internet Group as of January 1, 2017, sales revenue would have increased by € 647 million and earnings after taxes – without consideration of the previous at-equity investment in the Drillisch Group – would have improved by € 13.8 million as of December 31, 2017.

Acquisition of the Strato Group

On December 15, 2016, United Internet AG signed an agreement with the owner of Strato AG, Deutsche Telekom AG, regarding the acquisition of Strato AG. Based in Berlin, Strato AG employs over 500 people with operations mainly in Germany and the Netherlands. With over 1.8 million customer contracts, Strato's annual revenue for fiscal year 2016 was around € 127 million with EBITDA in 2016 of around € 48.5 million. The German Federal Cartel Office ("Bundeskartellamt") granted approval in February 2017.

The share purchase was made via 1&1 Internet Holding SE. The Company paid € 557.6 million in cash for the purchase of the shares in Strato AG. A conditional purchase price component of up to € 34 million is due at a later point subject to reaching certain performance goals. After deduction of assumed cash amounting to € 4.2 million, the Group's net cash outflow was € 553.3 million.

With effect from April 1, 2017 (date of acquisition), 1&1 Internet Holding SE assumed control over Strato AG.

The purchase price tranche of € 557.6 million due in 2017 at the holding structure level is financed by an internal loan from United Internet AG of € 350 million, as well as by prorated equity capital contributions of United Internet AG and Warburg Pincus. In the course of the acquisition of Strato AG, Warburg Pincus will retain its 33.33% stake in the "Business Applications" division in accordance with the partnership agreement.

In the course of the business combination, total transaction costs of € 5,504k were expensed; the major share of these transaction costs was already incurred in the fiscal year 2016.

Strato AG was first included in the consolidated financial statements of United Internet AG as of the date of acquisition. Initial consolidation of Strato AG was made in accordance with IFRS 3 – Business Combinations using the acquisition method.

The transferred consideration and net cash outflow were as follows:

Transferred consideration for the acquisition of Strato AG	€k
Cash purchase price	557,551
Fair value of conditional purchase price component	5,520
Transferred consideration	563,071

The net cash outflow from the acquisition was as follows:

Cash flow from investing activities	€k
Cash purchase price	557,551
Less assumed cash	-4,249
Net cash outflow	553,302

The assets and liabilities of Strato AG were recognized on the basis of a purchase price allocation. Goodwill of € 401,570k resulted from this purchase price allocation. The fair value of other intangible assets amounts to € 225,617k. These mainly include customer relationships (€ 179,027k), trademarks (€ 23,000k) and self-produced software (€ 18,833k).

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Cash flow	Audit opinion
Shareholders' equity	Responsibility statement

The following table, prepared on the basis of the preliminary purchase price allocation, presents an overview of the recognized assets and liabilities:

ASSETS	€k
Current	
Cash and cash equivalents	4,249
Trade accounts receivable	3,535
Prepaid expenses	7,233
Other financial assets	1,348
Non-current	
Other financial assets	2,625
Property, plant and equipment	33,967
Intangible assets	225,617
Total assets	278,574
LIABILITIES	
Current	
Trade accounts payable	5,073
Deferred revenue	25,501
Other accrued liabilities	67
Other financial liabilities	14,738
Other non-financial liabilities	2,543
Non-current	
Deferred tax liabilities	67,936
Other accrued liabilities	1,146
Other financial liabilities	69
Total liabilities	117,073
Total identifiable net assets	161,501
Goodwill from business acquisition	401,570
Transferred consideration	563,071

The gross trade accounts receivable amounted to € 6.2 million. The fair value of assumed trade accounts receivable and expected cash flow amounted to € 3.5 million.

Non-tax-deductible goodwill is allocated above all to non-separable assets, such as expected synergy effects, strategic benefits, and employee know-how. No allocation to the benefiting cash-generating units has been made.

As a result of the initial consolidation of Strato AG, sales revenue increased by € 99.2 million and earnings increased by € 5.6 million in the fiscal year 2017. If Strato AG had already been included in the consolidated group of the United Internet Group as of January 1, 2017, sales revenue would have increased by € 132.4 million and earnings after taxes would have decreased by € 0.7 million as of December 31, 2017.

Acquisition of the ProfitBricks Group

In a first step, the United Internet Group increased its existing stake in ProfitBricks GmbH from 30.2% to 44.4% GmbH with a purchase agreement dated June 26, 2017 between its subsidiary United Internet Investments Holding GmbH and Lakestar I LP. The purchase price for these shares amounted to € 7,920k.

With a purchase agreement dated July 24, 2017, 1&1 Internet SE – a subsidiary of the United Internet Group – subsequently acquired 100% of shares in ProfitBricks GmbH (from United Internet Investments Holding GmbH as well as the other outstanding shareholders) for a total purchase price of € 36,359k, of which € 4,416k was a variable purchase price component (conditional purchase price payment) and € 31,943k was paid in cash as fixed acquisition costs. On August 7, 2017, the German Federal Cartel Office ("Bundeskartellamt") stated that the transaction could be completed. The transaction was closed on August 8, 2017 with the purchase price payment.

The shares were purchased both internally from United Internet Investments Holding GmbH (44.4%) and from other shareholders (55.6%). The purchase price for shares acquired from the non-Group shareholders (55.6%) amounted to € 9,759k (payment in cash) as well as a conditional purchase price payment of € 4,416k.

In addition, transaction costs of € 130k were incurred, which were not capitalized.

The measurement basis for the goodwill is calculated as follows:

Valuation basis goodwill ProfitBricks acquisition	€k
Cash purchase price	9,759
Fair value of the conditional purchase price component	4,416
Old shares in ProfitBricks measured at fair value	22,184
Valuation basis for goodwill	36,359

The fair value of existing shares in ProfitBricks (including shares from the purchase from LakeStar) amounted to € 22,184k. Income from the revaluation of shares on the acquisition date amounted to € 16,053k.

Net cash outflow from the acquisition was as follows:

Cash flow from investing activity	€k
Cash purchase price	9,759
Less assumed cash and cash equivalents	-1,811
Net cash outflow	7,948

Balance sheet	Notes
Income statement	Fixed assets
Cash flow	Audit opinion
Shareholders' equity	Responsibility statement

Due to the short period between the acquisition date and the preparation of these consolidated financial statements, the combination is only carried with preliminary amounts.

The following table shows the amounts of the preliminary purchase price allocation (PPA):

ASSETS	€k
Current	
Cash and cash equivalents	1,811
Trade accounts receivable	2,939
Prepaid expenses	181
Other financial assets	61
Non-current	
Other financial assets	95
Intangible assets and property, plant and equipment	1,556
Total assets	6,643
LIABILITIES	
Current	
Trade accounts payable	1,803
Other accrued liabilities	16
Other financial liabilities	1,001
Other non-financial liabilities	108
Non-current	
Liabilities due to affiliated companies	8,665
Total liabilities	11,593
Total identifiable net assets	-4,950
Goodwill from business acquisition	41,309
Transferred consideration	36,359

The gross trade accounts receivable amounted to € 2.9 million. The fair value of assumed trade accounts receivable and expected cash flow amounted to € 2.9 million.

The resulting goodwill from the business combination will not be tax-deductible.

As a result of the initial consolidation of ProfitBricks GmbH, sales revenue increased by € 4.8 million and earnings decreased by € 2.2 million in the fiscal year 2017. If ProfitBricks GmbH had already been included in the consolidated group as of January 1, 2017, sales revenue would have increased by € 6.1 million and earnings after taxes – without consideration of the previous at-equity investment in ProfitBricks GmbH – would have decreased by € 4.1 million as of December 31, 2017.

4.2. Other company transactions of the fiscal year

Merger of affilinet and AWIN

United Internet and Axel Springer plan to create a joint affiliate network by merging their companies affilinet and AWIN. A corresponding agreement was signed on August 1, 2017.

As part of the transaction, United Internet contributed its affiliate marketing business operated by its subsidiary affilinet GmbH to AWIN AG in return for 20% of AWIN shares. 80% of AWIN shares are held by Axel Springer. The investment in AWIN AG is carried as an associated company using the equity method. Due to the short period between the transaction and the preparation of these consolidated financial statements, the purchase price allocation required for equity is still provisional.

The merger enables United Internet and Axel Springer to significantly strengthen their competitive standing in affiliate marketing and thus lay the foundation for accelerated growth in Germany and abroad. By pooling the expertise, skills and respective reach of AWIN and affilinet, the companies also plan to drive new revenue models. In addition, the business combination will lay the foundation for the targeted IPO of AWIN AG.

The merger was approved by the relevant anti-trust authorities in Austria and Germany on September 12 and 15, 2017 and closed as of October 1, 2017. affilinet was already carried as a discontinued operation in accordance with IFRS 5 in the half-yearly figures 2017.

With the contribution of affilinet to AWIN and affilinet's qualification as a discontinued operation according to IFRS 5, the statement of comprehensive income of the current year and previous year must be adjusted. The revenue and expenses of the discontinued operation (Applications segment) are no longer included in the respective items. The net income after taxes of the discontinued operation is disclosed separately. However, the balance sheet as at December 31, 2016 is to be disclosed unchanged.

Earnings after taxes of discontinued operations are as follows:

	Until September 2017 €k	2016 €k
Current earnings after taxes of affilinet	2,308	3,403
Net income after taxes from the contribution of affilinet to AWIN	36,270	-
Result from discontinued operations	38,578	3,403

The eliminations between continued and discontinued operations were allocated to discontinued operations taking into account future supply and service relationships (economic perspective). As the (previously intra-Group) supplies and services will continue with either this company or third parties after the final disposal of the discontinued operation, the full allocation of the eliminations to the discontinued operation results in a more meaningful presentation of the financial impact in the statement of comprehensive income.

Balance sheet	Notes
Income statement	Fixed assets
Cash flow	Audit opinion
Shareholders' equity	Responsibility statement

Current earnings after taxes of affilinet as follows:

	Until September 2017 €k	2016 €k
Sales	109,452	150,690
Expenses	-106,932	-146,651
Other operating expenses/ income	576	470
Financial result	54	-19
Result before taxes	3,150	4,490
Income taxes	-842	-1,087
Result after taxes	2,308	3,403

The result before taxes from the contribution of affilinet to AWIN is calculated from the difference between the fair value of the contributed investment and the carrying amount of the disposed assets and liabilities. On the basis of an accounting decision taken by United Internet, there was no prorated elimination of the deconsolidation result according to the stake in AWIN.

The fair value of the transferred consideration and thus the acquisition costs of United Internet for the shares in Awin amount to € 59,936k.

The net cash flows of the discontinued operation are as follows:

	Until September 2017 €k	2016 €k
Net cash flow from operating activities	-5,523 ⁽¹⁾	7,262
Net cash flow from investing activities	-3,962	-586
Net cash flow from financing activities	4,208 ⁽¹⁾	7,430 ⁽²⁾

(1) Net cash flow from operating activities results in part from a decline in trade accounts payable (€ -7,410k), which was partly financed by a reduction of the cash pool balance (part of financing activities). Net cash flow from financing activities includes a dividend (€ -9,705k) and a reduction of the cash pool balance (€ 17,232k).

(2) Net cash flow from financing activities refer to an increase in the cash pool balance (€ 7,430k).

In connection with the contribution of affilinet GmbH to AWIN, the United Internet Group received compensation of € 1,410k. Cash and cash equivalents of affilinet at the time of deconsolidation amounted to €3,593k.

In the course of deconsolidating affilinet, the following assets and liabilities were disposed of: current assets without cash and cash equivalents (€ 22,417k), cash and cash equivalents (€ 3,593k), non-current assets (€ 13,399k), current liabilities (€ 24,485k) and non-current liabilities (€ 265k).

Investment of Warburg Pincus

On November 8, 2016, United Internet AG and WP XII Venture Holdings S.a.r.l., Luxembourg, an affiliate of private equity funds managed by Warburg Pincus LLC (Warburg Pincus), signed an agreement regarding a 33.33% stake of Warburg Pincus in the United Internet division Business Applications.

Following approval by the German Federal Cartel Office ("Bundeskartellamt"), the transaction was closed over several stages in early 2017. United Internet AG contributed its shares in 1&1 Internet SE, Montabaur, initially to its subsidiary 1&1 Internet Holding SE, Montabaur, in the form of a mixed capital increase against the issue of new common shares and one preferred share, as well as a long-term vendor loan.

In a second step, United Internet AG contributed all common shares in 1&1 Internet Holding SE to a newly founded 1&1 Internet TopCo SE, Montabaur, against the issue of 66.67% of capital stock. The remaining 33.33% of shares in 1&1 Internet TopCo SE are held by Warburg Pincus. A purchase price of up to € 450 million was agreed for the 33.33% of shares held by Warburg Pincus.

In connection with the Warburg Pincus investment, a so-called Shareholders' Agreement and further contractual arrangements were concluded between United Internet and Warburg Pincus. Pursuant to IFRS 10, United Internet retains control over 1&1 Internet TopCo SE and its subsidiaries (Business Applications division) on the basis of the structure under company law as well as on the basis of the provisions of the Shareholders' Agreement.

The Warburg Pincus investment in the Business Applications division is disclosed in the consolidated financial statements of United Internet as a disposal of shares in a subsidiary without loss of control. Pursuant to IFRS 10, non-controlling interests in the sub-group 1&1 Internet TopCo SE were recognized for the first time, as was the contribution of Warburg Pincus. The difference was carried as an increase in capital reserves. The result of the sub-group 1&1 Internet TopCo SE is divided according to the respective stakes of United Internet (66.7%) and Warburg Pincus (33.3%).

Investment in rankingCoach

On March 28, 2017, United Internet AG announced that it had acquired – via United Internet Investments Holding GmbH (formerly: United Internet Ventures AG) – a stake of 29.93% in rankingCoach GmbH in the course of a capital increase. Based in Cologne, rankingCoach was founded in 2014 by the company's managers as a spin-off of a major online marketing agency. Today, an international team of over 60 specialists supports small and mid-size enterprises (SMEs) in 11 languages and 24 countries. rankingCoach markets its products both directly to end-users and agencies, as well as indirectly via international partners, such as hosting providers, telecommunications companies and publishers. Online visibility and online reputation have a major impact on the business success of SMEs. rankingCoach offers affordable, web-based solutions in the field of search engine marketing (SEM), search engine optimization (SEO) and social media which are tailored to the needs of its various target groups. The capital increase is aimed in particular at driving technical product development, the expansion of services, and the company's further internationalization. In addition to the equity stake, rankingCoach and the United Internet subsidiary 1&1 Internet SE have signed a long-term cooperation agreement for 1&1 to use the online marketing solutions of rankingCoach as part of its hosting and cloud products marketed in Europe and North America. At the time of its announcement, the transaction was still subject to approval by the relevant anti-trust authorities. This approval was granted on April 13, 2017. The acquisition costs for the share purchase amount to approx. € 5.0 million.

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Balance sheet		Notes	
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Shareholders' equity		Responsibility statement	

Investment in Tele Columbus

In the first quarter of 2017, United Internet increased its stake in Tele Columbus AG from 25.11% as of December 31, 2016 and holds around 28.52% of shares as of December 31, 2017. A total of € 34.9 million was paid for the purchase of additional shares.

Sale of yourfone Shop GmbH

With effect from December 31, 2017, Drillisch Online AG sold yourfone Shop GmbH with its 100 or so shops to aptus 1206. GmbH, Berlin, Germany. The sale of yourfone Shop GmbH resulted in a deconsolidation loss of € 15.1 million. In addition, one-off restructuring expenses for offline sales of € 13.2 million were incurred. The amount is disclosed in other operating expenses. The cash flow from disposal will not be carried until 2018.

4.3. Investments in the previous year

Via its subsidiary United Internet Ventures AG, United Internet contractually secured the acquisition of a share package amounting to approx. 15.31% of shares in Tele Columbus AG, Berlin, Germany, on February 10, 2016. At the time, the closing of the acquisition was subject to approval by the German anti-trust authority ("Bundeskartellamt"). This approval was granted on March 7, 2016. After closing the acquisition, United Internet has a total indirect shareholding – together with further shares acquired – of 25.11% in Tele Columbus and carries it as an associated company.

In the second quarter, United Internet sold its 430,454 shares (8.37% stake) in HiPay Group S.A., Paris / France, in an over-the-counter transaction at a price of € 10.37 per share and thus for a total of € 4.5 million. This share sale resulted in other operating income of € 935k.

EXPLANATIONS OF ITEMS IN THE STATEMENT OF COMPREHENSIVE INCOME

Note

With the qualification of affilinet as a discontinued operation according to IFRS 5, items in the statement of comprehensive income of the previous year have been adjusted. The revenue and expenses of the discontinued operation (Applications segment) are no longer included in the respective items. The net income after taxes of the discontinued operation is disclosed separately. However, the balance sheet as of December 31, 2016 is to be disclosed unchanged.

5. Sales revenue / segment reporting

According to IFRS 8, the identification of operating segments to be included in the reporting process is based on the so-called management approach. External reporting should therefore be based on the Group's internal organization and management structure, as well as internal financial reporting to the Chief Operating Decision Maker. In the United Internet Group, the Management Board is responsible for assessing and controlling the success of the various segments.

Management and consolidated reporting is undertaken via the segments "Access" and "Applications". The sub-segments "Consumer" and "Business" are combined herein as the products and services within the segments do not fundamentally differ. A description of the products and services is provided in note 2.1 in the explanation of revenue recognition. The segment "Corporate" comprises mainly management holding functions.

The Management Board of United Internet AG mainly controls operations on the basis of key performance figures. It measures segment success primarily on the basis of sales revenues, earnings before interest, taxes, depreciation and amortization (EBITDA) and the result of ordinary operations (EBIT). Transactions between segments are charged at market prices. Information on sales revenues is allocated to the country in which the company is domiciled. Segment earnings are reconciled with the total amount for the United Internet Group.

Segment reporting of United Internet AG in fiscal year 2017 was as follows:



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2017	Access segment €k	Applications segment €k	Corporate segment €k	Reconciliation/ Consolidation €k	United Internet Group €k
Segment revenues	3,192,644	1,041,756	195	-28,293	4,206,302
- thereof domestic	3,192,644	660,762	195	-28,293	3,825,308
- thereof non-domestic	0	380,994	0	0	380,994
EBITDA	897,437	378,720	-22,852	0	1,253,305
EBIT	705,862	276,238	-23,153	0	958,947
Financial result					-40,817
Writedowns on investments					-19,757
Result from at-equity companies					-7,388
EBT					890,985
Tax expense					-242,497
Net income (from continued operations)					648,488
Net income after taxes from discontinued operations					38,578
Net income (after discontinued operations)					687,066
Assets (non-current)	2,905,821	1,082,987	342,719	-	4,331,527
- thereof domestic	2,905,821	786,861	341,333	-	4,034,015
- thereof shares in associated companies	322,891	60,502	32,896	-	416,289
- thereof other financial assets	6,209	8,720	308,437	-	323,366
- thereof goodwill	2,576,721	717,639	0	-	3,294,360
- thereof non-domestic	0	296,126	1,386	-	297,512
- thereof shares in associated companies	0	1,759	0	-	1,759
- thereof other financial assets	0	8,947	1,386	-	10,333
- thereof goodwill	0	285,420	0	-	285,420
Investments in intangible assets, property, plant and equipment (without goodwill)	182,016	61,711	7,286	-	251,013
Amortization/depreciation	191,575	102,482	301	-	294,358
- thereof intangible assets and property, plant and equipment	112,921	73,557	301	-	186,779
- thereof assets capitalized during company acquisitions	78,654	28,925	0	-	107,579
Number of employees	4,526	4,547	341	-	9,414
- thereof domestic	4,526	3,023	341	-	7,890
- thereof non-domestic	0	1,524	0	-	1,524

Segment reporting of United Internet AG in fiscal year 2016 was as follows

2016	Access segment €k	Applications segment €k	Corporate segment €k	Reconciliation/ Consolidation €k	United Internet Group €k
Segment revenues	2,917,169	922,512	189	-31,739	3,808,131
- thereof domestic	2,917,169	552,507	189	-31,739	3,438,126
- thereof non-domestic	0	370,005	0	0	370,005
EBITDA	525,564	329,741	-19,902	0	835,403
EBIT	389,890	274,253	-21,484	0	642,659
Financial result					-26,372
Writedowns on investments					-254,905
Result from at-equity companies					1,247
EBT					362,629
Tax expense					-186,870
Net income (from continued operations)					175,759
Net income after taxes from discontinued operations					3,403
Net income (after discontinued operations)					179,162
Assets (non-current)	1,236,115	593,156	301,648	-	2,130,919
- thereof domestic	1,236,115	297,949	299,406	-	1,833,470
- thereof shares in associated companies	724,726	0	29,208	-	753,934
- thereof other financial assets	4,907	738	270,198	-	275,843
- thereof goodwill	506,482	297,211	0	-	803,693
- thereof non-domestic	0	295,207	2,242	-	297,449
- thereof shares in associated companies	0	1,612	0	-	1,612
- thereof other financial assets	0	9,603	2,242	-	11,845
- thereof goodwill	0	283,992	0	-	283,992
Investments in intangible assets, property, plant and equipment (without goodwill)	133,411	43,247	341	-	176,999
Amortization/depreciation	135,674	55,488	1,582	-	192,744
- thereof intangible assets and property, plant and equipment	98,975	45,518	1,582	-	146,075
- thereof assets capitalized during company acquisitions	36,699	9,970	0	-	46,669
Number of employees	3,478	4,221	198	-	7,897
- thereof domestic	3,478	2,646	198	-	6,322
- thereof non-domestic	0	1,575	0	-	1,575

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Income statement	Fixed assets
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Segment revenues also include certain revenues between segments, but without internal Group allocations and charges. The segment revenue of the Applications segment thus also contains revenue of € 28,293k (prior year: € 31,739k) generated with the Access segment, mainly in connection with the marketing of the GMX and WEB.DE portals for Access products. Revenues generated with external customers of the Access segment and Applications segment amount to € 3,192,644k (prior year: € 2,917,169k) and € 1,013,463k (prior year: € 890,773k), respectively. Non-current segment assets comprise shares in associated companies, other financial assets and goodwill.

In the periods under review, there was no significant concentration of individual customers in the customer profile. The United Internet Group does not generate more than 10% of total external sales revenues with one customer. Foreign sales accounted for 9.1% (prior year: 9.7%) of total Group revenues. As in the previous year, revenues of the Access segment from external customers were generated exclusively in Germany. Of total revenues of the Applications segment from external customers, an amount of € 632,469k (prior year: € 520,768k) was generated in Germany and an amount of € 380,994k (prior year: € 370,005k) was generated abroad.

The highest management committee only monitors shares in associated companies, other non-current financial assets and goodwill. The depreciation disclosed in the segments refers to other, non-monitored intangible assets and property, plant and equipment.

6. Cost of sales

	2017 €k	2016 €k
Cost of services	1,797,412	1,636,460
Cost of goods	389,476	396,276
Personnel expenditure	191,778	176,728
Depreciation	186,667	135,203
Others	123,767	117,090
Total	2,689,100	2,461,757

Cost of sales in relation to sales revenue fell to 63.9% compared with the previous year (64.6%), resulting in a higher gross margin 36.1% (prior year: 35.4%).

7. Selling expenses

Selling expenses rose from € 521,177k (13.7% of sales) to € 638,313k (15.2% of sales). They include personnel expenses of € 209,267k (prior year: € 182,232k), depreciation of € 96,945k (prior year: € 23,475k) and other selling expenses of € 332,101k (prior year: € 315,470k). The increase in depreciation results mainly from depreciation in connection with company acquisitions in 2017. Other selling expenses mostly comprise customer acquisition costs, advertising, customer care and product management.

8. General and administrative expenses

Compared to the previous year, general and administrative expenses rose from € 182,938k (4.8% of sales) to € 185,106k (4.4% of sales). They include personnel expenses of € 87,923k (prior year: € 74,813k), depreciation of € 10,746k (prior year: € 34,065k) and other general and administrative expenses of € 86,437k (prior year: € 74,060k). The other general and administrative expenses mostly comprise expenses for accounts receivable management, rent, legal and consulting fees, and maintenance costs.

9. Other operating income / expenses

9.1 Other operating expenses

	2017 €k	2016 €k
Losses due to accounts receivable	41,090	34,642
Restructuring of offline business	28,300	0
Transaction costs	17,085	11,008
Expenses from foreign currency translation	4,869	5,291
Losses from the disposal of investment	789	302
Others	8,499	6,227
Total	100,632	57,470

Losses due to accounts receivable include expenses for valuation allowances on trade accounts receivable and expenses arising from the derecognition of such receivables.

The restructuring of offline business refers to the sale of yourfone Shop GmbH and the associated restructuring measures. With effect from December 31, 2017, Drillisch Online AG sold yourfone Shop GmbH with its 100 or so shops. The restructuring resulted in total other operating expenses of € 28.3 million. In addition to an amount of € 15.1 million for the deconsolidation of yourfone Shop GmbH, Düsseldorf, the expense includes restructuring costs of € 13.2 million. Transaction costs mainly comprise expenses in connection with the purchase of the Drillisch Group and the ProfitBricks Group.

Transaction costs in the previous year mainly comprise expenses in connection with the acquisition of Strato and the investment of Warburg Pincus.

Expenses from foreign currency translation mainly comprise losses from exchange rate changes between the date of origination and time of payment of foreign currency receivables and payables as well as losses from valuation at the balance sheet date. Currency gains from these items are reported under other operating income. A net consideration of this item results in a net gain of € 527k (prior year: € 313k).

Balance sheet	Notes
Income statement	Fixed assets
Cash flow	Audit opinion
Shareholders' equity	Responsibility statement

9.2 Other operating income

	2017 €k	2016 €k
Income in connection with successive company acquisitions	319,002	0
Income from dunning and return debit charges	29,551	27,393
Income from foreign currency translation	4,342	5,604
Income from the reversal of accrued liabilities	2,921	2,361
Income from subsequent measurement of a purchase price liability	186	1,754
Income from the disposal of property, plant and equipment	158	269
Income from impaired accounts receivable	0	1,320
Income from the disposal of HiPay	0	935
Income from the processing of an investment transaction	0	7,827
Others	9,636	10,407
Total	365,796	57,870

Income in connection with successive company acquisitions refers to the revaluation of existing Drillisch shares during the successive acquisition of the Drillisch Group amounting to € 302,949k and the ProfitBricks Group amounting to € 16,053k.

Income from foreign currency translation mainly comprise gains from exchange rate changes between the date of origination and time of payment of foreign currency receivables and payables as well as gains from valuation at the balance sheet date. Currency losses from these items are reported under other operating expenses.

10. Depreciation and amortization

Depreciation and amortization of intangible assets and property, plant and equipment consist of the following:

	2017 €k	2016 €k
Cost of sales	186,667	135,203
Selling expenses	96,945	23,475
General and administrative expenses	10,746	34,065
Total	294,358	192,743

Depreciation and amortization also includes the amortization of capitalized assets resulting from business combinations. These are divided between the capitalized assets as follows:

	2017 €k	2016 €k
Intangible assets		
Customer base / order backlog	71,355	25,521
Licenses	8,447	0
Software	7,971	1,191
Technology	1,442	1,442
	89,215	28,154
Tangible assets		
Network infrastructure	18,364	18,515
Total	107,579	46,669

Amortization of capitalized assets resulting from business combinations is divided between the business combinations as follows:

	2017 €k	2016 €k
1&1 Versatel	36,542	36,699
1&1 Drillisch	42,127	0
Strato	18,723	0
Arsys	5,082	5,096
home.pl	4,509	4,132
Fasthosts	559	705
WEB.DE portal business	37	37
	107,579	46,669

Moreover, an impairment test in the Applications segment resulted in an impairment charge of € 20,738k for the Strato trademark. For further details, please refer to section 27 Impairment of goodwill and intangible assets with indefinite useful lives. This amount is disclosed in amortization and selling expenses.

Balance sheet	Notes
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11. Personnel expenses

Personnel expenses are divided among the various divisions as follows:

	2017	2016
	€k	€k
Cost of sales	191,778	176,728
Selling expenses	209,267	182,232
General and administrative expenses	87,923	74,813
Total	488,968	433,773

Personnel expenses include wages and salaries of € 418,221k (prior year: € 370,397k) and social security costs of € 70,747k (prior year: € 63,376k).

The number of employees increased by 19.2%, from 7,897 in the previous year to 9,414 employees at year-end 2017:

	2017	2016
Germany	7,890	6,322
Outside Germany	1,524	1,575
thereof the Philippines	366	386
thereof Spain	319	322
thereof Great Britain	232	209
thereof Poland	251	258
thereof USA	174	197
thereof Romania	174	194
thereof France	3	3
Others	5	6
Total	9,414	7,897
thereof women	31%	34%
thereof men	69%	66%

The average number of employees in fiscal year 2017 amounted to 8,788 (prior year: 7,905), of which 7,241 (prior year: 6,309) were employed in Germany and 1,547 (prior year: 1,596) abroad.

With regard to company pension plans, the Group only has defined contribution plans. The Company pays contributions to the state pension fund as a result of statutory obligations. There are no other benefit obligations for the Company after payment of the contributions. The current contribution payments are disclosed as an expense in the respective year. In fiscal year 2017, they amounted to € 28,197k (prior year: € 26,394k, thereof € 522k for affilinet) and mostly concerned contributions paid to the state pension fund in Germany.

As a result of contribution exemptions, an amount of € 0k (prior year: € 0k) of this total referred to contributions paid to related parties.

12. Financial expenses

	2017 €k	2016 €k
Loans and overdraft facilities	34,525	27,742
Subsequent valuation of derivatives	5,290	0
Financial expense from finance leases	2,093	2,266
Interest expense from tax audit	1,533	639
Other	804	529
	44,245	31,176

The year-on-year increase in borrowing costs results mainly from higher finance volumes.

The subsequent valuation of derivatives refers to the valuation through profit or loss of derivatives agreed in the course of the Warburg Pincus investment.



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Please refer to note 44 for an explanation of the financial expense from finance leases.

13. Financial income

	2017 €k	2016 €k
Interest income from finance leases	1,084	899
Income from dividends	730	589
Interest income from tax audit	606	2,409
Subsequent valuation of derivatives	250	0
Income from loans to associated companies	221	306
Other	537	599
	3,428	4,802

Other financial income mainly comprises interest income from credit balances with banks.



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With regard to income from loans to associated companies, please refer to note 41.

Balance sheet	Notes
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14. Income taxes

The income tax expense is comprised as follows:

	2017 €k	2016 €k
Current income taxes		
- Germany	262,284	177,556
- Abroad	10,516	8,539
Total (current period)	272,800	186,095
Deferred taxes		
- Due to tax loss carryforwards	4,073	411
- Tax effect on temporary differences	-32,419	254
- Due to tax rate changes	-1,957	110
Total deferred taxes	-30,303	775
Total tax expense	242,497	186,870

Under German tax law, income taxes comprise corporate income tax and trade tax, as well as the solidarity surcharge.

German trade tax is levied on a company's taxable income adjusted for certain revenues which are not subject to such tax and for certain expenses which are not deductible for purposes of trade tax. The effective trade tax rate depends on the municipality in which the company operates. The average trade tax rate in fiscal year 2017 amounted to approx. 15.3% (prior year: 14.4%).

As in the previous year, German corporate income tax was levied at 15% – irrespective of whether the result was retained or distributed. In addition, a solidarity surcharge of 5.5% is imposed on the assessed corporate income tax.

In addition to taxes on the current result, income taxes include tax expenses not relating to the period of € 3,675k (prior year: tax income € 5,417k).

Deferred tax assets are recognized for tax loss carryforwards and temporary differences if it is probable that taxable profit will be available against which the deductible temporary difference can be utilized.

Deferred tax assets for tax loss carryforwards in certain countries are shown in the table below:

	2017 €k	2016 €k
Germany	17,566	21,826
France	0	282
	17,566	22,108

Deferred tax assets for loss carryforwards of German companies mainly refer to the Versatel Group.

The following time limits apply for the use of tax loss carryforwards in different countries:

- USA: 20 years
- Germany: indefinite, but minimum taxation
- France: indefinite, but minimum taxation
- Poland: 5 years

Tax loss carryforwards for which no deferred tax assets have been formed, refer to the following countries (excluding Germany):

	2017 €k	2016 €k
USA Federal *	8,949	10,342
USA State **	9,998	11,532
Poland	305	11
	19,252	21,885

* Tax rate 21.0%

** Tax rate 10.0%

A breakdown of income tax types results in the following loss carryforwards for Germany for which no deferred taxes have been formed:

	2017		2016	
	Corporation tax in €k	Trade tax in €k	Corporation tax in €k	Trade tax in €k
Germany	87,194	47,342	90,315	31,553

Loss carryforwards in Germany for which no deferred tax assets have been formed mainly refer to loss carryforwards of the Versatel Group.

The so-called "interest cap" enshrined in German tax law limits the deductibility of interest expenses for the assessment of company income taxes. Interest expenses that cannot therefore be deducted are carried forward indefinitely to the following fiscal years (interest carryforward).

The Group's interest carryforward, for which no deferred taxes were formed, amounts to € 50,140k (prior year: € 0k).

In fiscal year 2017, loss carryforwards of € 10,325k were used (prior year: € 0k).

In fiscal year 2017, a deferred tax expense from the devaluation of deferred tax assets amounting to € 775k was recognized (prior year: € 1,527k).

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Deferred taxes resulted from the following items:

	Dec. 31, 2017		Dec. 31, 2016	
	Deferred tax assets €k	Deferred tax liabilities €k	Deferred tax assets €k	Deferred tax liabilities €k
Trade accounts receivable	8,098	5,815	1,502	6,800
Inventories	48	233	48	60
Other financial assets - current	607	54	537	0
Other financial assets - non-current	5,823	338	21,834	559
Other assets	3,924	2,415	717	1
Prepaid expenses	84,808	1,801	89,789	1,889
Property, plant and equipment	3,108	45,724	3,262	53,209
Intangible assets	41,821	397,351	4,083	108,535
Other provisions	19,059	3	6,832	0
Other liabilities	26,238	2,834	27,998	4,257
Deferred revenue	6,760	2,013	6,594	1,919
Gross value	200,295	458,580	163,196	177,229
Tax loss carryforwards	17,567	0	22,108	0
Adjustments for consolidation	7,031	1,896	7,421	2,016
Outside basis differences	0	0	0	4,560
Offsetting	-69,742	-69,742	-89,594	-89,594
Consolidated balance sheet	155,151	390,734	103,131	94,211

The net balance of deferred tax assets of € 8,920k in the previous year changed to a net balance of deferred tax liabilities of € 235,583k. As a result, the total change in the net balance of deferred taxes amounted to € 244,502k (prior year: € -1,646k). This change was mainly due to the following factors:

- Increase in deferred tax liabilities from intangible assets in connection with the acquisition of the Drillisch and Strato Groups amounting to € 243,151k and € 54,845k in fiscal year 2017, respectively.
- Increase in deferred tax assets from intangible assets in connection with the acquisition of the Drillisch Group in fiscal year 2017 amounting to € 19,671k.
- Increase in deferred tax assets from trade accounts receivable in connection with the acquisition of the Drillisch Group in fiscal year 2017 amounting to € 7,172k.
- Increase in deferred tax assets from other provisions in connection with the acquisition of the Drillisch Group in fiscal year 2017 amounting to € 4,136k.
- Decrease in deferred tax assets from other financial assets of € 16,599k due to the use of a debtor warrant of the Versatel Group acquired in 2014.
- Decrease in deferred tax assets of € 4,560k due to a reduction of so-called outside-basis-differences in connection with the Warburg Pincus transaction in the reporting period.
- Decline in deferred tax assets for customer acquisition costs carried in the tax balance sheet (€ 5,057k).

In the USA, the decrease in the applicable federal tax rate from 35% to 21% as of 2018, results in non-cash deferred tax income of € 1,840k. This results from the revaluation of the net balance of deferred tax liabilities.

The change in the net balance of deferred taxes compared to the previous year is reconciled as follows:

	2017 €k	2016 €k
Deferred tax income (prior year: tax expense)	30,302	-775
Discontinued activities	431	-683
Addition in connection with business combinations	-279,828	0
Deferred tax income recognized directly in equity (prior year: tax expense)	4,593	-188
Change in the net balance of deferred taxes	-244,502	-1,646

The net asset balance of deferred taxes recognized directly in equity amounted to € 3,216k as of December 31, 2017 (prior year: net liability balance € 1,377k).

In the previous year, deferred tax assets recognized directly in equity amounting to € 5,172k (prior year: € 0k) were in connection with employee stock ownership plans.

The aggregate tax rate is reconciled to the effective tax rate of continued operations as follows:

	2017 %	2016 %
Anticipated tax rate	31.2	30.2
- Actual and deferred taxes for previous years	0.5	-1.5
- Costs in connection with business combinations	0.2	0.0
- Tax-free income/non-deductible expenses from the valuation of financial assets/liabilities at fair value	0.2	0.0
- Non-tax-deductible writedowns on financial assets	0.7	21.0
- Non-tax-deductible writedowns on intangible assets	-0.5	-0.8
- Tax-reduced profit from disposals and income from investments	0.3	-0.5
- Tax effects in connection with internal Group dividends and disposals	3.6	0.6
- Differences due to tax rate changes	-1.0	-0.5
- Employee stock ownership plans	-0.8	1.4
- Tax-free income from transitional consolidations	-10.6	0.0
- Tax losses and non-deductible interest of the fiscal year for which no deferred taxes have been capitalized	2.4	0.2
- Value adjustment of tax loss carryforwards and temporary differences capitalized in previous years	0.0	0.4
- Non-taxable at-equity results	0.3	-0.1
- Recognition of deferred tax liabilities for outside basis differences	0.0	1.2
- Balance of other tax-free income and non-deductible expenses	0.7	-0.1
Effective tax rate	27.2	51.5

Tax-free income from transitional consolidations refers to special income from the successive acquisitions of Drillisch AG and ProfitBricks GmbH.

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The non-tax-deductible writedowns in the reporting period and in the previous year refer to the impairment of shares in Rocket Internet SE.

Tax effects in connection with internal Group dividends and disposals mainly refer to Group restructuring in the reporting period.

The non-tax-deductible amortization of intangible assets results from differences in assets recognized in equity on initial booking, for which no deferred taxes are formed pursuant to IAS 12.

The expected tax rate corresponds to the tax rate of the parent company, United Internet AG.

15. Earnings per share

As in the previous year, capital stock as of December 31, 2017 was divided into 205,000,000 registered no-par shares each with a theoretical share in the capital stock of € 1. On December 31, 2017, United Internet held 5,093,289 treasury shares (prior year: 3,370,943). These treasury shares do not entitle the Company to any rights or proportional dividends and are thus deducted from equity. The weighted average number of shares outstanding used for calculating undiluted earnings per share was 199,864,853 for fiscal year 2017 (prior year: 203,261,162).

A dilutive effect must be taken into consideration for option rights resulting from the employee stock ownership programs of United Internet AG which were contained in cash as of December 31, 2017. All option rights existing on December 31, 2017 were considered in the calculation of diluted earnings per share, using the treasury stock method, insofar as the option rights were in money and irrespective of whether the option rights were actually exercisable on the balance sheet date. The calculation of the dilutive effect from conversion is made by first determining the number of potential shares. On the basis of the average fair value of the shares, the number of shares is then calculated which could be acquired from the total amount of payments (par value of the rights plus additional payment). If the difference between the two values is zero, the total payment is exactly equivalent to the fair value of the potential shares and no dilutive effect need be considered. If the difference is positive, it is assumed that these shares will be issued in the amount of this difference without consideration.

The calculation of diluted earnings per share was based on 1,518,630 (prior year: 1,113,630) potential shares (from the assumed use of rights). Based on an average market price of € 47.55 (prior year: € 40.56), this would result in the issuance of 487,000 (prior year: 576,073) shares without consideration.

The following table shows the underlying amounts for the calculation of undiluted and diluted earnings:

	2017 €k	2016 €k
Profit attributable to the shareholders of United Internet AG	650,416	178,998
- thereof earnings after taxes from discontinued operations	38,578	3,403
Earnings per share (in €) from continued operations		
- undiluted	3.25	0.88
- diluted	3.25	0.88
- thereof earnings per share (in €) - from continued operations		
- undiluted	3.06	0.86
- diluted	3.05	0.86
- thereof earnings per share (in €) - from discontinued operations		
- undiluted	0.19	0.02
- diluted	0.19	0.02
Weighted average number of outstanding shares (in million units)		
- undiluted	199.86	203.26
- diluted	200.35	203.84

16. Dividend per share

The Annual Shareholders' Meeting of United Internet AG on May 18, 2017 voted to accept the proposal of the Management Board and Supervisory Board to pay a dividend of € 0.80 per share. The total dividend payment of € 159.7 million was made on May 19, 2017.

According to section 21 of the by-laws of United Internet AG, the Annual Shareholders' Meeting decides on the appropriation of retained earnings. For the fiscal year 2017, the Management Board proposes a dividend of € 0.85 per share to the Supervisory Board. The Management Board and Supervisory Board will discuss this dividend proposal for fiscal year 2017 at the Supervisory Board meeting on March 21, 2018.

Pursuant to Sec. 71b AktG, the Company does not accrue any rights from treasury shares and thus has no pro-rated dividend rights. As at the date of signing the consolidated financial statements, the United Internet Group holds 5,093,289 treasury shares (prior year: 3,370,943).

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EXPLANATIONS OF ITEMS IN THE BALANCE SHEET

17. Cash and cash equivalents

Cash and cash equivalents consist of bank balances, checks and cash in hand. Bank balances generally bear variable interest rates for call money. Due to the current low interest rates – which is even negative at present for amounts denominated in euros – bank balances do not bear interest.

The development and application of cash and cash equivalents is stated in the consolidated cash flow statement.



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18. Trade accounts receivable

	2017 €k	2016 €k
Trade accounts receivable	372,761	303,403
less		
Bad debt allowances	-29,190	-19,537
Trade accounts receivable, net	343,571	283,866
thereof trade accounts receivable - current	289,995	228,025
thereof trade accounts receivable - non-current	53,576	55,841

As of December 31, 2017 bad debt allowances for trade accounts receivable amounted to € 29,190k (prior year: € 19,537k). The development of bad debt allowances can be seen below:

	2017 €k	2016 €k
As of January 1	19,537	23,098
Utilization	-19,295	-17,000
Additions charged to the income statement	34,506	16,446
Reversals	-4,273	-3,051
Exchange rate differences	-484	44
Deconsolidation affilinet	-801	0
As of December 31	29,190	19,537

Additions charged to the income statement of each period under review do not comprise receivables arising during the year and eliminated before the balance sheet date.

As of the balance sheet date there is no recognizable indication that payment obligations for receivables not adjusted cannot be met. The maximum credit risk as of the balance sheet date corresponds to the net carrying value of the above trade accounts receivable. Overdue receivables are tested for possible impairment. Individual allowances are mainly formed by classifying receivables according to their age profile. We refer to note 42.



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All overdue receivables not adjusted individually are subjected to lump-sum allowances.

As of December 31, the age profile of trade accounts receivable less the aforementioned allowances was as follows:

	2017 €k	2016 €k
Trade accounts receivable, net		
< 5 days	296,933	256,489
6 - 15 days	7,475	5,733
16 - 30 days	9,389	10,103
31 - 180 days	19,091	10,576
181 - 365 days	9,519	861
> 365 days	1,164	104
	343,571	283,866

19. Inventories

As of December 31, inventories consisted of the following items:

	2017 €k	2016 €k
Merchandise		
- Mobile telephony / mobile internet	37,660	37,021
- DSL hardware	9,936	4,970
- IP-TV	1,487	4,043
- SIM cards	2,368	761
- Other	288	0
Domain stock held for sale		
- Domain stock	3,670	3,805
	55,409	50,600
less		
Allowances	-10,737	-11,110
Inventories, net	44,672	39,490

Goods recognized as material expense from inventories in cost of sales amounted to € 389,476k in the reporting period (prior year: € 396,152k). Of this total, an amount of € 689k refers to impairment of inventories (prior year: € 698k).

Allowances include € 7,187k for mobile telephony/mobile internet and IP-TV (prior year: € 7,508k) and € 3,550k for domain stock (prior year: € 3,602k).

Balance sheet	Notes
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20. Current prepaid expenses

Prepaid expenses of € 92,291k (prior year: € 111,172k) consist mainly of prepayments for domain registration fees and pre-service fees which were deferred and charged to the income statement on the basis of the underlying contractual period.

The current prepaid expenses of the previous year comprised expenses in connection with the Warburg Pincus transaction amounting to € 3,929k, which were netted with the contributions of Warburg Pincus in the fiscal year 2017 and reclassified to equity.

21. Other current assets

21.1 Other current financial assets

	2017 €k	2016 €k
Receivable from pre-service providers	71,350	3,329
Payments on account	7,140	5,435
Creditors with debit balances	4,127	2,851
Deposits	736	402
Other	16,917	9,519
Other financial assets	100,270	21,536

The receivable from pre-service providers as of December 31, 2017 also comprises a refund claim of € 66,781k from the return of certain DSL quotas to a pre-service provider. The amount was reimbursed in February 2018.

21.2 Other current non-financial assets

	2017 €k	2016 €k
Receivables from tax office	58,166	129,427
Other non-financial assets	58,166	129,427

The decline in receivables from the tax office of € 70.3 million refers to receivables from the payment of allowable capital gains tax including the solidarity surcharge in the previous year.

22. Shares in associated companies

Via its subsidiary United Internet Investments Holding GmbH (formerly United Internet Ventures AG), United Internet holds a stake in Tele Columbus AG, Berlin, Germany. In the fiscal year 2017, this stake was increased from 25.11% to 28.52%. Tele Columbus AG is an independent broadband cable network operator active in the German multimedia and communication sector with most of its network infrastructures in eastern Germany (Berlin, Brandenburg, Saxony, Saxony-Anhalt und Thuringia), as well as in North Rhine-Westphalia and Hesse. Tele Columbus offers its customers digital TV program packages, as well as internet and telephone connections.

In the fiscal year 2017, a majority shareholding was acquired in Drillisch AG, Maintal, Germany. As a result, the shares held as of December 31 are no longer carried as shares in associated companies. Further details on the acquisition of the Drillisch Group are provided in the disclosures on Business Combinations of the Fiscal Year. Prior to the consolidation of Drillisch AG, the company paid dividends of € 19,823k in the fiscal year 2017.

The shareholding in Tele Columbus AG corresponds to the proportion of voting rights. As in the previous year, it is valued using the equity method.

The following table contains summarized financial information on Tele Columbus AG on the basis of a 100% shareholding

Summarized financial information on the main associated companies:

	Tele Columbus AG €k
Current assets	127,801
Non-current assets	2,717,090
Current liabilities	-198,203
Non-current liabilities	-1,481,870
Shareholders' equity	1,164,818
Sales revenue	368,650
Other comprehensive income	-1,688
Net profit/loss	-15,314
Total comprehensive income	-17,002

As financial information on Tele Columbus AG as of December 31, 2017 had not yet been published at the time of preparation, the summarized financial information is estimated on the basis of the quarterly statements as of September 30, 2017, taking account of adjustments which the United Internet Group believe to be necessary at this time. There were no results from discontinued operations.

Balance sheet	Notes
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A reconciliation with the carrying amounts in the consolidated financial statements as of December 31, 2017 – with an estimation of investment results for the fourth quarter – is presented below:

	Tele Columbus AG €k
United Internet Group's share in the net asset values as of September 30, 2017	332,206
Closing date-related reconciliation effects	-9,315
Carrying amount as of December 31, 2017	322,891
Fair value of shares as of December 31, 2017	336,515
Dividend received in 2017	0

As of December 31, 2017, the other associated companies disclosed an aggregated carrying value of € 95,157k (prior year: € 30,625k) and an aggregated loss of € 487k (prior year: 1,901k) in fiscal year 2017. The earnings/loss contributions of AWIN and other associated companies are only included in the aggregated loss on a prorated basis.

The following table contains summarized financial information on the two main associated companies on the basis of a 100% shareholding as of December 31, 2016:

Summarized financial information on the main associated companies as of Dec. 31, 2016:

31.12.2016	Drillisch AG €k	Tele Columbus AG €k
Current assets	203,798	136,204
Non-current assets	2,306,829	2,730,609
Current liabilities	-170,644	-159,708
Non-current liabilities	-215,657	-1,533,149
Shareholders' equity	2,124,326	1,173,956
Sales revenue	522,145	354,166
Other comprehensive income	0	-3,827
Net profit/loss	24,742	-29,421
Total comprehensive income	24,742	-33,248

As financial information of both investments as of December 31, 2016 had not yet been published at the time of preparation, the summarized financial information was estimated on the basis of the quarterly statements as of September 30, 2016, taking account of adjustments which the United Internet Group believed to be necessary at this time. There were no results from discontinued operations for the two companies.

A reconciliation of the main associated companies with the carrying amounts in the consolidated financial statements as of December 31, 2016 – with an estimation of investment results for the fourth quarter – is presented below:

	Drillisch AG €k	Tele Columbus AG €k
United Internet Group's share in the net asset values as of September 30, 2016	427,202	294,780
Closing date-related reconciliation effects	3,066	-127
Carrying amount as of December 31, 2016	430,268	294,653
Fair value of shares as of December 31, 2016	450,421	253,037
Dividend received in 2016	19,272	0

The financial information is based in part on local accounting regulations as a reconciliation of this financial information with IFRS would incur disproportionately high costs.

23. Other non-current financial assets

The development of other non-current financial assets was as follows:

	Amortization of revaluation reserve not recognized in income				Change affecting income/ Impairment €k	Reclassification €k	Disposals €k	Dec. 31, 2017 €k
	Jan. 1, 2017 €k	Additions €k	Recycling €k	Change €k				
AdUX shares	2,242			-856				1,386
Afilias shares	8,720							8,720
Rocket Internet shares	262,597			47,059	-19,757			289,899
Derivatives	0	23,180			-5,290			17,890
Other	14,129	9,268			0	415	-8,008	15,804
	287,688	32,448	0	46,203	-25,047	415	-8,008	333,699

	Amortization of revaluation reserve not recognized in income				Change affecting income/ Impairment €k	Reclassification €k	Disposals €k	Dec. 31, 2016 €k
	Jan. 1, 2016 €k	Additions €k	Recycling €k	Change €k				
AdUX shares	1,380			862				2,242
HiPay shares	3,792		-935	935	-263		-3,529	0
Afilias shares	8,720							8,720
Rocket Internet shares	387,448			129,785	-254,636			262,597
Tele Columbus shares	35,530	79,083		-2,715		-111,898		0
Other	12,089	657			-6	4,937	-3,548	14,129
	448,959	79,740	-935	128,867	-254,905	-106,961	-7,077	287,688

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The additions mainly refer to derivatives agreed in the course of the Warburg Pincus investment.

After initial recognition of impairment on the shares of Rocket Internet AG classified as an available-for-sale financial asset in the first quarter of 2016, all further declines in the fair value in subsequent periods must also be recognized as impairments. In this connection, a further non-cash-effective writedown of shares in Rocket Internet of € 19.8 million was made in the first quarter of the reporting period. The share price of Rocket Internet increased again as of the reporting date. The impairment reversal of € 47.1 million was thus added to the revaluation reserve through other comprehensive income.

24. Property, plant and equipment

	2017 €k	2016 €k
Acquisition costs		
- Telecommunication equipment	679,565	554,077
- Operational and office equipment	519,334	492,166
- Network infrastructure	200,456	187,323
- Payments on account	43,385	26,749
- Land and buildings	17,731	17,082
	1,460,471	1,277,397
Less		
Accumulated depreciation	-713,048	-622,391
Property, plant and equipment, net	747,423	655,006

An alternative presentation of the development of property, plant and equipment in the fiscal years 2017 and 2016 is shown in the exhibit to the notes of the consolidated financial statements (assets movement schedule).



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The carrying value of property, plant and equipment held as part of finance leases amounts to € 87.8 million as of December 31, 2017 (prior year: € 96.5 million).

As of balance sheet date, there are purchase obligations for non-current assets totaling € 49.9 million (prior year: € 32.6 million).

25. Intangible assets (without goodwill)

	2017 €k	2016 €k
Acquisition costs		
- Customer base	1,226,387	308,379
- Software / technology	252,801	169,948
- Trademarks	208,540	131,915
- Payments on account	70,182	1,468
- Other intangible assets	4,669	2,350
	1,762,579	614,060
Less		
Accumulated amortization and impairment	-369,240	-244,591
Intangible assets, net	1,393,339	369,469



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An alternative presentation of the development of intangible assets in the fiscal years 2017 and 2016 is shown in the exhibit to the notes of the consolidated financial statements (assets movement schedule).

The layout of the disclosed intangible asset categories was adjusted in the fiscal year 2017; the prior-year figures were adjusted accordingly.

The carrying value of the customer base results from the following company acquisitions:

	2017 €k	2016 €k
1&1 Drillisch	709,725	0
Strato	165,188	0
Versatel	128,031	146,208
home.pl S.A.	24,895	26,491
Arsys	17,070	20,710
Other	509	1,012
	1,045,418	194,421

The residual amortization period for the customer base from the acquisition of the Drillisch Group (now 1&1 Drillisch) amounts to 5 to 13 years, depending on the customer groups, whereby 8 years applies to the major share. The residual amortization period for the customer base from the acquisition of Strato AG amounts to 3 to 13 years, depending on the product groups, whereby 11 years applies to the major share. The residual amortization period for the customer base of the home.pl transaction amounts to 8 years and for Arsys 5 years. The residual amortization period for the customer base from the acquisition of the Versatel Group amounts to 1 to 22 years, depending on the products and services, whereby 22 years applies to the major share.

The carrying values of intangible assets with indefinite useful lives (trademarks) totaled € 186,001k (prior year: € 131,804k). Intangible assets with indefinite useful lives were subjected to an impairment test on the level of the cash-generating units as of the balance sheet date.

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Based on findings from the internal integration project for the Business Applications division and subsequent internal considerations, United Internet expects that the Strato brand will not be indefinitely continued. According to current considerations, it is expected that the Strato brand will be discontinued in Q2/2019. Against this backdrop, an impairment amount of € 20,738k was recognized for the Strato trademark (Applications segment) in the fiscal year 2017. The residual useful life of the trademark was thus defined as being 1.5 years. The carrying amount of the Strato trademark as of December 31, 2017 is € 1,800k. There was no impairment in the previous year.

The following table provides an overview of trademarks:

	2017 €k	2016 €k
1&1 Versatel	62,000	62,000
1&1 Drillisch	56,300	0
mail.com	22,804	25,887
WEB.DE	17,173	17,173
home.pl	11,589	10,962
Arsys	7,553	7,553
united-domains	4,198	4,198
Fasthosts	3,921	4,031
Strato	1,800	0
Cronon	463	0
	187,801	131,804

With the exception of the Strato trademark, the useful life of trademarks is determined as being indefinite, as there are no indications that the flow of benefits will end in future.

Other intangible assets mainly refer to beneficial purchasing agreements of the Drillisch Group.

26. Goodwill

A presentation of the development of goodwill in the fiscal years 2017 and 2016 is shown in the exhibit to the notes of the consolidated financial statements (assets movement schedule).



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27. Impairment of goodwill and intangible assets with indefinite useful lives

Goodwill and intangible assets with indefinite useful lives are subjected to an impairment test at least once per year. With reference to its internal budgeting process, the Company has chosen the last quarter of its fiscal year to conduct its statutory annual impairment test.

Goodwill acquired in the course of business combinations is allocated for impairment test purposes to cash-generating units. Due to the short period between the acquisition and the preparation of these consolidated financial statements, no allocation of goodwill from the



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acquisition of Drillisch AG to the cash-generating units 1&1 Drillisch and 1&1 Telecom has been made so far. Moreover, no allocation of goodwill from the acquisition of Strato to cash-generating units has been made so far.

Impairment charges are always disclosed separately in the income statement and the consolidated assets movement schedule.

Goodwill as of December 31 is allocated to the cash-generating units as follows:

	2017 €k	2016 €k
Access segment		
1&1 Drillisch	2,070,239 ⁽¹⁾	0
1&1 Versatel	398,261	398,261
1&1 Telecom	108,221	108,221
	2,576,721	506,482
Applications segment		
Strato	401,570 ⁽²⁾	0
1&1 Mail & Media	228,501	228,501
home.pl	122,934	119,731
Arsys	100,495	100,495
UK (Fasthosts)	61,682	63,409
ProfitBricks	41,309 ⁽³⁾	0
united-domains	35,924	35,924
InterNetX	5,237	5,237
Domain-Marketing	5,098	5,098
mail.com	309	357
Affiliate-Marketing	0	22,451
	1,003,059	581,203
	3,579,780	1,087,685

(1) Due to the short period between the acquisition and the preparation of these consolidated financial statements, the purchase price allocation has not been fully completed yet. Allocation of goodwill to cash-generating units has also not been made so far. For further details, please refer to note 4.1.

(2) Due to the short period between the acquisition and the preparation of these consolidated financial statements, allocation of goodwill to cash-generating units has not been made so far. For further details, please refer to note 4.1.

(3) At the time of preparing the consolidated financial statements, no purchase price allocation had been made for ProfitBricks. The complete differing amount from the transaction was therefore recognized as goodwill on a preliminary basis. For further details, please refer to note 4.1.



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Goodwill after company acquisitions

The carrying values of goodwill according to cash-generating unit result from various transactions over the past years. The Group's goodwill is mainly the result of the following company acquisitions:

- The carrying value of the cash-generating unit 1&1 Drillisch results from the acquisition of the Drillisch Group in 2017.
- The carrying values of the cash-generating units Versatel and 1&1 Telecom reflect goodwill from the acquisition of the Versatel Group in 2014.
- The carrying value of the cash-generating unit Strato results from the acquisition of the Strato Group in 2017.
- The carrying value of the cash-generating unit 1&1 Mail & Media mainly comprises goodwill from the acquisition of the portal business of WEB.DE AG in 2005.

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- The carrying value of the cash-generating unit home.pl results from the acquisition of home.pl S.A. in 2015.
- The carrying value of the cash-generating unit Arsys results from the acquisition of Arsys Internet S.L. in 2013.
- The carrying value of the cash-generating unit Fasthosts results from the acquisition of Fasthosts Internet Ltd. in 2006 and the acquisition of Dollamore Ltd. in 2008.
- The preliminary carrying value of the cash-generating unit ProfitBricks results from the acquisition of ProfitBricks GmbH in 2017.
- The carrying value of the cash-generating unit united-domains results from the acquisition of united-domains AG in 2008.
- The carrying value of the cash-generating unit InterNetX results from the acquisition of InterNetX GmbH in 2005.

Scheduled impairment test on December 31, 2017

The recoverable amounts of the cash-generating units are calculated on the basis of a calculation of fair value less disposal costs using cash flow forecasts. The hierarchy of fair value less disposal costs as defined by IFRS 13 is set at Level 3 for all impairment tests. The cash flow forecasts are based on the Company's budgets for the fiscal year 2018. These budget calculations were extrapolated by management for a period of up to 23 years (prior year: up to 12 years) for the respective cash-generating units on the basis of external market studies and internal assumptions. Following this period, management assumes an annual increase in cash flow of 0.5% for the Access segment (prior year: 0.5%), and between 0.5% and 1.0% for the Applications segment (prior year: between 0.5% and 0.6%), corresponding to long-term average growth of the sector in which the respective cash-generating unit operates. The discount rates after tax used for cash flow forecasts are 5% for the Access segment (prior year: 5%), and between 5% and 8% for the Applications segment (prior year: between 5% and 8%).

The following table presents the basic assumptions used when checking impairment of individual cash-generating units, to which goodwill has been allocated, in order to determine their fair value less disposal costs:

	Reporting year	Total proportion of goodwill	Long-term growth rate	Discount rate after taxes
CGUs Access segment				
1&1 Drillisch	2017	57.8%	0.5%	5.2%
	2016	n/a	n/a	n/a
1&1 Versatel	2017	11.1%	0.5%	4.8%
	2016	36.6%	0.5%	4.5%
1&1 Telecom	2017	3.0%	0.5%	5.2%
	2016	9.9%	0.5%	4.9%
CGUs Application segment				
Strato	2017	11.2%	1.0%	6.1%
	2016	n/a	n/a	n/a
1&1 Mail & Media	2017	6.4%	0.5%	4.8%
	2016	21.0%	0.5%	5.3%
home.pl	2017	3.4%	0.5%	7.2%
	2016	11.0%	0.6%	7.3%
Arsys	2017	2.8%	0.5%	8.3%
	2016	9.2%	0.5%	8.7%
Fasthosts	2017	1.7%	0.5%	6.8%
	2016	5.8%	0.5%	6.7%
ProfitBricks	2017	1.2%	0.5%	6.1%
	2016	n/a	n/a	n/a
united-domains	2017	1.0%	0.5%	6.2%
	2016	3.3%	0.5%	6.1%
InterNetX	2017	0.1%	0.5%	6.1%
	2016	0.5%	0.5%	6.1%
Domain-Marketing	2017	0.1%	0.5%	6.1%
	2016	0.5%	0.5%	6.1%
Affiliate-Marketing	2017	n/a	n/a	n/a
	2016	2.1%	0.5%	5.3%

The cash flow forecasts depend heavily on the estimation of future sales revenues. The management of the respective cash-generating unit expects a varied development of sales within its planning horizon. Sales revenue figures in the detailed planning period of the cash-generating units for the Access segment are based on average annual sales growth rates of between 2.4% und 4.1% (prior year: between 0.4% and 5.8%). Sales revenue figures in the detailed planning period of the cash-generating units for the Applications segment are based on average annual sales growth rates of between 1.2% und 24.8% (prior year: between 0.5% and 8.1%).

Fair value less disposal costs is mainly based on the present value of the perpetual annuity, which is particularly sensitive to changes in assumptions on the long-term growth rate and the discount rate. For the calculation of fair value less disposal costs, disposal cost rates of between 0.2% and 3% were assumed (prior year: 3%).

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In the Applications segment, trademarks recognized amount to € 69,501k (prior year: € 69,804k) and in the Access segment to € 118,300k (prior year: € 62,000k; see note 25). In the course of business combinations, the trademarks were valued at their fair values less disposal cost using appropriate valuation methods (generally the so-called "royalty relief" method; in the cash-generating unit mail.com using the residual value method) and tested again for impairment on the balance sheet date. The trademark-relevant cash flows were multiplied with the trademark-relevant royalty rates. These range from 0.25% to 2.5% (prior year: 0.75% to 2.5%). The forecast of trademark-relevant cash flows was based on the same assumptions regarding market development and discount rates as used for the calculation of fair values. The result of the test was an impairment need of € 20,738k for the Strato trademark in the Applications segment. The fair value of the Strato trademark at the end of the reporting period amounts to € 1,800k. In this connection, the residual useful life of the Strato trademark was defined as being 1.5 years. There was no impairment in the previous year.

Sensitivity of assumptions

The sensitivity of the assumptions made with respect to the impairment of goodwill or trademarks depends on the respective cash-generating units.

In the course of analyzing sensitivity for cash-generating units to which goodwill or trademarks have been allocated, an increase in the discount rates (after taxes) of 1 percentage point and a decline in the long-term growth rate in perpetuity of 0.25 percentage points was assumed, as in the previous year. These assumptions would not result in any changes to the impairment test.

As in the previous year, the Company's management believes that, on the basis of reasonable judgment, no generally possible change in one of the basic assumptions used to determine fair value less disposal costs of a cash-generating unit could cause the carrying value to significantly exceed the recoverable amount.

28. Non-current prepaid expenses

Non-current prepaid expenses result mainly from advance payments relating to long-term purchasing agreements with pre-service providers and amount to € 100,880k as of December 31, 2017 (prior year: € 127,974k).

29. Trade accounts payable

Trade accounts payable amount to € 408,920k (prior year: € 383,189k), of which liabilities with terms of more than one year total € 9,023k (prior year: € 9,479k).

30. Liabilities due to banks

a) Liabilities due to banks

	2017 €k	2016 €k
Bank loans	1,955,781	1,760,653
Less		
Current portion of liabilities due to banks	-248,185	-422,236
Non-current portion of liabilities due to banks	1,707,596	1,338,417
Short-term loans/overdrafts	248,185	422,236
Current portion of liabilities due to banks	248,185	422,236
Total	1,955,781	1,760,653

Bank liabilities of € 1,956 million as of December 31, 2017 result mainly from promissory note loans and syndicated loans.

Promissory note loans

In an agreement dated March 13, 2017, United Internet placed a new promissory note loan with a total amount of € 500 million for general company funding. The 5 tranches in total with terms from March 2022 to March 2025 were placed at the issuance amount and are 100% repayable.

By placing mainly fixed-interest tranches, the Group hedged the risk of rising interest rates and optimized the maturity profile with maturities of up to 8 years. The average interest rate of this new promissory note loan is 1.14% p.a. The promissory note loan is not tied to any so-called covenants.

At the end of the reporting period, total liabilities from promissory note loans amounted to € 1,035 million. The outstanding 8 tranches from the promissory note loans 2014 and 2017 are mainly fixed-interest. Depending on the term, the fixed interest rates vary between 0.897% and 2.150% p.a. The interest rate for the variable-interest tranche of the promissory note loan of 2017 is tied to the respective 6-month EURIBOR rate plus a margin of 0.80% p.a.

Syndicated loans & syndicated loan facility

With effect from May 5, 2017, United Internet signed an agreement with its core banks regarding a consolidation and adjustment of its existing syndicated loan borrowing. The syndicated loan of € 750 million arranged in August 2014 and syndicated loan of € 810 million arranged in July 2015 were consolidated into a single loan arrangement. At the same time, the Company used the favorable market situation to renegotiate significant components of the loan agreements. In particular, existing covenants were relaxed, borrowing costs optimized, and some of the terms prolonged in order to further harmonize the maturity profile. No new debt was taken on as a result of this measure.

At the end of the reporting period, a total of € 400 million syndicated loans, redeemable on maturity, divided into two tranches with terms from August 2019 to August 2021 were outstanding, as well as various drawings from the revolving syndicated loan facility of € 810 million negotiated in July 2015 with a term until July 2020.

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The two tranches of the syndicated loans have variable interest rates. The effective interest rates for interest periods of 3 and 6 months are tied to the respective EURIBOR rate plus a margin p.a. This margin depends on the ratio of net liabilities to EBITDA (leverage) of the United Internet Group. At the end of the reporting period, the applicable interest rate for both loans was 0.90% p.a. Redemption payments are possible at any time.

As of December 31, 2017, an amount of € 477 million had been drawn from the revolving syndicated loan facility (prior year: € 407 million). An amount of € 333 million is therefore still available from the portion of the revolving syndicated loan facility not yet drawn (prior year: € 403 million).

There are variable interest rates for drawings from the revolving syndicated loan of € 810 million in total. The effective interest rates for the interest periods of 1, 3 or 6 months are tied to the EURIBOR rate plus a margin p.a. The margin depends on the ratio of net liabilities to EBITDA (leverage) of the United Internet Group. The applicable interest rate as of the reporting date amounts to 1.00% (prior year: 1.35%).

In addition, there was the short-term use of a bilateral credit facility totaling € 41 million by United Internet AG as at December 31, 2017. The credit facility with a total amount of € 75 million has been granted until further notice and bears interest at normal market rates. United Internet AG is liable as co-debtor for any drawings made by Group companies under this agreement.

1&1 Drillisch AG also has a revolving credit line of € 100 million in total granted by banks. This was not utilized as of the reporting date.

At the end of the reporting period, the United Internet Group has free credit lines totaling € 467 million.

	2017 €k	2016 €k
Credit lines granted	175,000	75,000
Credit line utilization	41,000	5,000
Available credit lines	134,000	70,000
Average interest rate	0.43%	0.43%

No collateral was provided for any of the liabilities due to banks.

With the exception of the interest-bearing tranches of the promissory note loan, the fair values of bank liabilities mainly correspond to their carrying values. For further information on the promissory note loan, please refer to note 40.

A euro cash pooling agreement (zero balancing) has been in place between United Internet AG, certain subsidiaries and one of the Company's core banks, since July 2002. Under the agreement, credit and debit balances of the participating Group subsidiaries are pooled and netted via several cascades in a central account of United Internet AG and available each banking day.

b) Guaranty credit facilities

In addition to the above mentioned credit lines, the Group had the following guaranty credit facilities at the end of the reporting period, which in some cases can also be used by other Group companies.

	2017 €k	2016 €k
Guaranty lines granted	91,000	67,800
Guaranty lines utilized	45,686	38,118
Available guaranty lines	45,314	29,682
Average interest rate	0.50%	0.57%

The guaranty credit facilities are available in particular for the provision of operational bank guarantees. The guaranty credit facilities granted are mostly for unlimited periods ("until further notice"). One agreement is limited until June 30, 2020. No collateral was provided to banks.

The stated average interest rate as of the reporting date is based on utilization.

31. Income tax liabilities

At the end of the reporting period, income tax liabilities consist of the following items:

	2017 €k	2016 €k
Germany	126,290	60,816
UK	1,753	1,880
Poland	1,373	621
Spain	500	510
Others	279	318
Total	130,195	64,145

32. Deferred revenue

Customers pay for certain contracts in advance. These contracts are mostly for webhosting and internet access services, as well as one-off provision charges of the Versatel Group. The prepaid charges are allocated and recognized as revenues over the underlying contractual period.

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33. Other accrued liabilities

The development of accruals in fiscal year 2017 was as follows:

	Restoration obligations €k	Litigation risks €k	Restructuring €k	Others €k	Total €k
January 1, 2017	29,689	17,967	100	5,152	52,908
Change in consolidated group	1,203	18,118	0	863	20,184
Utilization	107	2,574	0	4,532	7,213
Reversal	806	2,067	0	48	2,921
Addition	88	2,495	11,900	5,443	19,926
Addition of accrued interest	13	0	0	0	13
December 31, 2017	30,080	33,939	12,000	6,878	82,897

The accruals for restoration obligations mainly refer to possible obligations to remove active telecommunication technology in leased main distribution frames (MDFs).

Litigation risks consist of various legal disputes of Group companies.

Other accruals refer mainly to provisions for warranties and impending losses.

The accrual for restructuring refers to costs in connection with the sale of yourfone Shop GmbH.

Accruals of € 16,068k (prior year: € 16,426k) have a term of one to five years and accruals of € 17,417k (prior year: € 23,245k) a term of over five years. Long-term accruals mainly refer to restoration obligations.

34. Other liabilities

34.1 Other current financial liabilities

	2017 €k	2016 €k
Other current financial liabilities		
- Salary liabilities	49,941	35,036
- Marketing and selling expenses / commissions	22,572	23,820
- Finance lease commitments	16,978	16,333
- Liabilities from usage rights	10,000	0
- Creditors with debit balances	7,132	6,621
- Legal and consulting fees, auditing fees	6,894	16,399
- Service / maintenance / restoration obligations	6,787	5,961
- Bonds	3,077	0
- Others	12,277	10,578
Total	135,658	114,748

34.2 Other current non-financial liabilities

	2017 €k	2016 €k
Other current non-financial liabilities		
- Liabilities to the tax office	37,693	27,867
- Others	10,060	5,661
Total	47,753	33,528

Liabilities to the tax office mainly refer to sales tax liabilities.

34.3 Other non-current financial liabilities

	2017 €k	2016 €k
Other non-current financial liabilities		
- Finance lease commitments	74,809	82,855
- Conditional purchase price liabilities	9,686	0
- Liabilities from usage rights	5,000	0
- Liabilities from put option (InterNetX)	1,584	1,356
- Others	6,458	6,680
Total	97,537	90,891



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Please refer to note 44 regarding finance lease commitments. .

The conditional purchase price liabilities refer to variable purchase price components from the acquisition of Strato AG (€ 5,270k) and ProfitBricks GmbH (€ 4,416k).

On June 10, 2014, 1&1 Internet AG signed an option agreement with the other shareholders of InterNetX GmbH concerning the remaining 4.44% of shares in InterNetX. In the agreement, the two joint owners were granted a put option by 1&1 Internet AG for their remaining shares. The purchase price depends mainly on the development of the company's earnings.

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35. Maturities of liabilities

The maturities of liabilities are as follows:

in €k	Total	Dec. 31, 2017		
		Up to 1 year	1 to 5 years	Over 5 years
Financial liabilities				
Liabilities due to banks				
-Revolving syndicated loan facility	476,184	7,185	468,999	0
-Syndicated loan	400,233	0	400,233	0
-Promissory note loan	1,038,364	200,000	435,500	402,864
-Current account overdrafts	41,000	41,000	0	0
Trade accounts payable	408,920	399,897	9,023	0
Other financial liabilities				
-Finance leases	91,787	16,978	53,403	21,406
-Other	141,408	118,680	19,248	3,479
Total financial liabilities	2,597,896	783,741	1,386,406	427,749
Non-financial liabilities				
Advance payments received	10,901	10,901	0	0
Income tax liabilities	130,195	130,195	0	0
Deferred revenue	294,877	262,480	32,397	0
Other accrued liabilities	82,897	49,412	16,068	17,417
Other non-financial liabilities	47,753	47,753	0	0
Total non-financial liabilities	566,623	500,741	48,465	17,417
Liabilities	3,164,519	1,284,482	1,434,871	445,166

The maturities of liabilities in the previous year are as follows:

in €k	Dec. 31, 2016			
	Total	Up to 1 year	1 to 5 years	Over 5 years
Financial liabilities				
Liabilities due to banks				
-Revolving syndicated loan facility	406,929	736	406,193	0
-Syndicated loan	749,338	351,207	398,131	0
-Promissory note loan	599,386	65,293	436,821	97,272
-Current account overdrafts	5,000	5,000	0	0
Trade accounts payable	383,189	373,710	4,480	4,999
Other financial liabilities				
-Finance leases	99,189	16,333	47,734	35,122
-Other	106,450	98,415	5,924	2,111
Total financial liabilities	2,349,481	910,694	1,299,283	139,504
Non-financial liabilities				
Advance payments received	12,326	12,326	0	0
Income tax liabilities	64,145	64,145	0	0
Deferred revenue	269,323	235,503	33,820	0
Other accrued liabilities	52,908	13,237	16,426	23,245
Other non-financial liabilities	33,528	33,528	0	0
Total non-financial liabilities	432,230	358,739	50,246	23,245
Liabilities	2,781,711	1,269,433	1,349,529	162,749

In the course of determining the maturities of liabilities due to banks, management assumed that the amount drawn from the revolving syndicated loan facility as at the respective balance sheet date would remain constant until the end of the term (July 9, 2020).

36. Share-based payment – employee stock ownership plans

There were three different employee stock ownership plans in the reporting period 2017. One model with so-called Stock Appreciation Rights (SAR) is aimed at the group of senior executives and managers and based on virtual stock options of United Internet AG. The second model, the Employee Stock Ownership Plan (ESOP), was introduced in the second quarter of 2016 for active core employees of those Group companies in which United Internet AG holds a stake of at least 50%. The third program, the Long-Term Incentive Plan (LTIP) was introduced in the second half of 2017 and is aimed at the group of executives and employees in key positions in the Business Applications division.

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36.1 Stock Appreciation Rights (SAR)

The SAR program 2006 to 2010 and 2010 to 2017 employs so-called Stock Appreciation Rights (SARs) and is treated as an equity-settled shared-based payment transaction. SARs refer to the commitment of United Internet AG (or a subsidiary) to pay the beneficiary a cash amount equivalent to the difference between the share price on the date of granting the option (strike price) and the share price on exercising the option. The exercise hurdle is 120% of the share price, which is calculated as the average closing price in electronic trading (Xetra) of the Frankfurt Stock Exchange over the ten days preceding issuance of the option. Payment of value growth to the entitled person is limited to 100% of the calculated share price.

An SAR corresponds to a virtual subscription right for one share of United Internet AG. However, it is not a share right and thus not a (genuine) option to acquire shares of United Internet AG. United Internet AG retains the right, however, to fulfill its commitment (or the commitment of a subsidiary) to pay the SAR in cash by also transferring United Internet AG shares from its stock of treasury shares to the beneficiary, at its own discretion.

Up to 25% of the option right may be converted at the earliest 24 months after the date of issue of the option; up to 50% at the earliest 36 months after the date of issue of the option. A total of up to 75% may be exercised at the earliest 48 months after the date of issue of the option; the full amount may be exercised at the earliest 60 months after the date of issue of the option.

Using an option pricing model on the basis of the Black-Scholes model in accordance with IFRS 2, the fair value of options issued was calculated as follows:

Valuation parameters

	01.03.16	01.04.16	12.04.16	01.05.16
Issue date				
Fair value	1,142 €k	827 €k	971 €k	459 €k
Average market value per option	7.61 €	6.89 €	6.47 €	6.12 €
Strike price	43.76 €	43.49 €	44.06 €	43.51 €
Share price	46.19 €	44.54 €	43.97 €	42.83 €
Dividend yield	1.3%	1.4%	1.4%	1.4%
Volatility of the share	31%	30%	30%	30%
Expected term (years)	5	5	5	5
Risk-free interest rate	0%	0%	0%	0%

Valuation parameters

	01.06.16	13.07.16	02.12.16	06.04.17
Issue date				
Fair value	178 €k	118 €k	465 €k	480 €k
Average market value per option	5.94 €	5.89 €	4.65 €	4.80 €
Strike price	43.45 €	37.49 €	36.27 €	41.26 €
Share price	42.16 €	38.68 €	35.41 €	40.95 €
Dividend yield	1.4%	1.8%	2.0%	2.0%
Volatility of the share	30%	31%	29%	24.86%
Expected term (years)	5	5	5	5
Risk-free interest rate	0%	0%	0%	0%

The volatility used to determine fair value was calculated on the basis of historical volatility for the last 18 months prior to the valuation date. The strike price is calculated on the basis of the average share price of the last 10 days prior to the issuance date.

The total expense from the stock ownership plan amounts to € 33,874k (prior year: € 34,851k). The cumulative expense as of December 31, 2017 totaled € 31,710k (prior year: € 29,613k). Expenses of € 2,164k (prior year: € 5,238k) therefore relate to future years. The personnel expense for share options issued amounted to € 2,097k in the reporting period (prior year: € 2,945k).

Moreover, in fiscal year 2012 an individual commitment for the transfer of 100,000 shares of United Internet AG was granted. The total value of the commitment amounted to € 1,593 thousand on the grant date. On expiry of the blocking period, the shares were transferred in early 2018; the transfer was not linked to vesting conditions.

The changes in the virtual stock options granted and outstanding are shown in the table on the following page.

The range of strike prices for stock options outstanding at the end of the reporting period is between € 16.06 and € 44.06 (prior year: € 13.30 and € 44.06).

36.2 Employee stock ownership plan (ESOP)

In fiscal year 2016, a new employee stock ownership plan (ESOP) was introduced for active core employees of those Group companies in which United Internet AG holds a stake of at least 50%. The ESOP is designed to involve employees more in the development of the United Internet Group and the United Internet AG share, while raising staff motivation and performance and in particular their ties with the United Internet Group, i.e. to honor their continued work for the company (loyalty). The ESOP consists of two components:

Firstly, qualifying employees will receive the option to buy a specific number of shares in United Internet AG at a reduced price, which they must then hold for a period of two years (vesting period). On completion of this period, participants will be granted further shares for free provided they are still working for the company. On achievement of defined "ambition figures", the qualifying employees will receive additional free shares. Of the 5,638 qualifying employees in total, 1,936 employees or 34% of those entitled have accepted the offer and subscribed for a total of 211,460 shares in United Internet AG. The fair value of commitments classified as equity instruments amounted to € 4,298k on the grant date.

In fiscal year 2017, expenses of € 1,720k (prior year: € 1,488k) were incurred from the employee stock ownership plan. The total expense from the employee stock ownership plan (ESOP) amounts to € 4,298k (prior year: € 4,298k). The cumulative expense as of December 31, 2017 totaled € 3,208k (prior year: € 1,488k). Expenses of € 1,090k (prior year: € 2,810k) therefore relate to future years. In fiscal year 2017, expenses of € 1,720k (prior year: € 1,488k) were incurred from the employee stock ownership plan.

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United Internet AG

	SAR	Average strike price (€)
Outstanding as of December 31, 2015	2,875,000	22.78
issued	20,000	37.49
issued	150,000	43.76
issued	75,000	43.51
issued	250,000	44.06
issued	30,000	43.45
issued	100,000	36.27
issued	120,000	43.49
expired / forfeited	-100,000	44.06
exercised	-25,000	31.02
exercised	-20,000	12.12
exercised	-75,000	18.13
exercised	-15,000	30.11
exercised	-125,000	12.03
exercised	-325,000	16.06
exercised	-75,000	21.95
exercised	-100,000	13.43
exercised	-25,000	32.79
exercised	-15,000	13.30
exercised	-85,000	31.15
exercised	-75,000	16.24
Outstanding as of December 31, 2016	2,560,000	29.46
exercised	-325,000	16.06
exercised	-75,000	21.95
exercised	-235,000	31.15
exercised	-15,000	13.30
exercised	-75,000	18.13
exercised	-15,000	30.11
exercised	-25,000	32.79
exercised	-50,000	40.00
expired / forfeited	-75,000	31.02
expired / forfeited	-75,000	43.76
expired / forfeited	-100,000	44.06
expired / forfeited	-75,000	43.51
expired / forfeited	-30,000	43.45
expired / forfeited	-75,000	31.02
issued	100,000	41.26
Outstanding as of December 31, 2017	1,415,000	31.51
Exercisable as of December 31, 2016	75,000	31.15
Exercisable as of December 31, 2017	0	-
Weighted average remaining term		
Weighted average remaining term as of December 31, 2016 (in months)	42	
Weighted average remaining term as of December 31, 2017 (in months)	26	

Expenses for the employee stock ownership plan comprise both personnel expenses from the discounted sale of shares in United Internet AG to participating employees (investment expense) and from the granting of United Internet AG shares on expiry of 2 years (matching expense). The investment expense per share results from the difference between the stock exchange price of a United Internet share on the grant date (€ 36.22) and the purchase price (reference price less discount; € 32.96). On the basis of 211,460 shares, an expense of € 689k was recognized. The matching expense to be recognized over the service period is calculated on the basis of the following material valuation parameters: share price of a United Internet on the grant date (€ 36.22), expected dividend yield of approx. 2%, discount rate for dividend in 2017 and 2018: 0.1% p.a. and 0.2% p.a., and expected fluctuation of 7% p.a.

36.3 Long-Term Incentive Plan (LTIP)

An additional employee stock ownership plan (Long-Term Incentive Plan, LTIP) was introduced for the Business Applications division in the fiscal year 2017. The LTIP is designed to align the long-term interests of management board members and other key employees of the 1&1 Internet Group (Business Applications division) with the interests of the company, in order to raise the equity value of the company (1&1 Internet TopCo SE) and other companies of the 1&1 Internet Group.

Within the LTIP program, qualifying employees in the Hosting division will be allocated so-called Management Incentive Plan (MIP) units. The grant is made on a straight-line basis over a period of four years (beginning with the date of issue) and provided that the respective employee has not terminated his contract at the end of each year. A total of 300,000 MIP units were granted. As of December 31, 2017, all MIPs are still outstanding and not yet unforfeitable.

The entitlements under the LTIP program can be settled in the form of shares or cash. In the case of settlement in the form of shares, rights may be settled by the provision of shares or options to acquire shares. As there is no current obligation for cash settlement, the plan is carried as equity-settled.

Using an option pricing model based on a Black-Scholes model in accordance with IFRS 2, the fair value of the options issued was calculated using the following material valuation parameters: strike price € 114.7 per MIP unit, risk-free rate of 0%, dividend yield of 0%, volatility of 28.3%, and a remaining term as of December 31, 2017 of 3.8 years. The volatility used to calculate fair value was calculated using the price fluctuations of the past 180 days or last 360 days of the Business Applications division peer group.

Expense is recognized on a straight-line basis over the variable period until the anticipated occurrence of an event defined by the LTIP plan. This assessment is reviewed on each reporting date. Based on current estimates, a period of 4 years is used.

In fiscal year 2017, expenses of € 1,344k were incurred from the LTIP employee stock ownership plan. The fair value of commitments classified as equity instruments amounted to € 21,508k on the grant date.

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37. Capital stock

As in the previous year, the fully paid-in capital stock of the balance sheet date amounted to € 205,000,000 divided into 205,000,000 registered no-par shares having a theoretical share in the capital stock of € 1 each.

Pursuant to Sec. 71 (1) No. 8 AktG, the Company is entitled to acquire treasury shares until September 18, 2020 up to a limit of ten percent of capital stock. The purchase price may be no lower than ten percent of the share's market price, nor higher than ten percent above its market price. The authorization may not be used for the purpose of trading with treasury shares.

As of the balance sheet date 5,093,289 treasury shares were held (prior year: 3,370,943).

Treasury shares reduce equity and have no dividend entitlement.

Authorized capital

The Management Board is authorized, subject to the approval of the Supervisory Board, to increase the capital stock in the period ending May 20, 2020 by a maximum of € 102,500,000.00 by issuing on one or more occasions new no-par value shares in return for cash and/or non-cash contributions, whereby the subscription rights of shareholders can be excluded under certain conditions (Authorized Capital 2015).

In the case of a capital increase, shareholders shall be granted subscription rights. Pursuant to Section 186 (5) AktG, shareholders can also be granted subscription rights indirectly. However, the Management Board is authorized, subject to the approval of the Supervisory Board, to exclude the rights of shareholders to subscribe:

- in the case of fractional amounts arising from the subscription ratio;
- in the case of a capital increase in return for cash contribution if the new shares are issued at an issuance price which is not substantially below the market price (as defined by Section 203 (1) and (2) in conjunction with Section 186 (3) Sentence 4 AktG) of those Company shares already listed of the same type and with the same terms at the time of the final determination of the issuance price by the Management Board, which should be as near as possible to the share issue date, and the proportionate amount of the capital stock attributable to the new shares for which subscription rights are excluded does not exceed ten percent of the existing capital stock, neither at the time this authorization becomes effective nor when it is exercised. This amount includes the proportionate share of capital stock attributable to shares issued or used during the term of the authorization in direct or corresponding application of Section 186 (3) Sentence 4 AktG under exclusion of subscription rights. This amount also includes the proportionate share of capital stock attributable to shares issued or to be issued to serve conversion or warrant rights, providing the underlying bonds are issued during the term of this authorization under exclusion of subscription rights pursuant to Section 186 (3) Sentence 4 AktG;
- to the extent that this should be necessary in order to grant subscription rights for new shares to bearers of bonds with warrant or conversion rights or obligations issued by the Company or subordinated Group companies in the amount to which they are entitled on exercise of their warrant or conversion rights or fulfillment of their warrant or conversion obligation;
- in the case of capital increases in return for non-cash contribution to grant shares for the purpose of acquiring companies, parts of companies, interests in companies or other assets, including rights and receivables, or as part of business combinations.

Conditional capital

Capital stock is to be conditionally increased by up to € 25,000,000.00, divided into 25,000,000 no-par value shares (Conditional Capital 2015). The conditional capital increase is earmarked for shares to be granted to bearers or holders of warrant or convertible bonds granted by the Company or a subordinated Group company in accordance with the above authorization. The new shares shall be issued at the warrant or conversion price to be determined in the bond terms and in accordance with the above authorization. The conditional capital increase shall only be implemented to the extent that the warrant or conversion rights pertaining to the bonds are exercised or warrant or conversion obligations pertaining to the bonds are fulfilled, or the Company exercises its right to tender shares, and unless other fulfillment possibilities for servicing are used. The new shares used for the issue shall participate in profits from the beginning of the fiscal year in which they are created by exercising the warrant or conversion right; to the extent that it is legally permissible, the Management Board may, with the approval of the Supervisory Board, determine the profit participation of new shares and, notwithstanding Section 60 (2) AktG, also for a fiscal year already expired. The Management Board is authorized to determine the further details of the implementation of the conditional capital increase.

38. Reserves

As of December 31, 2017, capital reserves amounted to € 2,709,203k (prior year: € 377,550k). € 1,671,860k of this increase results mainly from additions in connection with the acquisition of the Drillisch Group, and € 650,907k from additions in connection with the investment of Warburg Pincus in the Business Applications division.

The accumulated result includes the past results of consolidated companies, insofar as no dividends were paid, less expenses for share-based remuneration.

At the end of the reporting period, the revaluation reserve consisted of the following items:

	2017 €k	2016 €k
Available-for-sale financial assets:		
- Rocket Internet shares	69,971	22,912
- Afilias shares	5,427	8,175
- AdUX shares	6	862
Share in other comprehensive income of associated companies:		
- Tele Columbus shares	-481	-961
Total	74,923	30,988

The revaluation reserve from available-for-sale financial assets includes gains and losses from subsequent measurement at fair value. Provided there is no indication of impairment, these are recognized directly in other comprehensive income net – i.e. less deferred taxes – and after non-controlling interests.

Translation differences from the annual financial statements of foreign subsidiaries without an effect on profit or loss are recognized in the currency translation adjustment.

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An overview of the composition and changes in the reserves described above for the fiscal years 2017 and 2016 is provided in the statement of changes in shareholders' equity.



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39. Non-controlling interests

Non-controlling interests as of December 31, 2017 developed as follows in the reporting period:

	Jan. 1, 2017 €k	Addition via acquisition €k	Employee stock ownership plan €k	Pro-rated result €k	Pro-rated other compre- hensive income €k	Dividend €k	Dec. 31, 2017 €k
1&1 Drillisch AG (26,71%)	0	231,350	0	31,768	0	0	263,118
1&1 Internet TopCo SE/ Business Applications (33.33%)	0	-209,651	1,466	4,684	-648	0	-204,149
Other non-controlling interests	348	0	0	199	-20	-164	363
Total	348	21,699	1,466	36,651	-668	-164	59,332

The addition refers to the initial investment of non-controlling shareholders in the respective subsidiary.

The following financial information comprises summarized details on the assets, liabilities, profits or losses, and cash flows of the subsidiary with material non-controlling interests.

Drillisch Group

The current and non-current assets of the Drillisch Group amount to € 657 million and € 4,079 million as of December 31, 2017. The current and non-current liabilities of the Drillisch Group amount to € 675 million and € 255 million as of December 31, 2017. Equity amounts to € 3,805 million as of December 31, 2017. Revenue for the fiscal year 2017 amounts to € 2,812 million. Earnings before taxes amount to € 431k for the fiscal year 2017. Tax expenses amount to € 121 million. Consolidated net income from continued operations amounts to € 310 million. Net income after taxes from discontinued operations amounts to € 171 million. Consolidated net income after discontinued operations amounts to € 481 million. Cash flow from operating, investing and financing activities amounts to € 370 million (thereof cash flow from operating activities of continued operations € 294 million), € -49 million (thereof cash flow from investing activities of continued operations € 9 million) and € 153 million (thereof cash flow from financing activities of continued operations € -146 million) in the fiscal year 2017.

1&1 Internet TopCo SE (Business Applications)

The current and non-current assets of the sub-group 1&1 Internet TopCo SE amount to € 199 million and € 1,222 million as of December 31, 2017. The current and non-current liabilities of the sub-group 1&1 Internet TopCo SE amount to € 376 million and € 1,657 million as of December 31, 2017. Equity amounts to € -612 million as of December 31, 2017. Revenue for the fiscal year 2017 amounts to € 806 million. Net income after taxes amounts to € 23 million for the fiscal year 2017. Cash flow from operating, investing and financing activities amounts to € 125 million, € -648 million and € 519 million for the fiscal year 2017.

40. Additional details on financial instruments

The following table shows the carrying values for each category of financial assets and liabilities for fiscal year 2017:

	Valuation category acc. to IAS 39	Valuation acc. to IAS 39					Fair value on Dec. 31, 2017 €k
		Carrying value on Dec. 31, 2017 €k	Amortized cost €k	Fair value not through profit or loss €k	Fair value through profit or loss €k	Measurement acc. to IAS 17 €k	
Financial assets							
Cash and cash equivalents	lar	238,522	238,522				238,522
Trade accounts receivable	lar/n/a						
Receivables from finance leases	n/a	59,229				59,229	61,965
Others	lar	284,341	284,341				284,341
Other current financial assets	lar	100,270	100,270				100,270
Other non-current financial assets							
Investments	afs	300,005	8,720	291,285			300,005
Derivatives	fahft	17,890			17,890		17,890
Others	lar	33,694	33,694				33,694
Financial liabilities							
Trade accounts payable	flac	-408,920	-408,920				-408,920
Liabilities due to banks	flac	-1,955,781	-1,955,781				-1,956,201
Other financial liabilities	flac/n/a						
Finance leases	n/a	-91,787				-91,787	-95,871
Conditional purchase price obligation	flhft	-9,686			-9,686		-9,686
Others	flac	-131,722	-131,722				-131,722
Of which aggregated acc. to valuation categories:							
Loans and receivables (lar)	lar	656,828	656,828	0	0	0	656,828
Available-for-sale (afs)	afs	300,005	8,720	291,285	0	0	300,005
Financial assets held for trading (fahft)	fahft	17,890	0	0	17,890	0	17,890
Financial liabilities measured at amortised cost (flac)	flac	-2,496,423	-2,496,423	0	0	0	-2,496,843
Financial liabilities held for trading (flhft)	flhft	-9,686	0	0	-9,686	0	-9,686
Finance leases	n/a	-32,558	0	0	0	-32,558	-33,906

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The following net results were stated for the individual categories of financial instruments acc. to IAS 39 in fiscal year 2017:

Net result acc. to valuation categories 2017
(in €k)

	Valuation category acc. to IAS 39	From interest and dividends	Net profits and losses from subsequent valuation			Net result
			Fair value	Currency translation	Value adjusted	
Loans and receivables (lar)	lar	758	-	-369	-41,090	-40,701
Available for sale (afs)	afs					
- of which not affecting net income		-	46,203	-	-	46,203
- of which affecting net income		730	-	-	-19,757	-19,027
Financial liabilities measured at amortized cost (flac)	flac	-35,329	-	-158	-	-35,487
Financial assets held for trading						
- of which affecting net income		-	-5,290	-	-	-5,290
Financial liabilities held for trading (flhft)						
- of which affecting net income		-	250	-	-	250
Total		-33,841	41,163	-527	-60,847	-54,052

With the exception of trade accounts receivable in connection with finance leases, cash and cash equivalents, trade accounts receivable, and other current financial assets mostly have short remaining terms. Their carrying values on the balance sheet date are thus similar to fair value.

Investments and derivatives are carried at fair value. In the case of the remaining other non-current financial assets carried at amortized cost, it is assumed that their carrying values correspond to fair value.

Trade accounts payable mostly have short remaining terms. Their carrying values on the balance sheet date are thus similar to fair value. The same applies to current liabilities due to banks.

Non-current liabilities due to banks are loans which can be prematurely redeemed. In addition, both the basic interest rate and the margin are variable. The margin depends on predefined KPIs of the United Internet Group. Due to these factors, it is assumed that their carrying values of non-current liabilities correspond approximately to fair value.

In spite of the promissory note loans totaling € 1,035 million concluded in the fiscal years 2014 and 2017 at favorable conditions, the fair values of these liabilities amount to € 1,036 million, due to the positive risk assessment of the Group by the banks. The valuation is based on Level 3 assumptions.

Due to changed interest rates, there are slight deviations between the carrying value and fair value of receivables and liabilities in connection with finance leases.

The conditional purchase price liabilities are carried at fair value. In the case of the remaining other non-current financial liabilities carried at amortized cost, it is assumed that their carrying values correspond to fair value.

The following table shows the carrying values for each category of financial assets and liabilities for fiscal year 2016:

	Valuation category acc. to IAS 39 €k	Net profits and losses from subsequent valuation					Fair Value per 31.12.2016 €k
		From interest and dividends €k	Fair value €k	Currency translation €k	Value adjusted €k	Measurement acc. to IAS 17 €k	
Financial assets							
Cash and cash equivalents	lar	101,743	101,743				101,743
Trade accounts receivable	lar/n/a						
Receivables from finance leases	n/a	61,775				61,775	64,551
Others	lar	222,091	222,091				222,091
Other current financial assets	lar	21,536	21,536				21,536
Other non-current financial assets	lar/afs						
Investments	afs	273,559	8,720	264,839			273,559
Others	lar	14,129	14,129				14,544
Financial liabilities							
Trade accounts payable	flac	-383,189	-383,189				-383,189
Liabilities due to banks	flac	-1,760,653	-1,760,653				-1,779,529
Other financial liabilities	flac/n/a						
Finance leases	n/a	-99,189				-99,189	-101,208
Others	flac	-106,450	-106,450				-106,450
Of which aggregated acc. to valuation categories:							
Loans and receivables (lar)	lar	359,499	359,499	0	0	0	359,914
Available-for-sale (afs)	afs	273,559	8,720	264,839	0	0	273,559
Financial liabilities measured at amortized cost (flac)	flac	-2,250,292	-2,250,292	0	0	0	-2,269,168
Finance leases	n/a	-37,414	0	0	0	-37,414	-36,657

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The following net results were stated for the individual categories of financial instruments acc. to IAS 39 in fiscal year 2016:

Net result acc. to valuation categories 2016
(in €k)

	Valuation category acc. to IAS 39	From interest and dividends	Net profits and losses from subsequent valuation			
			Fair value	Currency translation	Value adjusted	Net result
Loans and receivables (lar)	lar	905	-	219	-34,642	-33,518
Available for sale (afs)	afs					0
- of which not affecting net income		-	128,867	-	-	128,867
- of which affecting net income		589	-	-	-254,905	-254,316
Financial liabilities measured at amortized cost (flac)	flac	-28,271	-	94	-	-28,177
Financial assets held for trading	hd					
- of which affecting net income		-	6,592	-	-	6,592
Total		-26,777	135,459	313	-289,547	-180,552

The fair value of financial assets and liabilities is stated at the amount at which the instrument concerned might be exchanged in a current transaction (excluding a forced sale or liquidation) between willing business partners.

The methods and assumptions used to determine fair values are shown below:

- Cash and short-term deposits, trade receivables, trade payables, and other current assets and liabilities approximate their carrying amounts largely due to the short-term maturities of these instruments.
- Long-term fixed-rate and variable-rate receivables/borrowings are evaluated by the Group based on parameters such as interest rates, specific country risk factors, individual creditworthiness of the customer and the risk characteristics of the financed project. Based on this evaluation, allowances are taken to account for the expected losses of these receivables. As at 31 December 2016, and as in the previous year, the carrying amounts of such receivables, net of allowances, are not materially different from their calculated fair values.
- The fair value of unquoted instruments, loans from banks and other financial liabilities, as well as other non-current financial liabilities, is estimated by discounting future cash flows using rates currently available for debt on similar terms, credit risk and remaining maturities.
- Fair values of available-for-sale financial assets are derived from quoted market prices in active markets, if available.
- The fair value of unquoted available-for-sale financial assets is estimated using appropriate valuation techniques.
- Financial assets and liabilities measured at fair value are measured using appropriate valuation techniques. Where available, stock exchanges prices on active markets are used. The valuation of shares in non-listed companies is based mainly on present value models. The valuation of derivatives and conditional purchase price liabilities is based mainly option pricing models.

Fair value hierarchy

The Group uses the following hierarchy for determining and disclosing the fair value of financial instruments by valuation technique:

Level 1: quoted (unadjusted) prices in active markets for identical assets or liabilities

Level 2: other techniques for which all inputs which have a significant effect on the recorded fair value are observable, either directly or indirectly

Level 3: techniques which use inputs which have a significant effect on the recorded fair value that are not based on observable market data.

Assets and liabilities measured at fair value

	As of Dec. 31, 2017 €k	Level 1 €k	Level 2 €k	Level 3 €k
Available-for-sale financial assets				
Listed shares	291,285	291,285		
Financial assets held for trading				
Purchase price receivable				17,890
Financial liabilities held for trading				
Conditional purchase price liability				-9,686

As in the previous year, there were no transfers between levels during the reporting period.

	As of Dec. 31, 2016 €k	Level 1 €k	Level 2 €k	Level 3 €k
Available-for-sale financial assets				
Listed shares	264,839	264,839		

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41. Transactions with related parties

IAS 24 defines related parties as those persons and companies that control or can exert a significant influence over the other party. Mr. Ralph Dommermuth, the major shareholder, as well as from the members of the Management Board and Supervisory Board of United Internet AG and their close relatives were classified as related parties. Moreover, companies over which the related parties exert a controlling influence are classified as related parties.

Mr. Martin Witt stepped down from the Management Board of United Internet AG at his own request as of September 30, 2017 in order to take up his role in the Drillisch Group. There were no other changes to the circle of related parties as compared with the consolidated financial statements as at December 31, 2016.

United Internet's premises in Montabaur and Karlsruhe are leased from Mr. Ralph Dommermuth, the Chief Executive Officer and a major shareholder of the Company. The corresponding lease agreements have different terms between the end of 2021 and June 2025. The resulting rent expenses are customary and amounted to € 8,730k in fiscal year 2017 (prior year: € 8,378k).

At the Annual Shareholders' Meeting on May 21, 2015, Mr. Kurt Dobitsch (chairman), Mr. Michael Scheeren (deputy chairman), and Mr. Kai-Uwe Ricke were re-elected as members of the Company's Supervisory Board. The Supervisory Board was elected for the period ending with the Annual Shareholders' Meeting which adopts the resolution to release the Supervisory Board members from their responsibility for fiscal year 2019.

In fiscal year 2017, the members of the Supervisory Board also held seats on supervisory boards or similar committees of the following companies:

Kurt Dobitsch

- 1&1 Internet SE, Montabaur (until March 16, 2017)
- United Internet Investments Holding GmbH, Montabaur (formerly: United Internet Ventures AG) (until March 1, 2017)
- 1&1 Telecommunication SE, Montabaur
- 1&1 Mail & Media Applications SE, Montabaur
- 1&1 Drillisch Aktiengesellschaft, Maintal (formerly: Drillisch AG) (as of October 16, 2017)
- Nemetschek AG, Munich (chair)
- Graphisoft S.E., Budapest / Hungary
- Vectorworks Inc., Columbia / USA
- Bechtle AG, Gaildorf
- Singhammer IT Consulting AG, Munich
- Drillisch Online AG, Maintal (as of January 17, 2018)

Kai-Uwe Ricke

- 1&1 Internet SE, Montabaur
- United Internet Investments Holding GmbH, Montabaur (formerly: United Internet Ventures AG) (until March 1, 2017)
- 1&1 Telecommunication SE, Montabaur
- 1&1 Mail & Media Applications SE, Montabaur (chair)
- Strato AG, Berlin (as of May 17, 2017)
- 1&1 Drillisch Aktiengesellschaft, Maintal (formerly: Drillisch AG) (as of October 16, 2017)
- EUN Holdings LLP, Delaware / USA
- Delta Partners FZ-LLC, Dubai / Emirate of Dubai
- SUSI Partners AG, Zurich / Switzerland
- Zalando SE, Berlin (until May 31, 2017)
- Virgin Mobile CEE, Amsterdam / Netherlands
- Cash Credit Limited, Cayman Islands (as of November 1, 2017)
- 1&1 Internet TopCo SE, Montabaur (from March 3, 2017 to December 13, 2017)
- Drillisch Online AG, Maintal (as of January 1, 2018 – chair)

Michael Scheeren

- 1&1 Internet SE, Montabaur
- United Internet Investments Holding GmbH, Montabaur (formerly: United Internet Ventures AG) (until March 1, 2017 – chair)
- 1&1 Telecommunication SE, Montabaur
- 1&1 Mail & Media Applications SE, Montabaur (chair)
- 1&1 Internet TopCo SE, Montabaur (from March 3, 2017 to December 13, 2017)
- 1&1 Drillisch Aktiengesellschaft, Maintal (formerly: Drillisch AG) (as of October 16, 2017 – chair)
- Strato AG, Berlin (as of May 17, 2017)
- Drillisch Online AG, Maintal (as of January 17, 2018)

On May 21, 2015, the Annual Shareholders' Meeting adopted a new remuneration system which complies fully with the German Corporate Governance Code. It consists of a fixed remuneration component and an attendance fee per meeting. The fixed remuneration for an ordinary member of the Supervisory Board amounts to € 15k per full fiscal year. The Chairman of the Supervisory Board receives the double amount. The attendance fee amounts to € 1k for each meeting.

The members of the Supervisory Board of United Internet AG are also members of the supervisory board of various subsidiaries. As of fiscal year 2015, they also receive remuneration from these subsidiaries. The remuneration of the subsidiaries also consists of a fixed annual remuneration and an attendance fee for each meeting. The fixed annual remuneration varies between the subsidiaries, while the standard attendance fee amounts to € 1k for each meeting.

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The following table provides details on the compensation received by members of the Supervisory Board of United Internet AG:

	United Internet AG			Subsidiaries of United Internet AG			Total		
	Fixed €k	Atten- dance fee €k	Total €k	Fixed €k	Atten- dance fee €k	Total €k	Fixed €k	Atten- dance fee €k	Total €k
2017									
Kurt Dobitsch	30	4	34	85	10	95	115	14	129
Kai-Uwe Ricke	15	4	19	115	15	130	130	19	149
Michael Scheeren	15	4	19	129	15	144	144	19	163
	60	12	72	329	40	369	389	52	441

	United Internet AG			Subsidiaries of United Internet AG			Total		
	Fixed €k	Atten- dance fee €k	Total €k	Fixed €k	Atten- dance fee €k	Total €k	Fixed €k	Atten- dance fee €k	Total €k
2016									
Kurt Dobitsch	30	4	34	110	16	126	140	20	160
Kai-Uwe Ricke	15	4	19	115	16	131	130	20	150
Michael Scheeren	15	4	19	135	16	151	150	20	170
	60	12	72	360	48	408	420	60	480

There are no subscription rights or share-based payments for members of the Supervisory Board.

The Supervisory Board is responsible for determining the remuneration of the Management Board. The members of the Management Board are compensated according to performance. This compensation consists of a fixed and a variable element (bonus). A target remuneration figure is agreed for the fixed component and the bonus, which is regularly reviewed. The last review was made in fiscal year 2017. The fixed remuneration component is paid monthly as a salary. The size of the bonus depends on reaching certain, fixed financial targets agreed at the beginning of the fiscal year. These targets are based mainly on sales and earnings figures. The target attainment corridor is generally between 90% to 120%. No bonus is paid below 90% of the agreed target and the bonus calculation ends at 120% of the agreed target. No subsequent amendment of the performance targets is allowed. There is no minimum guaranteed bonus. Payment is generally made after the annual financial statements have been adopted by the Supervisory Board.

There are no retirement benefits from the Company to members of the Management Board.

The following table provides details on the compensation received by members of the Management Board:

2017

	Fixed €k	Variable €k	Fringe benefits €k	Total fixed, variable and fringe benefits €k	Market value of share- based payments granted in 2017 ⁽¹⁾ €k
Ralph Dommermuth	0	0	0	0	-
Robert Hoffmann	300	200	12	512	-
Frank Krause	360	140	311	811	-
Jan Oetjen	300	200	13	513	-
Martin Witt	225	150	9	384	-
Total	1,185	690	345	2,220	-

2016

	Fixed €k	Variable €k	Fringe benefits €k	Total fixed, variable and fringe benefits €k	Market value of share- based payments granted in 2017 ⁽¹⁾ €k
Ralph Dommermuth	0	0	0	0	-
Robert Hoffmann	300	199	12	511	-
Frank Krause	360	139	111	610	465
Jan Oetjen	300	199	13	512	-
Martin Witt	300	199	12	511	-
Total	1,260	736	148	2,144	465

(1) Share-based payments (so-called Stock Appreciation Rights) are compensation components with a long-term incentive and paid out over a total period of 6 years.

Total Management Board remuneration as defined by Section 314 (1) No. 6 a and b HGB, i.e. including the market value of share-based payments, amounted to € 2,231 in the fiscal year (prior year: € 2,609k). Members of the Management Board were not granted any advances or loans in the reporting period nor in the previous year.

In fiscal year 2016, Mr. Ralph Dommermuth waived his claim in full to Management Board remuneration with effect from January 1, 2016. As a consequence, Mr. Ralph Dommermuth received no remuneration in the fiscal years 2016 and 2017.

As in the previous year, Mr. Frank Krause received a special payment of € 300k in fiscal year 2017 (prior year: € 100k). This special payment was included in the fringe benefits.

In the fiscal year 2017, Mr. Frank Krause exercised 50,000 (prior year: 0), Mr. Martin Witt 115,000 (prior year: 125,000), Mr. Jan Oetjen 150,000 (prior year: 0), and Mr. Robert Hoffmann 250,000 (prior year: 325,000) subscription rights. The rights exercised by Mr. Witt were after his departure from the Management Board of United Internet AG.

Reference is also made to the Remuneration Report, which is part of the Combined Management Report.

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The number of shares in United Internet AG held by members of the Management Board and the Supervisory Board is given in the following table:

	January 1, 2017			December 31, 2017		
	Direct	Indirect	Total	Direct	Indirect	Total
Management Board						
Ralph Dommermuth	-	82,000,000	82,000,000	-	82,000,000	82,000,000
Robert Hoffmann	211,907	-	211,907	211,907	-	211,907
Frank Krause	920	-	920	5,482	-	5,482
Jan Oetjen	14,033	-	14,033	33,621	-	33,621
Martin Witt	23,195	-	23,195	-	-	-
Total	250,055	82,000,000	82,250,055	251,010	82,000,000	82,251,010
Supervisory Board						
Kurt Dobitsch	-	-	-	-	-	-
Kai-Uwe Ricke	-	-	-	-	-	-
Michael Scheeren	300,000	-	300,000	100,000	-	100,000
Total	300,000	-	300,000	100,000	-	100,000

The United Internet Group can also exert a significant influence on its associated companies.

Transactions with related parties

Sales to and purchases from related parties are conducted at standard market conditions. The open balances at year-end are unsecured, non-interest-bearing and settled in cash. There are no guarantees for receivables from or liabilities due to related parties. No allowances were recognized for receivables from related parties in fiscal year 2017 or the previous year. An impairment test is conducted annually. This includes an assessment of the financial position of the related party and the development of the market in which they operate.

At the end of the reporting period, there were two loan agreements with associated companies totaling € 8,600k (prior year: € 7,125k). Due to the complete purchase of the company ProfitBricks, the outstanding loan and corresponding outstanding interest of € 7,125k with this company in the previous year was eliminated in the course of consolidation. In connection with the contribution of affilinet to Awin, United Internet also acquired a loan to Awin. The loan comprises two tranches with terms of five and nine years. The tranches each have fixed interest rates of 2.5% p.a. to 3.0% p.a.

In addition, dividend income of DomainsBot S.r.l., Rome/Italy amounting to € 0k (prior year: € 37k) was received.

The following table presents the outstanding balances and total transactions volumes with associated companies in the respective fiscal year:

Purchases/services from related parties		Sales/services to related parties		Liabilities due to related parties		Receivables from related parties	
2017 €k	2016 €k	2017 €k	2016 €k	2017 €k	2016 €k	2017 €k	2016 €k
10,193	11,978	1,253	962	252	2,470	1,640	10,279

Receivables from other related parties mainly result from loans to AWIN. In the previous year, they mainly resulted from loans to ProfitBricks GmbH.

Financial income		Financial expenses	
2017 €k	2016 €k	2017 €k	2016 €k
221	306	0	0

42. Objectives and methods of financial risk management

Principles of risk management

The risk management system introduced by the United Internet Group is based on the COSO-ERM framework and is described in detail in the Management Report.

The principles of finance policy are set by the Management Board and monitored by the Supervisory Board. Certain transactions require the prior approval of the Supervisory Board.

The main financial liabilities used by the Group include bank loans, promissory note loans and overdraft facilities, trade accounts payable and other financial liabilities.

The Group holds various financial assets which result directly from its business activities. They consist mainly of trade accounts receivable, available-for-sale financial investments and short-term deposits.

As of the balance sheet date, the Group mainly held primary financial instruments.

The aim of financial risk management is to limit these risks through ongoing operating and financial activities. The Company is hereby exposed to certain risks with regard to its assets, liabilities and planned transactions, especially liquidity risks and market risks, as described below.

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Liquidity risk

Liquidity risk constitutes the risk that a company will be unable to meet the financial obligations arising from its financial liabilities. As in the previous year, the general liquidity risk of United Internet consists of the possibility that the Company may not be able to meet its current financial obligations in due time. To ensure the solvency and financial flexibility of the United Internet Group at all times, short-term liquidity forecasts and longer-term financial planning are conducted.

As a result of the expected positive contribution to liquidity from operations and the interest-optimized use of the credit lines already granted, the Company is able to ensure the continual coverage of its financial needs for fiscal year 2018 at all times. The credit commitments granted to the Company by banks and the existing syndicated loan facility offer sufficient flexibility for these needs. In order to maintain financial stability, a balanced financial structure is sought which provides both a diversification of financial instruments and a balanced maturity profile.

Our global cash requirements and surpluses are managed by our central liquidity management system. The daily automatic pooling of bank balances held by the participating Group companies provides United Internet AG at all times with the predominant proportion of its cash denominated in euro. The Company has established standardized processes and systems to manage its bank and netting accounts as well as for the execution of payment transactions.

The following table shows all contractually fixed payments for redemption, repayments and interest for financial liabilities carried in the balance sheet as of December 31, 2017 and 2016:

	Carrying values as of						Total €k
	Dec. 31, 2017 €k	2018 €k	2019 €k	2020 €k	2021 €k	> 2021 €k	
Liabilities to banks	1,955,781	277,331	219,613	724,270	208,965	608,545	2,038,724
Trade accounts payable	408,920	402,277	1,264	1,142	1,102	5,419	411,204
Other financial liabilities	233,195	160,258	23,816	12,092	11,803	33,770	241,739
Total	2,597,896	839,866	244,693	737,504	221,870	647,734	2,691,667

Payments from other financial liabilities also comprise expected payments from derivatives of € 9.7 million in fiscal year 2021.

	Carrying values as of						Total
	Dec. 31, 2016	2017	2018	2019	2020	> 2020	
	€k	€k	€k	€k	€k	€k	€k
Liabilities to banks	1,760,653	442,739	218,337	414,315	654,303	101,526	1,831,220
Trade accounts payable	383,189	373,709	1,238	1,189	1,055	5,998	383,189
Other financial liabilities	205,639	124,403	16,328	14,299	11,427	49,019	215,476
Total	2,349,481	940,851	235,903	429,803	666,785	156,543	2,429,885

For the calculation of cash flows from liabilities to banks, management assumed that the portion of the revolving syndicated loan facility currently used amounting to € 470,000k (prior year: € 406,991k) would remain unchanged until the end of its term (July 9, 2020).



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Please refer to note 30 for details on interest and redemption payments for liabilities to banks.

The Company has no significant concentration of liquidity risks.

Market risk

The activities of United Internet are mainly exposed to financial risks from changes in interest rates, exchange rates, stock exchange prices, and credit or contingency risks.

Interest risk

The interest (rate) risk refers to the risk that fair values or future interest payments on existing and future financial liabilities may fluctuate due to changes in market interest rates.

The Group is fundamentally exposed to interest risks as the major share of its borrowing as of the balance sheet date bears variable interest rates with varying terms.

With the aid of the liquidity planning, various investment possibilities or possibilities to reduce surplus liquidity are constantly examined. The maturity profile and amount of the Group's variable-rate financial instruments are regularly reviewed and appropriate measures are taken to ensure liquidity and the management of interest risks.

Market interest rate changes might have an adverse effect on the interest result and are included in our calculation of sensitive factors affecting earnings. In order to present market risks, United Internet has developed a sensitivity analysis which shows the impact of hypothetical changes to relevant risk variables on pre-tax earnings. The reporting period effects are illustrated by applying these hypothetical changes in risk variables to the stock of financial instruments as of the balance sheet date.

Due to the ongoing expansionary interest policy of the European Central Bank, the relevant EURIBOR interest rate is negative at the end of the reporting period. The company does not expect any material changes in risk premiums in the foreseeable future. United Internet currently regards the interest risk for its existing variable-rate financial instruments as low.

The interest risk is negligible for other interest-bearing liabilities. At the end of the reporting period, there were no external interest-hedging transactions.

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Currency risk

A currency risk is the risk that fair values or future cash flows of financial instruments may fluctuate due to changes in exchange rates. The Group companies are mainly exposed to currency risks as a result of their operations (if revenue and/or expenses are in a currency other than the functional currency of the respective company). In order to cover such foreign currency risks, United Internet strives to achieve an equilibrium between the incoming and outgoing payments of Group companies (so-called natural hedging). Currency risks which do not affect cash flows (i.e. risks from translating the assets and liabilities of the Group's foreign companies) are not hedged against. With regard to operating activities, individual Group companies perform their business mainly in their respective functional currencies. As in the previous year, the currency risk from operations is therefore regarded as low. In the reporting period, there were no currency risks which significantly affected cash flows. At the end of the reporting period, there were no external currency-hedging transactions.

The currency risks arising from original financial instruments in a currency and of a monetary nature other than that of the functional currency as of the balance sheet date were valued by the company. No material currency risks arose from this analysis.

Stock exchange risk (valuation risk)

The Company classifies certain (quoted) financial assets as available-for-sale and records changes in their fair value in equity via other comprehensive income in the revaluation account. If there is a significant or persistent decrease in the fair value of an equity instrument below its acquisition cost, the Company recognizes an impairment of the financial instrument in its income statement. The fair value of these listed financial assets amounted to € 291,285k as of the balance sheet date (prior year: € 264,839k).

The share price development of listed investments may lead to impairments or changes in equity without affecting income as of the balance sheet date. An increase in stock exchange prices of 10% as of the balance sheet date would have led to the recognition of € 28,990k through equity (prior year: € 26,484k). A decrease in stock exchange prices of 10% would have reduced the Group's equity by € 28,990k as of December 31, 2017 (prior year: reduced equity by € 23,774k and reduced financial result by € 2,710k). Valuations based on stock market prices continue to be made with the application of IFRS 9. In the future, however, United Internet will have the option of recognizing changes in the value of individual investments either directly in equity or through profit or loss. Please refer to the disclosures on expected effects from applying new accounting standards.

Credit and contingency risk

In the course of its operating activities, the Company is exposed to a contingency risk. A sophisticated and preventive fraud management system has therefore been established which is being permanently enhanced. Outstanding amounts are still monitored locally and on a continual basis. Individual and lump-sum allowances are made to account for such contingency risks. The Company sees a slight decrease in the contingency risk over the previous year.

With regard to trade accounts receivable, the maximum risk in the gross amount stated in the balance sheet is before allowances but after netting. Trade accounts receivable which are not impaired as of the balance sheet date, are classified according to periods in which they become overdue (see note 18).



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Internal rating system

A pre-contractual fraud check is generally conducted and collection agencies are also used for the management of receivables. In addition, a pre-contractual check of creditworthiness is made in the media sales business and collection agencies are also used for the management of receivables.

Individual allowances for receivables overdue are generally made on the basis of the respective age profile. These allowances are mainly derived from success rates of the agencies used for collecting such debts. 100% individual allowances are made for all receivables overdue more than 365 days. In certain Group companies, individual allowances are made for each customer according to various criteria (e.g. dunning level, insolvency, fraud cases etc.).

The Company has no significant concentration of credit risks.

Risks from financial covenants

The existing loans of United Internet AG are tied to so-called financial covenants. The infringement of a certain net debt-to-EBITDA ratio could result in individual banks terminating outstanding loans with the Company. In view of the low net debt-to-EBITDA ratio of United Internet at present, the probability of infringement is regarded as low. Compliance with the covenants is regularly monitored by the Company's Management Board and was met throughout the year.

Capital management

In addition to the legal provisions for stock corporations, the Company has no further obligations to maintain capital according to its statutes or other agreements. The key financial indicators used by the Company are mainly performance-oriented. The targets, methods and processes of capital management are thus subordinate to these performance-oriented financial indicators.

In order to maintain and adapt its capital structure, the Company can adjust dividend payments or pay capital back to its shareholders, can purchase treasury shares and place them again if required, or issue new shares. Please refer to the statement of changes in shareholders' equity. As of December 31, 2017 and December 31, 2016, no changes were made to the Company's targets, methods and processes.

43. Specific contingencies and commitments

Litigation

Litigation risks mainly relate to various legal disputes of Group subsidiaries.

Accruals for litigation were formed for any commitments arising from these disputes (see note 33).

Guarantees

As of the balance sheet date, the Company has issued no guarantees.



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44. Leases, other financial commitments, guarantees and contingent liabilities

Group as lessee

Operating lease contracts

The obligations mainly comprise leased network obligations including subscriber lines, buildings, technical equipment and vehicles. The contracts generally include renewal options.

Most leases have options to prolong the contractual relationship. The terms of these prolongation options are negotiable or identical with the current terms.

As of December 31, the future minimum lease obligations were as follows:

	2017 €k	2016 €k
Up to 1 year	88,799	75,612
1 to 5 years	116,408	118,524
Over 5 years	37,757	43,590
Total⁽¹⁾	242,964	237,726

(1) Figures are based on minimum contractual terms

In the reporting period, these operating leases incurred expenses of € 156,688k (prior year: € 165,297k).

Finance leases

The payment obligations resulting from finance leases as of the balance sheet date are carried as a liability at the present value of the future lease payments. Finance leases relate primarily to rent and lease agreements for the passive network infrastructure of the Versatel Group. Most leases include renewal options. Future minimum lease payments from finance leases can be reconciled to their present value as follows:

	2017		2016	
	Minimum lease payments €k	Present value of the minimum lease payments €k	Minimum lease payments €k	Present value of the minimum lease payments €k
Up to 1 year	18,548	16,978	18,200	16,333
1 to 5 years	56,934	53,403	52,932	47,734
Over 5 years	24,850	21,406	37,895	35,122
Total	100,332	91,787	109,027	99,189
Less interest share	-8,545	--	-9,838	-
Present value of minimum lease payments	91,787	91,787	99,189	99,189

Group as lessor

Finance leases

The Group acts as the lessor of finance leases via the Versatel Group acquired in 2014. Receivables from finance leases are disclosed in trade accounts receivable. The following table shows a reconciliation of gross investments in leases and the present value of outstanding minimum lease payments, as well as their maturities:

	Dec. 31, 2017	Dec. 31, 2016
	€k	€k
Gross investment (thereof unguaranteed residual values)		
thereof due within 1 year	5,593	5,738
thereof due in 1-5 years	21,891	21,379
thereof due after more than 5 years	34,875	38,669
Unearned finance income	-6,800	-7,722
Net investment	55,559	58,064
Accumulated impairment	0	0
Receivables from sales taxes	3,670	3,711
Carrying amount of finance lease receivables	59,229	61,775
previously present value of unguaranteed residual values	0	0
Present value of outstanding minimum lease payments	55,559	58,064
thereof due within 1 year	5,593	5,738
thereof due in 1-5 years	20,665	20,154
thereof due after more than 5 years	29,301	32,172

Finance lease receivables relate solely to leases for the provision and use of dark fiber.

In fiscal year 2017, several new finance lease agreements were concluded with two lessees regarding the provision of fiber pairs. An amount of € 2.4 million (prior year: € 22.0 million) is recognized in gross investment less unrealized financial income for these leases. The maturities range from 10 to 19 years.

Guarantees and other obligations

The Company is jointly and severally liable for credit lines granted to companies of the United Internet Group by a bank. The credit facilities had only been utilized with regard to guarantees as of the balance sheet date.

The Management Board has no knowledge of any other facts which could have a significant, adverse effect on the business activities, the financial situation or the operating result of the Company.

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Contingent liabilities

Contingent liabilities represent a possible obligation whose existence depends on the occurrence of one or more uncertain future events, or a current obligation whose payment is not likely or whose amount cannot be reliably estimated. As of the balance sheet date on December 31, 2017 and December 31, 2016, there were no significant contingent liabilities.

45. Statement of cash flows

In fiscal year 2017, cash flow from operating activities includes interest paid of € 37,923k (prior year: € 28,933k) and interest received of € 2,746k (prior year: € 1,291k). Income tax payments in fiscal year 2017 amounted to € 292,704k (prior year: € 250,502k) while income tax proceeds totaled € 158,752k (prior year: € 2,924k). Income tax proceeds of the year include the allowable capital tax including solidarity surcharge (€ 70,793k) in connection with a dividend distributed within the Group.

Cash and cash equivalents include bank balances of € 2,764k (prior year: € 2,764k) which are only usable under certain conditions as of the balance sheet date.

Cash inflows in connection with dividends received amounted to € 19,823k (prior year: € 19,309k) and mainly comprise dividends from Drillisch AG. Additions to intangible assets and property, plant and equipment of € 16,684k (prior year: € 10,546k) were in connection with finance leases without direct cash outflows.

Reconciliation of balance sheet changes in financial liabilities:

	Promissory note loan € million	Syndicated loan € million	Other financial liabilities € million	Total € million
Balance as of January 1, 2017	599	1.157	5	1.761
Changes from acquisition or disposal of companies	0	0	53	53
Cash flow from financing activities				
Proceeds from taking out loans	500	80	36	616
Payments for the redemption of loans	-65	-359	-53	-477
Total cash-effective change	436	-279	-17	140
Exchange rate changes	0	-1	0	-1
Other non-cash-effective changes	3	0	0	3
Balance as of December 31, 2017	1.038	877	41	1.956

46. Exemption pursuant to Sec. 264 (3) HGB

The following subsidiaries of United Internet AG make use of the exempting provisions of Sec. 264 (3) HGB:

- 1&1 De-Mail GmbH, Montabaur
- 1&1 Internet SE, Montabaur
- 1&1 Internet Holding SE, Montabaur
- 1&1 Internet TopCo SE, Montabaur
- 1&1 Internet Service GmbH, Montabaur
- 1&1 Mail & Media GmbH, Montabaur
- 1&1 Mail & Media Development & Technology GmbH, Montabaur
- 1&1 Mail & Media Service GmbH, Montabaur
- 1&1 Mail & Media Applications SE, Montabaur
- A1 Marketing, Kommunikation und neue Medien GmbH, Montabaur
- Cronon AG, Berlin
- Strato AG, Berlin
- United Internet Corporate Services GmbH, Montabaur
- United Internet Media GmbH, Montabaur
- United Internet Service SE, Montabaur
- United Internet Investments Holding GmbH, Montabaur (formerly: United Internet Ventures AG)
- United Internet Service Holding GmbH, Montabaur
- 1&1 Versatel GmbH, Berlin (formerly: Versatel GmbH)
- 1&1 Versatel Deutschland GmbH, Düsseldorf (formerly: Versatel Deutschland GmbH)
- Versatel Holding GmbH, Berlin
- Versatel Telecommunications GmbH, Düsseldorf

47. Subsequent events

There were no significant events subsequent to the end of the reporting period on December 31, 2017 which had a material effect on the financial position and performance of the Group.

48. Auditing fees

In fiscal year 2017, auditing fees totaling € 7,122k (prior year: € 6,258k) were calculated in the consolidated financial statements. These include auditing fees of € 4,479k (prior year: € 2,860k), other certification services of € 46k (prior year: € 65k), tax consultancy services of € 1,857k (prior year: € 2,264k), and other services of € 740k (prior year: € 1,069k). Auditing fees comprise both statutory audits as well as voluntary audits and audit reviews. Other services mainly refer to transaction-related due diligence services.

49. List of shareholdings of the United Internet AG Group acc. to Sec. 313 (2) HGB

As of December 31, 2017, the Group includes the following subsidiaries in which United Internet AG holds a direct or indirect majority interest (as indicated by the shareholdings in brackets). Unless otherwise stated, the shareholding corresponds to the proportion of voting rights:

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■ 1&1 Internet TopCo SE, Montabaur (66.67%)

- 1&1 Internet Holding SE, Montabaur (100.0%)
 - Strato AG, Berlin (100.0%)
 - Cronon AG, Berlin (100.0%)
 - 1&1 Internet SE, Montabaur (100.0%)
 - 1&1 Datacenter SAS, Strasbourg / France (100.0%)
 - 1&1 Internet Development SRL, Bucharest / Romania (100.0%)
 - 1&1 Internet España S.L.U., Madrid / Spain (100.0%)
 - 1&1 Internet Inc., Chesterbrook / USA (100.0%)
 - A1 Media USA LLC, Chesterbrook / USA (100.0%)
 - 1&1 Cardgate LLC, Chesterbrook / USA (100.0%)
 - 1&1 Internet Ltd., Gloucester / UK (100.0%)
 - 1&1 Internet S.A.R.L., Saargemünd / France (100.0%)
 - 1&1 Internet Service GmbH, Montabaur (100.0%)
 - 1&1 Internet (Philippines) Inc., Cebu City / Philippines (100.0%)
 - 1&1 Internet Sp. z o.o., Warsaw / Poland (100.0%)
 - 1&1 UK Holdings Ltd., Gloucester / UK (100.0%)
 - Fasthosts Internet Ltd., Gloucester / UK (100.0%)
 - Fasthosts Internet Inc., Chesterbrook / USA in liquidation (100.0%)
 - Arsys Internet S.L., Logroño / Spain (100.0%)
 - Arsys Internet E.U.R.L., Perpignan / France (100.0%)
 - Tesys Internet S.L., Logroño / Spain (100.0%)
 - Nicline Internet S.L., Logroño / Spain (100.0%)
 - InterNetX GmbH, Regensburg (95.56%)
 - Schlund Technologies GmbH, Regensburg (100.0%)
 - PSI-USA, Inc., Las Vegas / USA (100.0%)
 - Domain Robot Enterprises Inc., Vancouver / Canada (100.0%)
 - InterNetX Corp., Miami / USA (100.0%)
 - ProfitBricks GmbH, Berlin (100.0%)
 - ProfitBricks Inc., San Antonio / USA (100.0%)
 - Sedo Holding GmbH, Montabaur (100.0%)
 - Sedo GmbH, Cologne (100.0%)
 - DomCollect Worldwide Intellectual Property AG in liquidation, Zug / Switzerland (100.0%)
 - DomCollect International GmbH, Montabaur (100.0%)
 - Sedo.com LLC, Cambridge / USA (100.0%)
 - Escrow.domains LLC, Washington / USA (75.0%)
 - united-domains AG, Starnberg (100.0%)
 - united-domains Reselling GmbH, Starnberg (100.0%)
 - United Domains Inc., Cambridge / USA (100.0%)
 - Immobilienverwaltung AB GmbH, Montabaur (100.0%)
 - Immobilienverwaltung NMH GmbH, Montabaur (100.0%)
 - home.pl S.A., Stettin / Poland (100.0%)
 - AZ.pl Sp. z o.o., Stettin / Poland (100.0%)
 - HBS Cloud Sp. z o.o., Stettin / Poland (100.0%)
 - premium.pl Sp. z o.o., Stettin / Poland (75.0%)
 - DP €OPE Sp. z o.o., Stettin / Poland (100.0%)
 - DP POLAND Sp. z o.o., Stettin / Poland (100.0%)
 - DP ASIA Sp. z o.o., Stettin / Poland (100.0%)

- **1&1 Mail & Media Applications SE, Montabaur (100.0 %)**
 - 1&1 Mail & Media GmbH, Montabaur (100.0%)
 - 1&1 De-Mail GmbH, Montabaur (100.0%)
 - 1&1 Energy GmbH, Montabaur (100.0%)
 - 1&1 Mail & Media Inc., Chesterbrook / USA (100.0%)
 - General Media Xervices GMX S.L., Madrid / Spain (100.0%)
 - GMX Italia S.r.l., Milan / Italy (100.0%)
 - 1&1 Mail & Media Development & Technology GmbH, Montabaur (100.0%)
 - 1&1 Mail & Media Service GmbH, Montabaur (100.0%)
 - United Internet Media GmbH, Montabaur (100.0%)
 - United Internet Media Austria GmbH, Vienna / Austria (100.0%)

- **Drillisch AG, Maintal (73.29%)**
 - Drillisch Netz AG, Maintal (100.0%)
 - Drillisch Online AG, Düsseldorf (100.0%)
 - Mobile Ventures GmbH, Maintal (100.0%)
 - IQ-optimize Software AG, Maintal (100.0%)
 - Drillisch Logistik GmbH, Münster (100.0%)
 - Blitz 17-665 SE, Munich (100.0%)
 - Blitz 17-666 SE, Munich (100.0%)
 - 1&1 Telecommunication SE, Montabaur (100.0%)
 - 1&1 Berlin Telecom Service GmbH, Berlin (100.0%)
 - 1&1 Logistik GmbH, Montabaur (100.0%)
 - 1&1 Telecom Holding GmbH, Montabaur (100.0%)
 - 1&1 Telecom GmbH, Montabaur (100.0%)
 - 1&1 Telecom Sales GmbH, Montabaur (100.0%)
 - 1&1 Telecom Service Montabaur GmbH, Montabaur (100.0%)
 - 1&1 Telecom Service Zweibrücken GmbH, Zweibrücken (100.0%)

- **United Internet Service Holding GmbH, Montabaur (100.0%)**
 - Versatel Telecommunications GmbH, Düsseldorf (100.0%)
 - 1&1 Versatel GmbH, Berlin (100.0%)
 - Versatel Holding GmbH, Berlin (100.0%)
 - 1&1 Versatel Deutschland GmbH, Düsseldorf (100.0%)
 - Versatel Immobilien Verwaltungs GmbH, Düsseldorf (100.0%)
 - TROPOLYS Service GmbH, Düsseldorf (100.0%)
 - TROPOLYS Netz GmbH, Düsseldorf (100.0%)

Other

- Atrium 113. Europäische VV SE, Düsseldorf (100.0%)
- Atrium 121. Europäische VV SE, Berlin (100.0%)
- MIP Multimedia Internet Park GmbH, Zweibrücken (100.0%)
- United Internet Corporate Services GmbH, Montabaur (100.0%)
 - A1 Marketing Kommunikation und neue Medien GmbH, Montabaur (100.0%)
- United Internet Investments Holding GmbH, Montabaur (100.0%)
- United Internet Service SE, Montabaur (100.0%)
 - United Internet Sourcing & Apprenticeship GmbH (100.0%)

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Associated companies

Investments over whose financial and business policies the Company has a significant influence are carried as associated companies using the equity method pursuant to IAS 28 and comprise the following main companies:

- Intellectual Property Management Company Inc., Dover / USA (49.0%)
- DomainsBot S.r.l, Rome / Italy (49.0%)
- uberall GmbH, Berlin (30.34%)
- Open-Xchange AG, Nuremberg (25.39%)
- Tele Columbus AG, Berlin (28.52%)
- rankingCoach Int. GmbH, Cologne (29.93%)
- Virtual Minds AG, Freiburg (25.1%)
- ePages GmbH, Hamburg (25.01%)
- AWIN AG, Berlin (20.0%)

Other investments

Companies in which the Company has invested and over whose financial and business policies it has no significant influence (< 20% of voting shares) are included as financial instruments pursuant to IAS 39 and held as available-for-sale financial assets:

- MMC Investments Holding Company Ltd., Port Louis / Mauritius (11.36%)
- AdUX S.A., Paris / France (10.46%) (formerly: Hi-Media S.A., Paris / France)
- Afiliias Ltd., Dublin / Ireland (9.82%)
- Rocket Internet SE, Berlin (8.31%)

Changes in the reporting unit

The following companies were founded by the Company in fiscal year 2017:

- United Internet Sourcing & Apprenticeship GmbH, Montabaur (100.0%)

The following companies were acquired in fiscal year 2017:

- Atrium 113. Europäische VV SE, Düsseldorf (100.0%)
- Atrium 121. Europäische VV SE, Berlin (100.0%)
- Blitz 17-665 SE, Munich (100.0%)
- Blitz 17-666 SE, Munich (100.0%)
- Escrow.domains LLC, Washington / USA (100.0%)
- ProfitBricks GmbH, Berlin (100.0%)
 - ProfitBricks Inc. San Antonio / USA (100.0%)
- Strato AG, Berlin (100.0%)
 - Cronon AG, Berlin (100.0%)

The following companies were acquired by means of a capital increase in fiscal year 2017:

- 1&1 Internet TopCo SE (formerly: Blitz 16-612 SE) (66.67%)

- Drillisch AG, Maintal (73.29%)
 - Drillisch Logistik GmbH, Münster (100.0%)
 - Drillisch Netz AG, Maintal (100.0%)
 - Drillisch Online AG, Düsseldorf (100.0%)
 - Mobile Ventures GmbH, Maintal (100.0%)
 - yourfone Retail AG, Düsseldorf (100.0%)
 - yourfone Shop GmbH, Düsseldorf (100.0%)
 - IQ-optimize Software AG, Maintal (100.0%)

The following investments were acquired in fiscal year 2017:

- 20% in AWIN AG, Berlin

The following companies were deconsolidated by means of contribution or sale in fiscal year 2017:

- affilinet GmbH, Munich (100.0%)
 - affilinet Austria GmbH, Vienna / Austria (100.0%)
 - affilinet España S.L.U., Madrid / Spain (100.0%)
 - affilinet France SAS, Saint-Denis / France (100.0%)
 - affilinet Ltd., London / UK (100.0%)
 - affilinet Nederland B.V., Haarlem / Netherlands (100.0%)
 - affilinet Schweiz GmbH, Zurich / Switzerland (100.0%)
- yourfone Shop GmbH, Düsseldorf (100.0%)

The following companies were liquidated in the reporting period:

- VictorianFibre Holding & Co. S.C.A, Luxembourg (25.1%)
- InterNetX LAC S.A., Buenos Aires / Argentina (100.0%)
- Domain Robot Servicos de Hospedagem na Internet Ltda, Sao Paulo / Brazil (100.0%)
- DP AFRICA Sp. Z o.o., Szczecinie / Poland (100.0%)
- DP AMERICAS Sp. Z o.o., Szczecinie / Poland (100.0%)
- DP AUSTRALIA Sp. Z o.o., Szczecinie / Poland (100.0%)

The following companies were merged or accreted with an existing Group company in the reporting period 2017:

- 1&1 Telecom Service Holding Montabaur GmbH, Montabaur (100.0%)
- GTCOM GmbH, Düsseldorf (100.0%)
- myLLC GmbH, Regensburg (100.0%)
- myLLP GmbH, Regensburg (100.0%)
- Versatel Beteiligungs GmbH, Düsseldorf (100.0%)
- Versatel Service Süd GmbH & Co. KG, Düsseldorf (100.0%)
- yourfone AG, Maintal (100.0%)
- yourfone Retail AG, Düsseldorf (100.0%)

Balance sheet

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Shareholders' equity

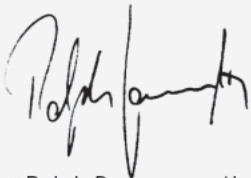
Responsibility statement

50. Corporate Governance Code

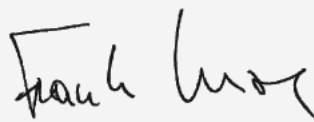
The declaration pursuant to Sec. 161 AktG on observance of the German Corporate Governance Code was submitted by the Management Board and Supervisory Board and has been made available to shareholders via the internet portal of United Internet AG (www.united-internet.de).

Montabaur, March 16, 2018

The Management Board



Ralph Dommermuth



Frank Krause



Jan Oetjen

DEVELOPMENT OF FIXED ASSETS ACC. TO IFRS

for the fiscal year 2017 and 2016 in €k

2017	Acquisition and production costs						
	Jan. 1, 2017	Additions from initial consolidation	Additions	Disposals	Reclassi- fications	Currency translation	Dec. 31, 2017
Intangible assets							
Software / licenses	169,948	58,118	19,043	952	-1,466	-243	244,448
Trademark	131,915	80,259	0	959	-187	-2,488	208,539
Customer base	308,379	916,866	0	431	0	1,573	1,226,387
Goodwill	1,152,093	2,469,917	0	300	0	1,983	3,623,693
Other intangible assets	1,468	71,000	3,844	528	2,664	87	78,535
Payments in advance	2,350	0	3,329	415	-594	0	4,670
Total (I)	1,766,153	3,596,160	26,216	3,585	417	912	5,386,272
Property, plant and equipment							
Land and buildings	17,082	2,967	730	3,047	0	0	17,732
Telecommunication equipment	554,077	0	114,202	8,826	20,112	0	679,565
Network infrastructure	187,323	0	7,871	811	6,073	0	200,456
Operational equipment	492,166	35,415	63,480	54,367	-3,963	-13,397	519,334
Payments in advance	26,749	813	38,515	33	-22,639	-20	43,385
Total (II)	1,277,397	39,195	224,798	67,084	-417	-13,417	1,460,472
Total	3,043,550	3,635,355	251,014	70,669	0	-12,505	6,846,745

2016*	Acquisition and production costs						
	Jan. 1, 2016	Additions from initial consolidation	Additions	Disposals	Reclassi- fications	Currency translation	Dec. 31, 2016
Intangible assets							
Software / licenses	150,192	0	18,080	1,459	3,151	-16	169,948
Trademark	133,032	0	0	873	0	-244	131,915
Customer base	312,573	0	0	2,833	0	-1,361	308,379
Goodwill	1,164,531	0	0	309	0	-12,129	1,152,093
Other intangible assets	919	0	549	0	0	0	1,468
Payments in advance	0	0	5,488	51	-3,087	0	2,350
Total (I)	1,761,247	0	24,117	5,525	64	-13,750	1,766,153
Property, plant and equipment							
Land and buildings	17,144	0	68	0	-124	-6	17,082
Telecommunication equipment	474,050	0	90,842	12,531	1,716	0	554,077
Network infrastructure	184,132	0	4,486	2,286	991	0	187,323
Operational equipment	466,093	0	42,229	15,574	674	-1,256	492,166
Payments in advance	14,584	0	15,853	374	-3,321	7	26,749
Total (II)	1,156,003	0	153,478	30,765	-64	-1,255	1,277,397
Total	2,917,250	0	177,595	36,290	0	-15,005	3,043,550

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* Prior year figures adjusted in connection with the final purchase price allocation for an acquisition in the prior-year, please refer to note 25

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Accumulated depreciation

Net book value

Jan. 1, 2017	Additions	Disposals	Reclassifications	Currency translation	Change of consolidation scope	Dec. 31, 2017	Dec. 31, 2016	Dec. 31, 2017
129,305	29,998	190	228	-246	-1,682	157,412	40,643	87,036
111	20,738	959	-110	0	959	20,739	131,804	187,800
113,958	70,766	431	0	61	-3,385	180,968	194,421	1,045,420
64,408	0	300	0	551	-20,746	43,912	1,087,685	3,579,780
1,216	9,372	483	0	16	0	10,121	252	68,414
0	0	292	292	0	0	0	2,350	4,670
308,998	130,874	2,655	410	381	-24,853	413,153	1,457,155	4,973,119
8,717	3,470	2,475	0	0	0	9,712	8,365	8,020
160,264	78,676	3,249	0	0	0	235,691	393,813	443,874
63,865	28,023	242	1,065	0	0	92,711	123,458	107,745
385,607	52,965	50,854	-1,040	-11,457	-3,258	371,963	106,559	147,371
3,938	350	882	-435	0	0	2,972	22,811	40,413
622,391	163,484	57,702	-410	-11,457	-3,258	713,048	655,006	747,423
931,389	294,358	60,357	0	-11,076	-28,111	1,126,201	2,112,161	5,720,543

Accumulated depreciation

Net book value

Jan. 1, 2016	Additions	Disposals	Reclassifications	Currency translation	Change of consolidation scope	Dec. 31, 2016	Dec. 31, 2015	Dec. 31, 2016
114,132	15,803	628	0	-1	0	129,305	36,060	40,643
984	0	873	0	0	0	111	132,048	131,804
91,301	25,504	2,833	0	-14	0	113,958	221,272	194,421
64,408	0	0	0	0	0	64,408	1,100,123	1,087,685
785	431	0	0	0	0	1,216	134	252
0	0	0	0	0	0	0	0	2,350
271,610	41,737	4,334	0	-15	0	308,999	1,489,637	1,457,155
7,705	1,039	0	-26	-1	0	8,717	9,439	8,365
92,498	74,247	5,457	-1,024	0	0	160,264	381,552	393,813
36,260	28,202	597	0	0	0	63,865	147,872	123,458
351,574	48,110	13,261	26	-842	0	385,607	114,519	106,559
2,771	143	0	1,024	0	0	3,938	11,813	22,811
490,808	151,741	19,315	0	-843	0	622,391	665,195	655,006
762,418	193,478	23,649	0	-858	0	931,389	2,154,832	2,112,161

INDEPENDENT AUDITOR'S REPORT TO UNITED INTERNET AG

Report on the audit of the consolidated financial statements and of the management report for the company and the group

Opinions

We have audited the consolidated financial statements of United Internet AG, Montabaur, and its subsidiaries (the Group), which comprise the consolidated statement of financial position as at 31 December 2017, and the consolidated statement of comprehensive income, consolidated statement of changes in equity and consolidated statement of cash flows for the fiscal year from 1 January to 31 December 2017, and notes to the consolidated financial statements, including a summary of significant accounting policies. In addition, we have audited the management report for the company and the group of United Internet AG for the fiscal year from 1 January to 31 December 2017. In accordance with the German legal requirements, we have not audited the content of the group declaration on company management contained in section 7 of the management report for the company and the group or the declaration pursuant to Sec. 161 AktG ["Aktiengesetz": German Stock Corporation Act] contained therein.

In our opinion, on the basis of the knowledge obtained in the audit,

- the accompanying consolidated financial statements comply, in all material respects, with the IFRSs as adopted by the EU, and the additional requirements of German commercial law pursuant to Sec. 315e (1) HGB ["Handelsgesetzbuch": German Commercial Code] and, in compliance with these requirements, give a true and fair view of the assets, liabilities, and financial position of the Group as at 31 December 2017, and of its financial performance for the fiscal year from 1 January to 31 December 2017, and
- the enclosed management report for the company and the group as a whole provides a suitable view of the Group's position. In all material respects, this management report for the company and the group is consistent with the consolidated financial statements, complies with German legal requirements and appropriately presents the opportunities and risks of future development. Our opinion on the management report for the company and the group does not cover the content of the declaration on company management contained in section 7 of the management report for the company and the group or the declaration pursuant to Sec. 161 AktG contained therein.

Pursuant to Sec. 322 (3) Sentence 1 HGB ["Handelsgesetzbuch": German Commercial Code], we declare that our audit has not led to any reservations relating to the legal compliance of the consolidated financial statements and of the management report for the company and the group.

Balance sheet	Notes
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Shareholders' equity	Responsibility statement

Basis for the opinions

We conducted our audit of the consolidated financial statements and of the management report for the company and the group in accordance with Sec. 317 HGB and the EU Audit Regulation (No 537/2014, referred to subsequently as "EU Audit Regulation") and in compliance with German Generally Accepted Standards for Financial Statement Audits promulgated by the Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (IDW). Our responsibilities under those requirements and principles are further described in the "Auditor's responsibilities for the audit of the consolidated financial statements and of the combined management report" section of our auditor's report. We are independent of the group entities in accordance with the requirements of European law and German commercial and professional law, and we have fulfilled our other German professional responsibilities in accordance with these requirements. In addition, in accordance with Art. 10 (2) f) of the EU Audit Regulation, we declare that we have not provided non-audit services prohibited under Art. 5 (1) of the EU Audit Regulation. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinions on the consolidated financial statements and on the management report for the company and the group.

Key audit matters in the audit of the consolidated financial statements

Key audit matters are those matters that, in our professional judgment, were of most significance in our audit of the consolidated financial statements for the fiscal year from 1 January to 31 December 2017. These matters were addressed in the context of our audit of the consolidated financial statements as a whole, and in forming our opinion thereon; we do not provide a separate opinion on these matters.

Below, we describe what we consider to be the key audit matters:

1. Merger of 1&1 Telecommunication SE with Drillisch AG

■ Reasons why the matter was determined to be a key audit matter

On 8 September 2017, the merger of 1&1 Telecommunication SE (United Internet's Consumer Access business) with Drillisch AG was executed. After this transaction the United Internet Group holds a 73% interest in Drillisch AG. In light of the magnitude and complexity of the transaction and the related significant risk of material misstatement and the assumptions and estimates made by the executive directors in connection with the purchase price allocation, the accounting for the merger was a key audit matter.

■ Auditor's response

As part of our group audit, among other procedures, we analyzed management's assertion that United Internet has control over the combined entity based on agreements under corporate law and the criteria defined in IFRS 10 Consolidated Financial Statements.

Our procedures in relation to the partly provisional purchase price allocation comprised the appraisal of the consideration paid by United Internet in the form of shares in 1&1 Telecommunication SE, the assessment of the methodology applied by the external expert consulted by the executive directors to identify the acquired assets and an assessment of the design of the valuation models with regard to the requirement of IFRS 3. In this context, we also assessed the competence, capabilities and objectivity of the expert, obtained an understanding of the expert's work and assessed the suitability of the expert opinion commissioned by the executive directors for the determination of fair values as audit evidence.

With the aid of our internal valuation specialists, we obtained an understanding of the valuation methods used with regard to the requirements of IFRS 13 Fair Value Measurement. We also analyzed the assumptions and estimates subject to judgment (such as growth rates, cost of capital or royalty rates) used to determine the fair values of the acquired identifiable assets and liabilities assumed (including contingent liabilities) on the acquisition date to determine whether they are consistent with general and industry-specific market expectations. In addition, we checked the clerical accuracy of the models.

We also considered the use of uniform accounting policies in the Access segment and the accounting for the initial consolidation of the Drillisch Group in the consolidation system, including non-controlling interests. In addition, we assessed the information in the notes to the consolidated financial statements about the merger of United Internet's Consumer Access business with Drillisch with regard to the requirements of IFRS 3.

Our procedures did not lead to any reservations relating to the accounting for the merger of 1&1 Telecommunication SE with Drillisch AG.

- **Reference to related disclosures**

The Company's information on the purchase price allocation in connection with the acquisition of Drillisch AG and the related use of judgment is contained in Note 4.1 of the notes to the consolidated financial statements.

2. Acquisition of Strato AG

- **Reasons why the matter was determined to be a key audit matter**

On 1 April 2017, the acquisition of a 100% interest in Strato AG was executed. The purchase price comprises an immediately payable fixed amount and a contingent consideration. In light of the magnitude and complexity of the transaction and the related significant risk of material misstatement and the assumptions and estimates made by the executive directors in connection with the purchase price allocation, the accounting for the merger was a key audit matter.

- **Auditor's response**

Our procedures in relation to the purchase price allocation comprised the appraisal of the consideration paid by United Internet including the contingent consideration, the assessment of the methodology applied by the external expert consulted by the executive directors to identify the acquired assets and an assessment of the design of the valuation models with regard to the requirement of IFRS 3. In this context, we assessed the competence, capabilities and objectivity of the expert, obtained an understanding of the expert's work and assessed the suitability of the expert opinion commissioned by the executive directors for the determination of fair values as audit evidence.

With the aid of our internal valuation specialists, we obtained an understanding of the valuation methods used with regard to the requirements of IFRS 13 Fair Value Measurement. We also analyzed the assumptions and estimates subject to judgment (such as growth rates, cost of capital or royalty rates) used to determine the fair values of the acquired identifiable assets and liabilities assumed (including contingent liabilities) and the contingent consideration liabilities on the acquisition date to determine whether they are consistent with general and industry-specific market expectations. Furthermore, we examined the assumptions and estimates subject to judgment in relation to the underlying business plan plans to determine whether they are plausible in comparison with the historical development. In addition, we checked the clerical accuracy of the models.

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Cash flow		Audit opinion	
Shareholders' equity		Responsibility statement	

We also considered the use of uniform accounting policies and the accounting for the initial consolidation of the Strato Group in the consolidation system. In addition, we assessed the information in the notes to the consolidated financial statements about the acquisition of Strato AG with regard to the requirements of IFRS 3.

Our audit procedures did not lead to any reservations relating to the accounting for the acquisition of Strato AG.

■ Reference to related disclosures

The Company's information on the purchase price allocation in connection with the acquisition of Strato AG and the related use of judgment is contained in Note 4.1 of the notes to the consolidated financial statements.

3. Investment of Warburg Pincus in the Business Applications business of the United Internet Group

■ Reasons why the matter was determined to be a key audit matter

On 2 March 2017 WP XII Venture Holdings S.à r.l., Luxembourg (Warburg Pincus) acquired an investment in the United Internet Group's Business Applications business. After this transaction the United Internet Group still holds a 66.67% interest in the Business Applications business. The Business Applications business is still fully consolidated in the United Internet Group's consolidated financial statements. Warburg Pincus' investment is accounted for as a non-controlling interest. In light of the arrangements in the shareholders' agreement and the significance of the Business Applications business for the United Internet Group, the audit of United Internet AG's continued control over the Business Applications business was a key audit matter. In light of complexity of the transaction structure and the related significant risk of material misstatement in the consolidated financial statements, the account for the investment of Warburg Pincus in the United Internet Group's Business Applications business was a key audit matter.

■ Auditor's response

Our procedures comprised an assessment of the shareholders' agreement between United Internet AG and WP XII Venture Holdings S.à r.l. and other contractual arrangements in the context of the transaction with regard to United Internet AG's continued control of the Business Applications business in accordance with the criteria of IFRS 10. We also checked whether the measurement of the non-controlling interests and the allocation of profit between the controlling and the non-controlling interests was in compliance with the requirements of IFRS 10. In addition, we assessed the presentation of the non-controlling interest and the disclosures in the notes to the consolidated financial statements in relation to the requirements of IFRS 12.

Our procedures did not lead to any reservations relating to the accounting for the investment of Warburg Pincus in the United Internet Group's Business Applications business.

■ Reference to related disclosures

The Company's information on the continued full consolidation of the Business Applications business and on the measurement of non-controlling interests is contained in Note 4.2, and Note 39 of the notes to the consolidated financial statements.

4. Impairment of goodwill

■ Reasons why the matter was determined to be a key audit matter

The goodwill presented in the consolidated financial statements of United Internet AG comprises 47% of total assets. Goodwill is tested for impairment at least once every fiscal year. The impairment test comprises a valuation of the cash-generating unit to which the goodwill is allocated and is regularly based on the present value of the future cash flows of the cash-generating unit. The cash flows are derived from the Company's budgets for the coming fiscal year which are extrapolated by the Company on the basis of internal assumptions and external market studies and rolled forward after the detailed planning period using a long term growth rate. In light of the magnitude of the goodwill, the underlying complexity of the valuation and the judgment exercised during valuation, the goodwill impairment test was a key audit matter.

■ Auditor's response

We obtained an understanding of the methodology applied by the external expert for the valuations on the basis of the design requirements of IAS 36 and checked the clerical accuracy the calculations in the underlying valuation model. In this context, we also assessed the competence, capabilities and objectivity of the expert, obtained an understanding of the expert's work and assessed the suitability of the expert opinion commissioned by the executive directors for the determination of fair values as audit evidence. The focus of our audit was on appraising the key assumptions used for the valuation, such as planning assumptions and discount rates.

We assessed the financial planning in terms of the reliability of previous forecasts and used the historical development to support the underlying assumptions. The assumptions relating to future cash flows were assessed by obtaining supporting evidence and by questioning about the significant assumptions relating to growth and business performance. We assessed the other significant assumptions, such as the discount rate and the long-term growth rate with the aid of internal valuation specialists and on the basis of our own analysis of the general market indicators.

Our audit procedures did not lead to any reservations relating to the assessment of impairment of goodwill by the executive directors.

■ Reference to related disclosures

The Company's information on the impairment of goodwill is contained in Note 27 of the notes to the consolidated financial statements.

5. Revenue recognition

■ Reasons why the matter was determined to be a key audit matter

The recognition and cut-off of revenue in the group companies' mass customer business are largely automated and uniform processes due to the use of special IT systems dedicated to revenue recognition which, owing to the extensive branching and interdependencies are highly complex in their structure. Owing to the logic implemented in the IT systems, adjustments triggered by changes in tariffs or the launch of new products, for example, made in certain IT systems have a direct effect on the entire revenue recognition process. In addition, there are postings not generated by the system – especially cut-offs between periods – which entail a risk of errors associated with manual postings.

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■ Auditor's response

As part of our audit procedures, with the aid of internal IT specialists, we assessed the design and operating effectiveness of the control system established by the Group with regard to the IT systems relevant for revenue recognition. In so doing, we assessed in particular the mapping and processing of business processes, the possibilities for IT administrators to make changes and the access rights of individual employees. We examined relevant general IT controls and relevant IT application controls on a sample basis. Furthermore, we considered the risk of errors arising from manual posting by performing analytical procedures using internal analysis tools. For this, we analyzed – particularly in view of cut-offs between periods – revenue in relation to its development during the year, the underlying posting patterns, the persons responsible for posting and the correlation between revenue and selected accounts (e.g., trade receivables).

Our audit procedures did not lead to any reservations relating to the recognition of revenue.

■ Reference to related disclosures

The Company's information on revenue in the consolidated financial statements of United Internet AG is contained in Note 5 and in the Note 2.1 "Explanation of main accounting and valuation methods" in the notes to the consolidated financial statements.

Other information

The supervisory board is responsible for the report of the supervisory board pursuant to Sec. 171 (2) AktG. In all other respects, the executive directors are responsible for the other information. The other information comprises

- the corporate governance report pursuant to No. 3.10 of the German Corporate Governance Code contained in section 7 of the management report for the company and the group,
- the declaration on company management pursuant to Sec. 289f HGB and Sec. 315d HGB contained in section 7 of the management report for the company and the group.

The other information also comprises the responsibility statement pursuant to Sec. 297 (2) Sentence 4 HGB included in the annual report, of which we obtained a version prior to issuing this auditor's report.

In addition, the other information comprises the following sections of the annual report that we expect to be provided to us after we have issued our auditor's report:

- Letter to the shareholders
- Report of the Supervisory Board pursuant to Sec. 171 (2) AktG
- Other elements of the annual report

Our opinions on the consolidated financial statements and on the management report for the company and the group do not cover the other information, and consequently we do not express an opinion or any other form of assurance conclusion thereon.

In connection with our audit, our responsibility is to read the other information and, in so doing, to consider whether the other information

- is materially inconsistent with the consolidated financial statements, with the management report for the company and the group or our knowledge obtained in the audit, or
- otherwise appears to be materially misstated.

If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report with regard to the other information already provided to us.

Responsibilities of the executive directors and the supervisory board for the consolidated financial statements and the management report for the company and the group

The executive directors are responsible for the preparation of the consolidated financial statements that comply, in all material respects, with IFRSs as adopted by the EU and the additional requirements of German commercial law pursuant to Sec. 315e (1) HGB, and that the consolidated financial statements, in compliance with these requirements, give a true and fair view of the assets, liabilities, financial position, and financial performance of the Group. In addition, the executive directors are responsible for such internal control as they have determined necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, the executive directors are responsible for assessing the Group's ability to continue as a going concern. They also have the responsibility for disclosing, as applicable, matters related to going concern. In addition, they are responsible for financial reporting based on the going concern basis of accounting unless there is an intention to liquidate the Group or to cease operations, or there is no realistic alternative but to do so.

Furthermore, the executive directors are responsible for the preparation of the management report for the company and the group that, as a whole, provides an appropriate view of the Group's position and is, in all material respects, consistent with the consolidated financial statements, complies with German legal requirements, and appropriately presents the opportunities and risks of future development. In addition, the executive directors are responsible for such arrangements and measures (systems) as they have considered necessary to enable the preparation of a management report for the company and the group that is in accordance with the applicable German legal requirements, and to be able to provide sufficient appropriate evidence for the assertions in the management report for the company and the group.

The supervisory board is responsible for overseeing the Group's financial reporting process for the preparation of the consolidated financial statements and of the management report for the company and the group.

Auditor's responsibilities for the audit of the consolidated financial statements and of the management report for the company and the group

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and whether the management report for the company and the group as a whole provides an appropriate view of the Group's position and, in all material respects, is consistent with the consolidated financial statements and the knowledge obtained in the audit, complies with the German legal requirements and appropriately presents the opportunities and risks of future development, as well as to issue an auditor's report that includes our opinions on the consolidated financial statements and on the management report for the company and the group.

FINANCIAL STATEMENTS	
Balance sheet	Notes
Income statement	Fixed assets
Cash flow	Audit opinion
Shareholders' equity	Responsibility statement

Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Sec. 317 HGB and the EU Audit Regulation and in compliance with German Generally Accepted Standards for Financial Statement Audits promulgated by the "Institut der Wirtschaftsprüfer (IDW)" will always detect a material misstatement. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements and this management report for the company and the group.

We exercise professional judgment and maintain professional skepticism throughout the audit. We also

- Identify and assess the risks of material misstatement of the consolidated financial statements and of the management report for the company and the group, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinions. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit of the consolidated financial statements and of arrangements and measures (systems) relevant to the audit of the management report for the company and the group in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of these systems.
- Evaluate the appropriateness of accounting policies used by the executive directors and the reasonableness of estimates made by the executive directors and related disclosures.
- Conclude on the appropriateness of the executive directors' use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Group's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in the auditor's report to the related disclosures in the consolidated financial statements and in the management report for the company and the group, if such disclosures are inadequate, to modify our respective opinions. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Group to cease to be able to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements present the underlying transactions and events in a manner that the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and financial performance of the Group in compliance with IFRSs as adopted by the EU and the additional requirements of German commercial law pursuant to Sec. 315e (1) HGB.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Group to express opinions on the consolidated financial statements and on the management report for the company and the group. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinions.
- Evaluate the consistency of the management report for the company and the group with the consolidated financial statements, its conformity with German law, and the view of the Company's position it provides.

- Perform audit procedures on the prospective information presented by the executive directors in the management report for the company and the group. On the basis of sufficient appropriate audit evidence we evaluate, in particular, the significant assumptions used by the executive directors as a basis for the prospective information, and evaluate the proper derivation of the prospective information from these assumptions. We do not express a separate opinion on the prospective information and on the assumptions used as a basis. There is a substantial unavoidable risk that future events will differ materially from the prospective information.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

We also provide those charged with governance with a statement that we have complied with the relevant independence requirements, and communicate with them all relationships and other matters that may reasonably be thought to bear on our independence and where applicable, the related safeguards.

From the matters communicated with those charged with governance, we determine those matters that were of most significance in the audit of the consolidated financial statements of the current period and are therefore the key audit matters. We describe these matters in our auditor's report unless law or regulation precludes public disclosure about the matter.

Other legal and regulatory requirements

■ Further information pursuant to Art. 10 of the EU Audit Regulation

We were elected as auditor by the Annual Shareholders' Meeting on May 18, 2017. We were engaged by the supervisory board on May 18, 2017. We have been the group auditor of United Internet AG without interruption since fiscal year 2002.

We declare that the opinions expressed in this auditor's report are consistent with the additional report to the audit committee pursuant to Art. 11 of the EU Audit Regulation (long-form audit report).

■ German Public Auditor responsible for the engagement

The German Public Auditor responsible for the engagement is Andreas Grote.

Eschborn/Frankfurt am Main, March 21, 2018

Ernst & Young GmbH
Wirtschaftsprüfungsgesellschaft

Grote
Wirtschaftsprüfer
[German Public Auditor]

Vorbrodt
Wirtschaftsprüfer
[German Public Auditor]

Balance sheet

Notes

Income statement

Fixed assets

Cash flow

Audit opinion

Shareholders' equity

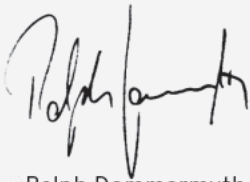
Responsibility statement

RESPONSIBILITY STATEMENT

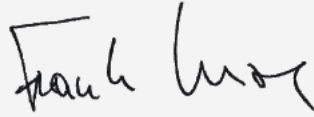
To the best of our knowledge, and in accordance with the applicable reporting principles, the consolidated financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the Group, and the Management Report and Group Management Report includes a fair review of the development and performance of the business and the position of the Group, together with a description of the principal opportunities and risks associated with the expected development of the Group.

Montabaur, March 16, 2018

Board of Management



Ralph Dommermuth



Frank Krause



Jan Oetjen

LOCATIONS

United Internet is successfully represented around the world by its various business fields. Its activities in Europe and the world are shown in the charts below.

UNITED INTERNET WORLDWIDE

- | | | |
|--------------|-----------|-------------|
| USA | Brazil | Philippines |
| Cambridge | Sao Paulo | Cebu City |
| Chesterbrook | | |
| Lenexa | | |
| Las Vegas | | |
| Miami | | |



MISCELLANEOUS

Locations

Glossary

Imprint / Financial calendar

EUROPE

Germany

- └ Montabaur
- └ Berlin
- └ Cologne
- └ Dortmund
- └ Dresden
- └ Dusseldorf
- └ Essen
- └ Flensburg
- └ Frankfurt
- └ Karlsruhe
- └ Kiel
- └ Krefeld
- └ Maintal
- └ Munich
- └ Munster
- └ Nuremberg
- └ Regensburg
- └ Starnberg
- └ Stuttgart
- └ Zweibrücken

France

- └ Perpignan
- └ Saargemünd
- └ Straßburg

Austria

- └ Vienna

Switzerland

- └ Zug

Spain

- └ Logroño
- └ Madrid

Poland

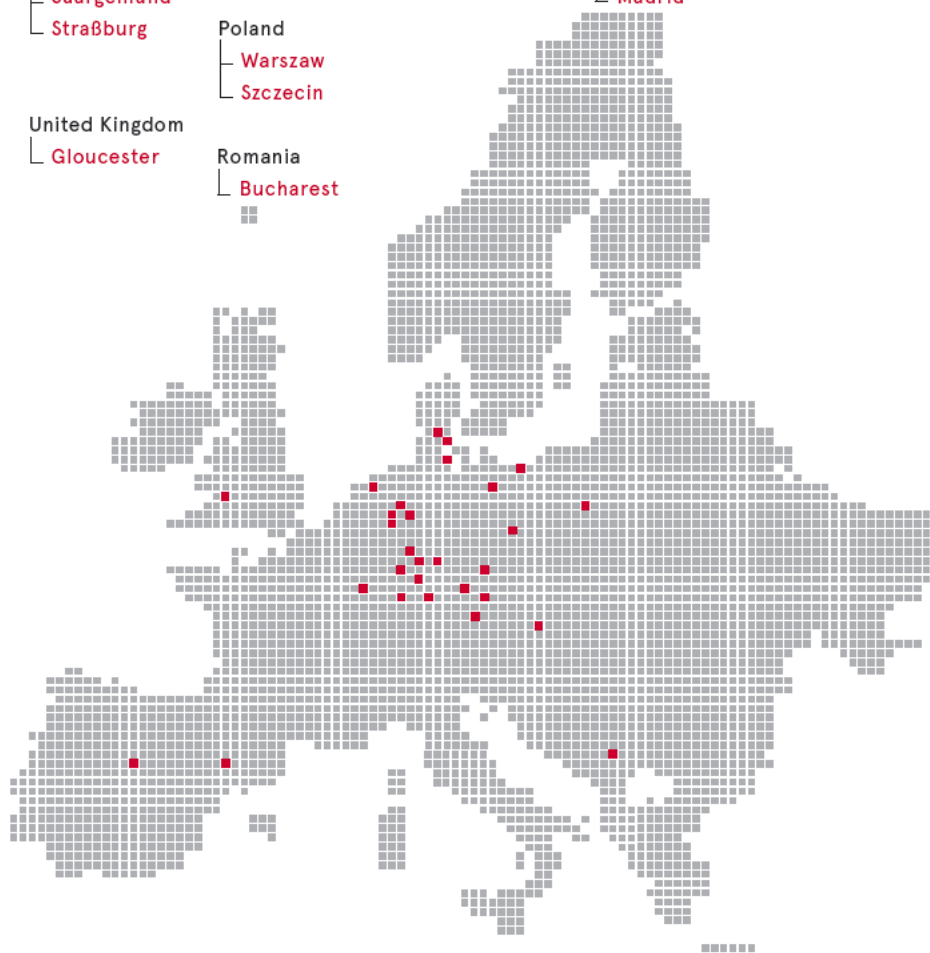
- └ Warsaw
- └ Szczecin

United Kingdom

- └ Gloucester

Romania

- └ Bucharest



GLOSSARY

BITKOM

The Bundesverband Informationswirtschaft Telekommunikation und neue Medien e.V. (BITKOM) [German Association for Information Technology, Telecommunications and New Media] is the voice of the information technology, telecommunications, and new media industry in Germany.

Corporate governance

Term used to signify responsible, long-term, value-oriented management and corporate control.

DDos

(Distributed Denial of Service) In a DDos attack, a server is bombarded with so many requests that it cannot process them all and is unable to respond to legitimate traffic. In order to avoid or limit such overloads, a number of countermeasures have been developed over the years.

De-Mail

De-Mail is a means of communication to facilitate the exchange of secure, legally binding electronic documents between citizens, public administrations and companies via the internet. The Citizens Portals project is being implemented by the German government and various private sector partners. DE-Mail providers must fulfill certain admission criteria.

Diluted

Earnings per share are termed "diluted" when not only all outstanding shares are used in the calculation, but also those theoretically convertible shares issued as part of employee stock option programs.

D&O insurance

(Directors & Officers Liability Insurance) D&O insurance refers to a liability insurance policy which a company takes out on behalf of its executive bodies and corporate officers. In the case of any breach of duty, D&O insurance offers protection against the financial consequences of personal liability. Cover is generally provided if the duty of care has been breached without intent or knowledge. The German Act on the Appropriateness of Management Board Compensation (Gesetz zur Angemessenheit der Vorstandsvergütung – VorstAG) requires that Management Board members accept an obligatory deductible for D&O insurance policies.

Domain

Specific area of hierarchical internet name system administered by domain name server. Divided into generic top-level domains, or gTLD, (such as .com, .net, .org or .info) and country-code top-level domains, in short ccTLD (such as .de or .uk).

EBITDA

Earnings before interest, taxes, depreciation and amortization.

EBT

Earnings before taxes

ecommerce

(Electronic commerce) Generic term for business transactions using electronic media, such as the internet.

EPS

Earnings per share

Federal Cartel Office

(Bundeskartellamt – BKartA) Higher federal authority for all antitrust issues. Its main tasks include implementing cartel bans, examining business combination requests and exercising its antitrust monitoring duties with regard to market-dominating companies.

Federal Network Agency

(German Federal Network Agency for electricity, gas, telecommunications, postal and railway networks) Higher federal authority (former Regulatory Authority for Telecommunications and Post, Reg TP). Its responsibilities include implementing cartel bans, examining business combination requests and exercising its antitrust monitoring duties with regard to market-dominating companies.

Free accounts

Accounts financed through advertising, where the customer is not paying a monthly fee.

FTTB

(Fiber To The Building or Fiber To The Basement) refers to the laying of optical fiber cables up to the building. The fiber cables are usually laid up to the cellar, from where the signals are then distributed to connection points in the building.

Groupwork

Functions which support several users/a group during joint work on projects, targets, tasks etc.. Users generally access centrally stored data and applications.

HGB

German Commercial Code (Handelsgesetzbuch)

Hosting

(also webhosting) Provision of storage space via the internet. In addition to registering and operating domains and renting out web servers, hosting mainly refers to the provision of value-added internet services enabling users to work more efficiently on the internet. Shared Hosting means that several customers share a physical server, while in Dedicated Hosting one customer has exclusive access to one sever.

HSPA

(High Speed Packet Access) is an extension of the UMTS standard which allows higher data transmission rates.

IPTV

(Internet Protocol Television) refers to the transmission of television programs via an Internet connection. Telecommunication providers commonly offer a range of configurable program bundles via the broadband connection. IPTV therefore represents an alternative to TV reception via cable or satellite dish.

MISCELLANEOUS

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IFRS

(International Financial Reporting Standards) International accounting standard.

LTE

(Long Term Evolution) is a mobile telecommunications standard which enables even higher speeds than the UMTS standard. The corresponding frequencies were auctioned off by the German Federal Network Agency in 2010. The network development work commenced in summer 2010 focused initially on covering the "gaps on the map", i.e. those areas of Germany which do not yet have broadband internet.

Market capitalization

Market price of a listed company. The result of share price multiplied by the number of shares.

Open Access

Model for open, non-discriminatory access to high-speed data networks, e.g. by connecting different infrastructures.

nTLD

(new Top Level Domains). As most of the internet addresses with domain endings such as .de or .com have already been taken, ICANN plans to release hundreds of new domain endings over the next two years. The introduction of additional domain endings, such as .shop, .web, .sport or .berlin, gives website owners the opportunity to indicate the nature of their online presence more clearly via the new domain, e.g. in a certain sector or region.

Portal

Central internet access point or start page. Usually contains a wide range of navigation functions, content and additional services, such as e-mail.

PPA

= Purchase Price Allocation. Allocation of the purchase price into various assets and liabilities in context of the initial consolidation of an acquired company or partial acquisition.

R-DSL

(Resale-DSL) In the case of Resale-DSL connections, the Internet Service Provider purchases switched DSL connections on the customer's premises as a pre-service product from Deutsche Telekom and markets them to the customer as its own product together with a data tariff. R-DSL requires participants to have their own fixed-line Deutsche Telekom connection for which they are responsible themselves.

Risk management

Systematic process to identify and evaluate potential risks as well as to select and implement measures to deal with such risks.

T-DSL

In contrast to R-DSL connections, customers with a T-DSL connection receive both their telephone and DSL connections from Deutsche Telekom. The Internet Service Provider only markets data tariffs to the customer as an independent product.

TecDAX

Index of the Frankfurt Stock Exchange. The TecDAX is calculated from the market price of Germany's top 30 technology shares.

UMTS

(Universal Mobile Telecommunications System) is a mobile telecommunications standard with much higher transmission rates (see also HSPA) than are possible with the older GSM standard (GSM: Global System for Mobile Communications).

Unbundled Local Loop

(ULL) By unbundling the local loop, competing fixed-line operators can have direct access to customers without having their own "last mile". They are allowed to rent the local loop from Deutsche Telekom at regulated conditions. Internet Service Providers in turn purchase "complete packages" as a pre-service product from alternative fixed-line operators (e.g. QSC, Telefonica, Vodafone) and then market them as their own product to end users. A comparable complete package can also be bought from Deutsche Telekom. In contrast to R-DSL/T-DSL connections, the end user does not need a separate telephone connection from Deutsche Telekom.

VATM

Association of Telecommunications and Value-Added Service Providers (Verband der Anbieter von Telekommunikations- und Mehrwertdiensten - VATM) The VATM is an association of over 90 telecommunications and value-added service providers operating on the German market, who are all in competition with the ex-monopolist Deutsche Telekom AG.

V-DSL

(Very High Speed Digital Subscriber Line). VDSL is a DSL technology which provides higher data transfer rates than conventional DSL connections. In Germany, maximum transfer rates of 50 MBit/s downstream and 10 MBit/s upstream are currently offered.

Vectoring

Vectoring is a transmission technology which can significantly increase data throughput via existing copper lines with relatively little effort. The technology is based on VDSL, whereby "crosstalking" (mutual interference between neighboring subscriber lines) is canceled by monitoring the signals in one cable. Vectoring currently enables speeds of up to 100 Mbit/s.

Video on Demand (VoD)

Service of an internet provider enabling subscribers to select and watch films at any time for money.

Webhosting

See "Hosting".

IMPRINT

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E-mail: investor-relations@united-internet.com

April 2018
Registry court: Montabaur HRB 5762

Note:

Due to calculation processes, tables and references may produce rounding differences from the mathematically exact values (monetary units, percentage statements, etc.).

These annual financial statements are available in German and English. Both versions can also be downloaded from www.united-internet.de. In all cases of doubt, the German version shall prevail.

Disclaimer

This Annual Report contains certain forward-looking statements which reflect the current views of United Internet AG's management with regard to future events. These forward looking statements are based on our currently valid plans, estimates and expectations. The forward-looking statements made in this Annual Report are only based on those facts valid at the time when the statements were made. Such statements are subject to certain risks and uncertainties, as well as other factors which United Internet often cannot influence but which might cause our actual results to be materially different from any future results expressed or implied by these statements. Such risks, uncertainties and other factors are described in detail in the Risk Report section of the Annual Reports of United Internet AG. United Internet does not intend to revise or update any forward-looking statements set out in this Annual Report.

FINANCIAL CALENDAR

March 22, 2018	Annual financial statements for fiscal year 2017 press and analyst conference
May 9, 2018	3-Month Report Q1 2018
May 24, 2018	Annual Shareholders' Meeting, Alte Oper, Frankfurt/Main
August 9, 2018	6-Month Report 2018 press and analyst conference
November 13, 2018	9-Month Report 2018

United Internet AG

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EXHIBIT RM-14



The Internet Corporation for Assigned Names and Numbers

13 July 2016

Mr. Jose Ignacio Rasco, NU DOT CO LLC
 Ms. Sarah Falvey, Charleston Road Registry Inc.
 Mr. Robert Wiegand, Web.com Group, Inc
 Mr. Brijesh Joshi, DotWeb Inc.
 Mr. Daniel Schindler, Ruby Glen, LLC
 Mr. John Kane, Afilias Domains No. 3 Limited
 Mr. David Barron, Vistaprint Ltd
 Mr. Thomas Moerz, Schlund Technologies GmbH
 Mr. Jonathon Nevett, Ruby Glen, LLC

Re: .WEB/.WEBS Auction on 27 July 2016

Dear Members of the .WEB/.WEBS Contention Set,

We are writing in regards to inquiries we have received concerning potential changes of control of NU DOT CO LLC, an applicant in the .WEB/.WEBS contention set, and requests to postpone the auction to investigate the matter. We would like to provide some clarification regarding this issue and how it may or may not impact the .WEB/.WEBS auction scheduled for 27 July 2016.

Firstly, as a reminder, in regards to a request for postponement, Rule 10 of the Auction Rules for Indirect Contention states:

“...Postponement requests must be submitted by all members of the Contention Set by the due date specified within the ICANN Customer Portal, generally twenty eight (28) days after receipt of Intent to Auction notice from ICANN. If a postponement request is not submitted by the due date specified within the ICANN Customer Portal or is not accommodated by ICANN, an applicant may request an advancement/postponement request via submission of the Auction Date Advancement/Postponement Request Form. The form must be submitted at least 45 days prior to the scheduled Auction Date and ICANN must receive a request from each member of the contention set...” (<https://newgtlds.icann.org/en/applicants/auctions/rules-indirect-contention-24feb15-en.pdf>)

The date to submit the postponement form passed on 12 June 2016, and we did not receive consensus from the contention set. As such, no postponement was granted.

Secondly, in regards to potential changes of control of NU DOT CO LLC, we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.



The Internet Corporation for Assigned Names and Numbers

Finally, as you are aware, ICANN provided confirmation to all members of the .WEB/.WEBS contention set on 6 July 2016 that the auction will be proceeding as scheduled on 27 July 2016. Please follow all instructions provided to you by Power Auctions, the Auction Manager, regarding next steps, including mini and mock auctions as well as the deposit deadline.

Regarding the deposit deadline, Rule 28 of the Auction Rules for Indirect Contention states:

“All wires and all instructions associated with Deposits, including instructions regarding the allocation of funds among Contention Sets from wires and funds rolled over from previous Auctions, must be received no later than 16:00 UTC on the day that is seven (7) calendar days prior to the Commencement Date of the relevant Auction (the “Deposit Deadline”), unless this deadline is waived, at the Auction Manager’s sole discretion.”

As per Rule 28, the Deposit Deadline for the upcoming auction is 16:00 UTC on 20 July 2016.

While the auction is currently set to proceed as scheduled, applicants may continue to work toward self-resolution of the contention set. Applicants may withdraw their application up until the Deposit Deadline noted above. Once the Deposit Deadline is reached, there is a quiet period in which applicants are no longer allowed to withdraw their application until after conclusion of the auction.

I hope this information has been helpful to you. Please do not hesitate to respond with any additional questions or concerns. Should you have specific questions regarding next steps for the auction, you may submit a case to globalsupport@icann.org, and someone from my team will contact you promptly.

Sincerely,

Christine A. Willett
Vice President, GDD Operations
ICANN

EXHIBIT RM-15

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 16-9**

21 JULY 2016

The Requesters, Ruby Glen, LLC and Radix FZC, submitted a reconsideration request seeking urgent reconsideration of ICANN's decision not to delay the .WEB/.WEBS auction (scheduled for 27 July 2016) following ICANN's investigation into alleged material changes in Nu Dot Co LLC's (Nu Dot's) application for .WEB.

I. Brief Summary.

Seven applications for .WEB and one application for .WEBS are currently in a contention set (.WEB/.WEBS Contention Set) and scheduled to participate in an auction of last resort on 27 July 2016 (Auction). The Requesters and Nu Dot each submitted an application for .WEB and are Auction participants. The Requesters contacted ICANN staff on or about 23 June 2016 and submitted a complaint to the Ombudsman during ICANN56 in June 2016 alleging that Nu Dot had experienced changes in leadership and/or control without notifying ICANN, as it is obligated to do. The Requesters then submitted an urgent Reconsideration Request on 17 July 2016 (Request 16-9) claiming that: (a) the Auction should be postponed because there are pending accountability mechanisms (initiated by the Requesters); and (b) reconsideration is warranted because ICANN's investigation of the alleged changes in Nu Dot's application was insufficient and, in the Requesters' view, comprises "a clear violation of the principles and procedures set forth in the ICANN Articles of Incorporation and Bylaws[,] and the ICANN gTLD Applicant Guidebook."¹

¹ Request, Pg. 2.

The Requesters' claims do not warrant postponement of the Auction or reconsideration. First, the Requesters argue that their pending complaint with the Ombudsman and initiation of Request 16-9 require ICANN to postpone the Auction. However, there is no policy requiring ICANN to postpone the Auction here because these accountability mechanisms were not initiated before the .WEB/.WEBS Contention Set entered into the Auction process on 27 April 2016. Indeed, the timing parameters within the auction rules were established specifically so that auction participants could not game the system by filing last-minute accountability mechanisms. Second, reconsideration is not warranted because the Requesters do not identify any misapplication of policy or procedure by ICANN staff in its investigation of the allegations regarding Nu Dot's application.

Contrary to the Requesters' claims, ICANN diligently investigated the alleged potential changes to Nu Dot's application and found no basis to initiate the application change request process.² Because the Requesters have failed to show that ICANN staff acted in contravention of established policy or procedure, the BGC concludes that Request 16-9 be denied.

II. Facts.

A. Background Facts.

In June 2012, Ruby Glen, LLC, DotWeb Inc. (an affiliate of Radix FZC), Nu Dot, Charleston Road Registry, Inc., Web.com Group, Inc., Afilias Domains No. 3 Limited, and Schlund Technologies GmbH each submitted an application for .WEB; Vistaprint Limited filed two applications for .WEBS (one standard, and one community-based that was later withdrawn).

² Furthermore, even if ICANN *had* determined that an applicant change request was necessary, ICANN has discretion to determine whether a change request warrants postponing an auction.

Nu Dot's application listed three officers/directors: Jose Ignacio Rasco II, CFO; Juan Diego Calle, CEO; and Nicolai Bezsonoff, COO.³

The seven applications for .WEB and the remaining application for .WEBS are in the .WEB/.WEBS Contention Set.⁴

On 27 April 2016, ICANN initiated the Auction process by notifying all active members of the .WEB/.WEBS Contention Set that the Auction had been scheduled and providing instructions and deadlines to participate in the Auction.

According to the Requesters, on or about 7 June 2016 they contacted Nu Dot and asked Nu Dot to reconsider its decision to forego private resolution of the .WEB/.WEBS Contention Set. The Requesters have indicated that Nu Dot's reply included the following statement: "Nicolai [Bezsonoff] is at NSR full-time and is no longer involved with our TLD applications. [Jose Ignacio Rasco II is] still running our program and Juan [Diego Calle] sits on the board with me and several others."⁵ This communication apparently led the Requesters to believe that Nu Dot had experienced some change in ownership and/or leadership. Thereafter, on or about 23 June 2016, the Requesters contacted ICANN staff regarding their apparent belief that changes to Nu Dot's application were required. The Requesters also formally raised the issue with the ICANN Ombudsman during ICANN56 in June 2016.

After receiving the Requesters' notification that they believed Nu Dot's application needed to be changed, ICANN staff proceeded to investigate the claims. On 27 June 2016, ICANN sent Nu Dot's authorized primary contact a message to determine whether there had been any "changes to your application or the [Nu Dot] organization that need to be reported to

³ Nu Dot Application for .WEB, *available at* <https://gtdresult.icann.org/applicationstatus/applicationdetails/1053>.

⁴ Contention Set for .WEB/.WEBS, *available at* <https://gtdresult.icann.org/applicationstatus/contentionsetdiagram/233>.

⁵ Request, § 8, Pg. 9.

ICANN. This may include any information that is no longer true and accurate in the application, including changes that occur as part of regular business operations (e.g., changes to officers and directors, application contacts).” Jose Ignacio Rasco, CFO of Nu Dot, replied that same day to “confirm that there have been no changes to the [Nu Dot] organization that would need to be reported to ICANN.”

Subsequently, both ICANN staff and the Ombudsman reached out to Mr. Rasco to again inquire about the claims of potential changes in Nu Dot’s organization that the Requesters believed required notification to ICANN. Specifically, ICANN staff conducted a telephone conversation with Mr. Rasco on 8 July 2016 regarding the allegations. During that call, and later in a confirming email on 11 July 2016, Mr. Rasco stated that: “Neither the ownership nor the control of Nu Dotco, LLC has changed since we filed our application. The Managers designated pursuant to the company’s LLC operating agreement (the LLC equivalent of a corporate Board) have not changed. And there have been no changes to the membership of the LLC either.” Mr. Rasco also confirmed to ICANN that he provided this same information to the ICANN Ombudsman in responding to the Ombudsman’s investigation of the complaint lodged with him. According to Mr. Rasco, he informed the Ombudsman that there had been no changes to Nu Dot’s ownership, operating agreement, or LLC membership. After receiving information from Nu Dot and ICANN, the Ombudsman informed ICANN that, in his opinion, there was nothing to justify a postponement of the .WEB/.WEBS Auction based on unfairness to the other applicants.

On 11 July 2016, the Requesters sent an email to ICANN “support[ing] a postponement of the .WEB auction to give ICANN and the other applicants time to investigate whether there has been a change of leadership and/or control of another applicant, [Nu Dot,]” and stating that,

“[t]o do otherwise would be unfair, as we do not have transparency into who leads and controls that applicant as the auction approaches.”⁶

After completing its investigation of the allegations regarding Nu Dot’s application, ICANN sent a letter to the members of the .WEB/.WEBS Contention Set on 13 July 2016 stating, among other things, that “in regards to potential changes of control of [Nu Dot], we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.”⁷

On 17 July 2016, the Requesters filed Request 16-9, seeking postponement of the .WEB/.WEBS Auction and requesting a “thorough and transparent investigation into the apparent discrepancies and/or changes in [Nu Dot’s] .WEB/.WEBS application.”⁸

The .WEB/.WEBS Auction is scheduled to occur on 27 July 2016.⁹

B. Relief Requested.

The Requesters ask ICANN to:

1. “[D]elay the ICANN auction of last resort for the .WEB/.WEBS contention set *on an emergency basis*”, and;
2. “[C]onduct a thorough and transparent investigation into the apparent discrepancies and/or changes in [Nu Dot’s] .WEB/.WEBS application in accordance with ICANN’s Bylaws (including ICANN’s guiding principles to ensure transparency, openness and accountability), the Auction Rules, and the

⁶ Email from Brijesh Joshi to Akram Atallah, Christine Willett, and John Jeffrey, dated 11 July 2016, *available at* <https://www.icann.org/en/system/files/correspondence/joshi-to-atallah-et-al-11jul16-en.pdf>.

⁷ Letter from Christine Willett to Members of the .WEB/.WEBS Contention Set, dated 13 July 2016, *available at* <https://newgtlds.icann.org/en/program-status/correspondence>.

⁸ Request, § 9, Pg. 11. On 20 July 2016, ICANN received a letter of support from Donuts Inc. regarding Request 16-9. Donuts requested that the letter not be published.

⁹ Auction Schedule, *available at* <https://newgtlds.icann.org/en/applicants/auctions>.

III. The Relevant Standard For Reconsideration Requests.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.¹¹ The Requesters challenge staff action. Dismissal of a request for reconsideration of staff action or inaction is appropriate only if the BGC concludes, and the Board agrees to the extent that the BGC deems that further consideration by the Board is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws.

IV. Analysis and Rationale.

A. No Established Policy Requires ICANN to Postpone the .WEB/.WEBS Auction.

The Requesters argue that the Auction should be postponed because of the pending accountability mechanisms. Those accountability mechanisms, however, were not pending at the required time—namely, the time when the .WEB/.WEBS Contention Set entered into the Auction process—and do not warrant postponement of the Auction.

The Requesters argue that a stay is “mandated by ICANN’s own rules governing Auction Eligibility given the pendency of (a) [the Requesters’] complaint to the ICANN Ombudsman and (b) this Request.”¹² In particular, the Requesters assert that “[a]s plainly stated on ICANN’s ‘New gTLD Program Auctions’, a string contention set will be eligible to enter into a New gTLD

¹⁰ Request, § 9, Pg. 11 (emphasis in original).

¹¹ Bylaws, Art. IV, § 2. 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.

¹² Request, § 9, Pg. 12.

Program auction only where all active applications in the contention set have ‘no pending ICANN Accountability Mechanisms.’”¹³

Contrary to what the Requesters argue, there were no pending accountability mechanisms when the .WEB/.WEBS Contention Set entered into the Auction process. ICANN initiated the Auction process on 27 April 2016 by notifying all active members of the .WEB/.WEBS Contention Set that the Auction had been scheduled and providing instructions and deadlines to participate in the Auction. The Requesters did not lodge a complaint with the Ombudsman until two months later (and less than one month before the Auction) during ICANN56 in June 2016. Similarly, Request 16-9 was not filed until 17 July 2016. As such, there were no accountability mechanisms pending on the date that the .WEB/.WEBS Contention Set entered the Auction process. Indeed, the auction rules were designed to, among other things, prevent exactly this sort of last-minute attempt to delay. The Requesters have not identified any violation of process or procedure. The .WEB/.WEBS Auction will therefore proceed as scheduled on 27 July 2016.

B. ICANN Staff Complied with Established Policy when Investigating the Requesters’ Allegations Regarding Nu Dot.

The Requesters contend that ICANN’s investigation regarding Nu Dot “was taken without attention to, in contravention of, and with apparent disregard for its obligation to investigate the veracity of the representations made by [Nu Dot] and its potential changes of control, leadership, and/or ownership.”¹⁴ However, there is no established policy or procedure requiring ICANN to undertake an investigation in the manner that the Requesters would prefer. Nevertheless, ICANN did diligently investigate the Requesters’ claims and found nothing to support them.

¹³ Request, § 9, Pg. 12 (quoting ICANN’s New gTLD Program Auctions page, *available at* <https://newgtlds.icann.org/en/applicants/auctions>).

¹⁴ Request, § 10, Pg. 16.

The Requesters cite the “Top-Level Domain Application –Terms and Conditions” (Guidebook Terms and Conditions) in which gTLD applicants authorize ICANN to:

8. ... [C]onduct thorough background screening[s] ... [including] identifying information may be required to resolve questions of identity of individuals within the applicant organization investigations[; and]

10. (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.¹⁵

These provisions of the Guidebook Terms and Conditions do not support the Requesters’ argument. In the course of evaluating Nu Dot’s application, ICANN performed the above referenced background screening in accordance with the Applicant Guidebook and standard procedures, and the results were released with the Initial Evaluation Report on 7 June 2013.¹⁶ Thus, there is no dispute that ICANN performed all necessary checks of the application.

Rather, just one month before the scheduled Auction, the Requesters seemingly are suggesting that ICANN should have conducted another in-depth investigation and background check of Nu Dot because, according to the Requesters, certain unknown changes *may* have occurred with respect to Nu Dot’s organization which *might* require changes to Nu Dot’s application. Specifically, the Requesters claim that ICANN was obligated to investigate Nu Dot because the Applicant Guidebook grants ICANN “broad authority to investigate all applicants who apply to participate in the New gTLD Auction Program.”¹⁷ But the Requesters’ proposed level of investigation is not what is required at this stage of the process. While the Requesters

¹⁵ Guidebook, §§ 6.8, 6.10 (emphasis supplied).

¹⁶ Nu Dot New gTLD Program Initial Evaluation Report, *available at* ICANN’s New gTLD Program Auctions page, available at <https://newgtlds.icann.org/en/applicants/auctions>.

¹⁷ Request, § 10, Pg. 14.

are correct that the Applicant Guidebook gives ICANN the authority to conduct investigations, the Applicant Guidebook does not require ICANN to investigate the Requesters' claims regarding Nu Dot in the manner that the Requesters suggest. Furthermore, the Guidebook Terms and Conditions cited by the Requesters confirm that it is within "ICANN's sole judgment" to determine whether additional information may be pertinent to an application and, consequently, to determine whether any investigation is warranted.¹⁸ Accordingly, the Requesters fail to identify any policy or procedure that would require ICANN to investigate their claims.

Nevertheless, in response to the Requesters' allegations, ICANN *did* diligently investigate the claims regarding potential changes to Nu Dot's leadership and/or ownership. Indeed, on several occasions, ICANN staff communicated with the primary contact for Nu Dot both through emails and a phone conversation to determine whether there had been any changes to the Nu Dot organization that would require an application change request. On each occasion, Nu Dot confirmed that no such changes had occurred, and ICANN is entitled to rely upon those representations. For example, on 27 June 2016, ICANN sent Nu Dot's authorized primary contact a message to determine whether there had been any "changes to your application or the [Nu Dot] organization that need to be reported to ICANN ... [including] changes to officers and directors, [or] application contacts." Jose Ignacio Rasco, CFO of Nu Dot, replied that same day to "confirm that there have been no changes to the [Nu Dot] organization that would need to be reported to ICANN." Shortly thereafter, both ICANN staff and the Ombudsman reached out to Mr. Rasco to again inquire about the claims of potential changes requiring notification to ICANN. Specifically, ICANN staff conducted a telephone conversation with Mr. Rasco on 8 July 2016 regarding the allegations. During that call, and later in a confirming email on 11 July 2016, Mr. Rasco stated that "[n]either the ownership nor the control of Nu Dotco, LLC has

¹⁸ Guidebook, §§ 6.8, 6.10.

changed since we filed our application. The Managers designated pursuant to the company’s LLC operating agreement (the LLC equivalent of a corporate Board) have not changed. And there have been no changes to the membership of the LLC either.” Mr. Rasco also confirmed that he had provided this same information to the ICANN Ombudsman in responding to the Ombudsman’s investigation of the complaint lodged with him. After completing its investigation of the Requesters’ allegations regarding Nu Dot’s organization, ICANN informed the Requesters that “we have investigated the matter, and to date we have found no basis to initiate the application change request process or postpone the auction.”¹⁹

C. ICANN Staff Complied with Established Policy when Determining that No Changes Were Necessary to Nu Dot’s Application.

The Requesters also suggest that ICANN violated its established policy of non-discriminatory treatment by allowing Nu Dot’s application to proceed without a change request.²⁰ Specifically, the Requesters claim that ICANN engaged in “disparate treatment in favor of Nu Dot” by allowing Nu Dot’s application to proceed despite “clear statements from [Nu Dot] that representations made in its application are, at best, misleading.”²¹

The Applicant Guidebook provides that, “[i]f at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN.”²² First, Nu Dot never notified ICANN that there were any changes to the information provided in the application. Second, as discussed above, after investigating the Requesters’ allegations that there were changes in Nu Dot’s organization requiring changes to the application, ICANN concluded that there was no evidence to suggest

¹⁹ Letter from Christine Willett to Members of the .WEB/.WEBS Contention Set, dated 13 July 2016, *available at* <https://newgtlds.icann.org/en/program-status/correspondence>.

²⁰ Bylaws, Article II, § 3 (“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.”)

²¹ Request, § 10, Pg. 20.

²² Guidebook, § 1.2.7.

that Nu Dot’s application was no longer accurate. Thus, as ICANN explained to the Requesters, there was no need for Nu Dot to “initiate the application change request process.”²³

Finally, the Requesters’ claims rest upon one email (provided in redacted form), purportedly received from Nu Dot, stating that: “Nicolai [Bezsonoff] is at NSR full-time and is no longer involved with our TLD applications. [Jose Ignacio Rasco II is] still running our program and Juan [Diego Calle] sits on the board with me and several others.”²⁴ This email does not indicate that these persons have left the organization or that the organization has “resold, assigned or transferred its rights in the application.”²⁵ Moreover, after investigating the Requesters’ allegations, ICANN found no evidence to suggest that Nu Dot experienced a change of leadership and/or control, and in fact received explicit confirmation from the primary contact for Nu Dot, Jose Ignacio Rasco, that no such changes had occurred, which ICANN is entitled to rely upon. Thus, there appears to be no need for an application change request, and ICANN acted in accordance with established policy and procedure in reaching this conclusion.

V. Determination.

Based on the foregoing, the BGC concludes that the Requesters have not stated proper grounds for reconsideration, and therefore denies Request 16-9. If the Requesters believe that they have somehow been treated unfairly here, they are free to ask the Ombudsman to review this matter.

The Bylaws provide that the BGC is authorized to make a final determination for all Reconsideration Requests brought regarding staff action or inaction and that no Board consideration is required. As discussed above, Request 16-9 seeks reconsideration of a staff

²³ Letter from Christine Willett to Members of the .WEB/.WEBS Contention Set, dated 13 July 2016, *available at* <https://newgtlds.icann.org/en/program-status/correspondence>.

²⁴ Request, § 8, Pg. 9.

²⁵ *Id* at 10.

action or inaction. As such, after consideration of Request 16-9, the BGC concludes that this determination is final and that no further consideration by the Board is warranted.

In terms of the timing, because the BGC agreed to consider the matter on an urgent basis, Section 2.19 of Article IV of the Bylaws provides that the BGC shall make a final determination or recommendation with respect to a reconsideration request within seven days, or as soon thereafter as feasible.²⁶ The Requesters submitted this Request on 17 July 2016. By issuing its Determination on 21 July 2016, the BGC has acted within the established time limit for urgent reconsideration requests.

²⁶ Bylaws Article IV, Section 2.19.

EXHIBIT RM-16

VERISIGN INC/CA

FORM 10-Q (Quarterly Report)

Filed 07/28/16 for the Period Ending 06/30/16

Address 12061 BLUEMONT WAY
ATTN: GENERAL COUNSEL
RESTON, VA 20190

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CIK 0001014473

Symbol VRSN

SIC Code 7371 - Computer Programming Services

Industry Software & Programming

Sector Technology

Fiscal Year 12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2016

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number: 000-23593

VERISIGN, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

12061 Bluemont Way, Reston, Virginia

(Address of principal executive offices)

94-3221585

(I.R.S. Employer
Identification No.)

20190

(Zip Code)

Registrant's telephone number, including area code: (703) 948-3200

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.): YES NO

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

<u>Class</u>	<u>Shares Outstanding as of July 22, 2016</u>
Common stock, \$.001 par value	106,766,527

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

As required under Item 1—Financial Statements included in this section are as follows:

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Condensed Consolidated Balance Sheets as of June 30, 2016 and December 31, 2015	4
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VERISIGN, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)
(Unaudited)

	June 30, 2016	December 31, 2015
<u>ASSETS</u>		
Current assets:		
Cash and cash equivalents	\$ 170,966	\$ 228,659
Marketable securities	1,736,030	1,686,771
Accounts receivable, net	15,086	12,638
Other current assets	22,573	39,856
Total current assets	<u>1,944,655</u>	<u>1,967,924</u>
Property and equipment, net	277,942	295,570
Goodwill	52,527	52,527
Deferred tax assets	13,205	17,361
Other long-term assets	25,844	24,355
Total long-term assets	<u>369,518</u>	<u>389,813</u>
Total assets	<u>\$ 2,314,173</u>	<u>\$ 2,357,737</u>
<u>LIABILITIES AND STOCKHOLDERS' DEFICIT</u>		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 144,361	\$ 188,171
Deferred revenues	699,456	680,483
Subordinated convertible debentures, including contingent interest derivative	632,308	634,326
Total current liabilities	<u>1,476,125</u>	<u>1,502,980</u>
Long-term deferred revenues	288,232	280,859
Senior notes	1,236,272	1,235,354
Deferred tax liabilities	326,112	294,194
Other long-term tax liabilities	114,762	114,797
Total long-term liabilities	<u>1,965,378</u>	<u>1,925,204</u>
Total liabilities	<u>3,441,503</u>	<u>3,428,184</u>
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock—par value \$.001 per share; Authorized shares: 5,000; Issued and outstanding shares: none	—	—
Common stock—par value \$.001 per share; Authorized shares: 1,000,000; Issued shares: 323,941 at June 30, 2016 and 322,990 at December 31, 2015; Outstanding shares: 107,180 at June 30, 2016 and 110,072 at December 31, 2015	324	323
Additional paid-in capital	17,279,468	17,558,822
Accumulated deficit	(18,404,933)	(18,625,599)
Accumulated other comprehensive loss	(2,189)	(3,993)
Total stockholders' deficit	<u>(1,127,330)</u>	<u>(1,070,447)</u>
Total liabilities and stockholders' deficit	<u>\$ 2,314,173</u>	<u>\$ 2,357,737</u>

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In thousands, except per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Revenues	\$ 286,466	\$ 262,539	\$ 568,342	\$ 520,961
Costs and expenses:				
Cost of revenues	48,753	48,221	99,335	96,574
Sales and marketing	19,757	24,329	39,784	46,711
Research and development	14,288	16,347	31,031	33,499
General and administrative	27,401	24,677	55,158	50,975
Total costs and expenses	110,199	113,574	225,308	227,759
Operating income	176,267	148,965	343,034	293,202
Interest expense	(28,859)	(28,503)	(57,663)	(50,520)
Non-operating income (loss), net	1,709	3,201	4,830	(2,354)
Income before income taxes	149,117	123,663	290,201	240,328
Income tax expense	(35,907)	(30,652)	(69,535)	(59,079)
Net income	113,210	93,011	220,666	181,249
Realized foreign currency translation adjustments, included in net income	85	(291)	85	(291)
Unrealized gain on investments	851	147	1,786	234
Realized gain on investments, included in net income	(1)	(69)	(67)	(73)
Other comprehensive income (loss)	935	(213)	1,804	(130)
Comprehensive income	\$ 114,145	\$ 92,798	\$ 222,470	\$ 181,119
Earnings per share:				
Basic	\$ 1.05	\$ 0.80	\$ 2.03	\$ 1.56
Diluted	\$ 0.87	\$ 0.70	\$ 1.68	\$ 1.36
Shares used to compute earnings per share				
Basic	108,067	115,656	108,829	116,394
Diluted	130,588	133,251	131,084	133,546

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2016	2015
Cash flows from operating activities:		
Net income	\$ 220,666	\$ 181,249
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation of property and equipment	29,417	31,620
Stock-based compensation	22,891	22,129
Excess tax benefit associated with stock-based compensation	(12,708)	(11,366)
Unrealized (gain) loss on contingent interest derivative on Subordinated Convertible Debentures	(971)	4,311
Payment of contingent interest	(6,544)	(5,225)
Amortization of debt discount and issuance costs	6,590	5,941
Other, net	(1,414)	(1,099)
Changes in operating assets and liabilities		
Accounts receivable	(2,798)	(1,018)
Prepaid expenses and other assets	15,430	7,369
Accounts payable and accrued liabilities	(28,653)	(4,778)
Deferred revenues	26,346	41,247
Net deferred income taxes and other long-term tax liabilities	36,039	37,245
Net cash provided by operating activities	304,291	307,625
Cash flows from investing activities:		
Proceeds from maturities and sales of marketable securities	2,056,607	1,283,367
Purchases of marketable securities	(2,101,863)	(1,747,025)
Purchases of property and equipment	(13,458)	(21,891)
Other investing activities	206	(3,736)
Net cash used in investing activities	(58,508)	(489,285)
Cash flows from financing activities:		
Proceeds from issuance of common stock from option exercises and employee stock purchase plans	8,084	9,014
Repurchases of common stock	(324,235)	(335,885)
Proceeds from borrowings, net of issuance costs	—	492,237
Excess tax benefit associated with stock-based compensation	12,708	11,366
Net cash (used in) provided by financing activities	(303,443)	176,732
Effect of exchange rate changes on cash and cash equivalents	(33)	606
Net decrease in cash and cash equivalents	(57,693)	(4,322)
Cash and cash equivalents at beginning of period	228,659	191,608
Cash and cash equivalents at end of period	\$ 170,966	\$ 187,286
Supplemental cash flow disclosures:		
Cash paid for interest	\$ 57,636	\$ 42,839
Cash paid for income taxes, net of refunds received	\$ 13,994	\$ 14,342

See accompanying Notes to Condensed Consolidated Financial Statements.

VERISIGN, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1. Basis of Presentation

Interim Financial Statements

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared by VeriSign, Inc. (“Verisign” or the “Company”) in accordance with the instructions to Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and, therefore, do not include all information and notes normally provided in audited financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals and other adjustments) considered necessary for a fair presentation have been included. The results of operations for any interim period are not necessarily indicative of, nor comparable to, the results of operations for any other interim period or for a full fiscal year. These unaudited Condensed Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements and related notes contained in Verisign’s fiscal 2015 Annual Report on Form 10-K (the “2015 Form 10-K”) filed with the SEC on February 19, 2016.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, *Revenue from Contracts with Customers*, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard will become effective for the Company on January 1, 2018. The standard permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the effect that ASU 2014-09 will have on its consolidated financial statements and related disclosures. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting.

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. The guidance introduces a lessee model that requires most leases to be reported on the balance sheet. This ASU will become effective for the Company on January 1, 2019 and requires the modified retrospective transition method. The Company is currently evaluating the impact of this ASU on its consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU No. 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which simplifies several aspects of the accounting for share-based payment award transactions, including income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The ASU requires that excess tax benefits and tax deficiencies (the difference between the deduction for tax purposes and the compensation cost recognized for financial reporting purposes) be recognized as income tax expense or benefit in the Consolidated Statement of Comprehensive Income. This change may lead to increased volatility in the provision for income taxes. There are different transition methods for different aspects of the standard. The new standard will be effective for the Company on January 1, 2017 with early adoption permitted. The Company is evaluating the timing of adoption, transition methods and the effect that this ASU will have on its consolidated financial statements and related disclosures.

Note 2. Cash, Cash Equivalents, and Marketable Securities

The following table summarizes the Company's cash, cash equivalents, and marketable securities:

	June 30, 2016	December 31, 2015
	(In thousands)	
Cash	\$ 37,588	\$ 99,027
Money market funds	141,209	137,593
Time deposits	3,932	4,007
Debt securities issued by the U.S. Treasury	1,733,258	1,685,882
Equity securities of public companies	2,772	890
Total	<u>\$ 1,918,759</u>	<u>\$ 1,927,399</u>
Included in Cash and cash equivalents	\$ 170,966	\$ 228,659
Included in Marketable securities	\$ 1,736,030	\$ 1,686,771
Included in Other long-term assets (Restricted cash)	\$ 11,763	\$ 11,969

The fair value of the debt securities held as of June 30, 2016 was \$1.7 billion, including less than \$0.6 million of gross and net unrealized gains. All of the debt securities held as of June 30, 2016 are scheduled to mature in less than one year.

Note 3. Fair Value of Financial Instruments
Assets and Liabilities Measured at Fair Value on a Recurring Basis

The following table summarizes the Company's financial assets and liabilities measured at fair value on a recurring basis as of June 30, 2016 and December 31, 2015 :

	Total Fair Value	Fair Value Measurement Using		
		(Level 1)	(Level 2)	(Level 3)
(In thousands)				
As of June 30, 2016:				
Assets:				
Investments in money market funds	\$ 141,209	\$ 141,209	\$ —	\$ —
Debt securities issued by the U.S. Treasury	1,733,258	1,733,258	—	—
Equity securities of public companies	\$ 2,772	\$ 2,772	\$ —	\$ —
Foreign currency forward contracts (1)	563	—	563	—
Total	\$ 1,877,802	\$ 1,877,239	\$ 563	\$ —
Liabilities:				
Contingent interest derivative on the Subordinated Convertible Debentures	\$ 22,611	\$ —	\$ —	\$ 22,611
Foreign currency forward contracts (2)	65	—	65	—
Total	\$ 22,676	\$ —	\$ 65	\$ 22,611
As of December 31, 2015:				
Assets:				
Investments in money market funds	\$ 137,593	\$ 137,593	\$ —	\$ —
Debt securities issued by the U.S. Treasury	1,685,882	1,685,882	—	—
Equity securities of public companies	890	890	—	—
Foreign currency forward contracts (1)	230	—	230	—
Total	\$ 1,824,595	\$ 1,824,365	\$ 230	\$ —
Liabilities:				
Contingent interest derivative on the Subordinated Convertible Debentures	\$ 30,126	\$ —	\$ —	\$ 30,126
Foreign currency forward contracts (2)	164	—	164	—
Total	\$ 30,290	\$ —	\$ 164	\$ 30,126

(1) Included in Other current assets

(2) Included in Accounts payable and accrued liabilities

The fair value of the Company's investments in money market funds approximates their face value. Such instruments are classified as Level 1 and are included in Cash and cash equivalents. The fair value of the debt securities consisting of U.S. Treasury bills is based on their quoted market prices and are classified as Level 1. Debt securities purchased with original maturities in excess of three months are included in Marketable securities. The fair value of the equity securities of public companies is based on quoted market prices and are classified as Level 1. Investments in equity securities of public companies are included in Marketable securities. The fair value of the Company's foreign currency forward contracts is based on foreign currency rates quoted by banks or foreign currency dealers and other public data sources.

The Company utilizes a valuation model to estimate the fair value of the contingent interest derivative on the subordinated convertible debentures due 2037 ("the Subordinated Convertible Debentures"). The inputs to the model include stock price, bond price, risk free interest rates, volatility, and credit spread observations. As several significant inputs are not observable, the overall fair value measurement of the derivative is classified as Level 3. The volatility and credit spread assumptions used in the calculation are the most significant unobservable inputs. As of June 30, 2016, the valuation of the contingent interest derivative assumed a volatility rate of approximately 26% and a credit spread of approximately 6%. The fair value of the contingent interest derivative would not have significantly changed using a volatility rate of either 21% or 31%, or a credit spread of either 5% or 7%.

The following table summarizes the change in the fair value of the Company's contingent interest derivative on the Subordinated Convertible Debentures during the three and six months ended June 30, 2016 and 2015:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Beginning balance	\$ 22,517	\$ 28,549	\$ 30,126	\$ 26,755
Payment of contingent interest	—	—	(6,544)	(5,225)
Unrealized loss (gain)	94	(2,708)	(971)	4,311
Ending balance	\$ 22,611	\$ 25,841	\$ 22,611	\$ 25,841

On February 15, 2016, the Company paid contingent interest of \$6.5 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of February 1, 2016. In February 2016, the upside trigger on the Subordinated Convertible Debentures was met for the six month interest period ending in August 2016. On August 15, 2016, the Company will pay contingent interest of \$6.8 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of August 1, 2016. The \$ 6.8 million contingent interest payable in August 2016 is included in the balance of the contingent interest derivative on the Subordinated Convertible Debentures as of June 30, 2016 .

The Company's other financial instruments include cash, accounts receivable, restricted cash, and accounts payable. As of June 30, 2016 , the carrying value of these financial instruments approximated their fair value. The fair value of the Company's Subordinated Convertible Debentures was \$ 3.1 billion as of June 30, 2016 . The fair values of the senior notes due 2023 (the "2023 Senior Notes") and the senior notes due 2025 (the "2025 Senior Notes") were \$ 761.3 million and \$512.8 million , respectively, as of June 30, 2016 . The fair values of these debt instruments are based on available market information from public data sources and are classified as Level 2.

Note 4. Other Balance Sheet Items

Other Current Assets

Other current assets consist of the following:

	June 30,	December 31,
	2016	2015
	(In thousands)	
Prepaid expenses	\$ 18,194	\$ 14,823
Income tax receivables	2,104	23,098
Other	2,275	1,935
Total other current assets	\$ 22,573	\$ 39,856

The Income tax receivables as of December 31, 2015 primarily consists of the remaining U.S. federal income tax overpayment from prior years. As of June 30, 2016, substantially all of the remaining overpayment has been used to offset current year income taxes.

Accounts Payable and Accrued Liabilities

Accounts payable and accrued liabilities consist of the following:

	June 30,	December 31,
	2016	2015
	(In thousands)	
Accounts payable	\$ 17,661	\$ 23,298
Accrued employee compensation	40,118	51,851
Customer deposits, net	39,558	48,307
Interest Payable	27,701	27,701
Income taxes payable and other tax liabilities	4,485	16,943
Other accrued liabilities	14,838	20,071
Total accounts payable and accrued liabilities	\$ 144,361	\$ 188,171

Accrued employee compensation primarily consists of liabilities for employee leave, salaries, payroll taxes, employee contributions to the employee stock purchase plan, and incentive compensation. Accrued employee incentive compensation as of December 31, 2015, was paid during the six months ended June 30, 2016. Income taxes payable and other tax liabilities decreased in the six months ended June 30, 2016 as a result of payments made for income taxes in certain non-U.S. jurisdictions. Interest payable includes coupon interest on the Subordinated Convertible Debentures, the 2023 Senior Notes and the 2025 Senior Notes.

Note 5. Stockholders' Deficit

On February 11, 2016, the Company's Board of Directors authorized the repurchase of approximately \$ 611.2 million of its common stock, in addition to the \$ 388.8 million remaining available for repurchase under the previous share repurchase program for a total repurchase authorization of up to \$1.0 billion of its common stock. The share repurchase program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions. During the three and six months ended June 30, 2016 the Company repurchased 1.7 million and 3.5 million shares of its common stock, respectively, at an average stock price of \$86.46 and \$84.63, respectively. The aggregate cost of the repurchases in the three and six months ended June 30, 2016 was \$149.9 million and \$299.8 million, respectively. As of June 30, 2016, \$765.9 million remained available for further repurchases under the share repurchase program.

During the six months ended June 30, 2016, the Company placed 0.3 million shares, at an average stock price of \$80.92, and for an aggregate cost of \$24.4 million, into treasury stock for purposes related to tax withholding upon vesting of Restricted Stock Units ("RSUs").

Since inception the Company has repurchased 216.8 million shares of its common stock for an aggregate cost of \$7.8 billion, which is presented as a reduction of Additional paid-in capital.

Note 6. Calculation of Earnings per Share

The following table presents the computation of weighted-average shares used in the calculation of basic and diluted earnings per share:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Weighted-average shares of common stock outstanding	108,067	115,656	108,829	116,394
Weighted-average potential shares of common stock outstanding:				
Conversion spread related to Convertible Debentures	21,872	16,973	21,472	16,392
Unvested RSUs, stock options, and ESPP	649	622	783	760
Shares used to compute diluted earnings per share	130,588	133,251	131,084	133,546

The calculation of diluted weighted average shares outstanding, excludes potentially dilutive securities, the effect of which would have been anti-dilutive, as well as performance based RSUs granted by the Company for which the relevant performance criteria have not been achieved. The number of potential shares excluded from the calculation was not significant in any period presented.

Note 7. Stock-based Compensation

Stock-based compensation is classified in the Condensed Consolidated Statements of Comprehensive Income in the same expense line items as cash compensation. The following table presents the classification of stock-based compensation:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Cost of revenues	\$ 1,747	\$ 1,741	\$ 3,588	\$ 3,480
Sales and marketing	1,457	1,818	3,090	3,117
Research and development	1,587	1,691	3,290	3,412
General and administrative	6,341	6,751	12,923	12,120
Total stock-based compensation expense	\$ 11,132	\$ 12,001	\$ 22,891	\$ 22,129

The following table presents the nature of the Company's total stock-based compensation:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
RSUs	\$ 8,625	\$ 9,210	\$ 17,758	\$ 17,504
Performance-based RSUs	2,285	2,385	4,662	3,838
ESPP	822	1,113	1,670	2,194
Capitalization (Included in Property and equipment, net)	(600)	(707)	(1,199)	(1,407)
Total stock-based compensation expense	\$ 11,132	\$ 12,001	\$ 22,891	\$ 22,129

Note 8. Debt and Interest Expense

The following table presents the components of the Company's interest expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Contractual interest on Subordinated Convertible Debentures	\$ 10,156	\$ 10,156	\$ 20,312	\$ 20,312
Contractual interest on Senior Notes	15,234	15,234	30,469	24,271
Amortization of debt discount on the Subordinated Convertible Debentures	2,744	2,527	5,433	5,004
Credit facility fees and other interest expense	725	586	1,449	933
Total interest expense	\$ 28,859	\$ 28,503	\$ 57,663	\$ 50,520

Note 9. Non-operating Income (Loss), Net

The following table presents the components of Non-operating income (loss), net:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(In thousands)			
Unrealized (loss) gain on contingent interest derivative on Subordinated Convertible Debentures	\$ (94)	\$ 2,708	\$ 971	\$ (4,311)
Interest income	1,522	373	2,564	632
Other, net	281	120	1,295	1,325
Total non-operating income (loss), net	\$ 1,709	\$ 3,201	\$ 4,830	\$ (2,354)

Unrealized gains and losses on the contingent interest derivative on the Subordinated Convertible Debentures reflect the change in value of the derivative that results primarily from changes in the Company's stock price.

Note 10. Income Taxes

The following table presents income tax expense and the effective tax rate:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
	(Dollars in thousands)			
Income tax expense	\$ 35,907	\$ 30,652	\$ 69,535	\$ 59,079
Effective tax rate	24%	25%	24%	25%

The effective tax rate for the three and six months ended June 30, 2016 and 2015 is lower than the statutory federal rate of 35% primarily due to tax benefits from foreign income taxed at lower rates, partially offset by state income taxes.

Deferred tax liabilities as of June 30, 2016 reflect the use of a portion of U.S. foreign tax credits during the six months ended June 30, 2016, and an increase in the deferred tax liability related to the Subordinated Convertible Debentures.

Note 11. Subsequent Event

Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion in conjunction with the interim unaudited Condensed Consolidated Financial Statements and related notes.

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements involve risks and uncertainties, including, among other things, statements regarding our anticipated costs and expenses and revenue mix. Forward-looking statements include, among others, those statements including the words "expects," "anticipates," "intends," "believes" and similar language. Our actual results may differ significantly from those projected in the forward-looking statements. Factors that might cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q. You should also carefully review the risks described in other documents we file from time to time with the Securities and Exchange Commission, including the Quarterly Reports on Form 10-Q or Current Reports on Form 8-K that we file in 2016 and our 2015 Form 10-K, which was filed on February 19, 2016, which discuss our business in greater detail. You are cautioned not to place undue reliance on the forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q. We undertake no obligation to publicly release any revisions to the forward-looking statements or reflect events or circumstances after the date of this document.

Overview

We are a global provider of domain name registry services and internet security, enabling internet navigation for many of the world's most recognized domain names and providing protection for websites and enterprises around the world. Our Registry Services ensure the security, stability and resiliency of key internet infrastructure and services, including the .com and .net domains, two of the internet's root servers, and the operation of the root zone maintainer function for the core of the internet's DNS. Our product suite also includes Security Services, consisting of DDoS Protection Services, iDefense Services, and Managed DNS Services. Revenues from Security Services are not significant in relation to our consolidated revenues.

As of June 30, 2016, we had approximately 143.2 million names in the domain name base for .com and .net, our principal registries. The number of domain names registered is largely driven by continued growth in online advertising, e-commerce, and the number of internet users, which is partially driven by greater availability of internet access, as well as marketing activities carried out by us and third-party registrars. Growth in the number of domain names under our management may be hindered by certain factors, including overall economic conditions, competition from ccTLDs, the introduction of new gTLDs, and ongoing changes in the internet practices and behaviors of consumers and businesses. Factors such as the evolving practices and preferences of internet users, and how they navigate the internet, as well as the motivation of domain name registrants and how they will manage their investment in domain names, can negatively impact our business and the demand for new domain name registrations and renewals.

Business Highlights and Trends

- We recorded revenues of \$286.5 million and \$568.3 million during the three and six months ended June 30, 2016. This represents an increase of 9%, as compared to the same periods in 2015.
- We recorded operating income of \$176.3 million and \$343.0 million during the three and six months ended June 30, 2016. This represents an increase of 18% and 17%, respectively, as compared to the same periods in 2015.
- We added 0.8 million net new names during the second quarter, ending with 143.2 million names in the domain name base for .com and .net, which represents a 7% increase over the base at the end of the second quarter in 2015.
- During the three months ended June 30, 2016, we processed 8.6 million new domain name registrations for .com and .net as compared to 8.7 million for the same period in 2015.
- The final .com and .net renewal rate for the first quarter of 2016 was 74.4% compared with 73.4% for the same quarter in 2015. Renewal rates are not fully measurable until 45 days after the end of the quarter.
- During the three months ended June 30, 2016, we repurchased 1.7 million shares of our common stock under the share repurchase program for \$149.9 million. As of June 30, 2016, \$765.9 million remained available for further repurchases under our share repurchase program.

- Through July 27, 2016, we repurchased an additional 0.5 million shares for \$42.3 million under our share repurchase program.
- We generated cash flows from operating activities of \$304.3 million during the six months ended June 30, 2016, compared to \$307.6 million in the same period last year.
- On July 28, 2016, we announced an increase in the annual fee for the .net domain name registration from \$7.46 to \$8.20, effective February 1, 2017, per our agreement with ICANN.

Pursuant to our agreements with ICANN, we make available on our website (at www.Verisign.com/zone) files containing all active domain names registered in the .com and .net registries. At the same website address, we make available a summary of the active zone count registered in the .com and .net registries and the number of .com and .net domain names in the domain name base. The domain name base is the active zone plus the number of domain names that are registered but not configured for use in the respective top level domain zone file plus the number of domain names that are in a client or server hold status. These files and the related summary data are updated at least once per day. The update times may vary each day. The number of domain names provided in this Form 10-Q are as of midnight of the date reported. Information available on, or accessible through, our website is not incorporated herein by reference.

Results of Operations

The following table presents information regarding our results of operations as a percentage of revenues:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
Revenues	100.0 %	100.0 %	100.0 %	100.0 %
Costs and expenses:				
Cost of revenues	17.0	18.4	17.5	18.5
Sales and marketing	6.9	9.3	7.0	9.0
Research and development	5.0	6.2	5.5	6.4
General and administrative	9.6	9.4	9.7	9.8
Total costs and expenses	38.5	43.3	39.7	43.7
Operating income	61.5	56.7	60.3	56.3
Interest expense	(10.1)	(10.9)	(10.1)	(9.7)
Non-operating income (loss), net	0.6	1.2	0.8	(0.5)
Income before income taxes	52.0	47.0	51.0	46.1
Income tax expense	(12.5)	(11.7)	(12.2)	(11.3)
Net income	39.5 %	35.3 %	38.8 %	34.8 %

Revenues

Revenues related to our Registry Services are primarily derived from registrations for domain names in the .com and .net domain name registries. We also derive revenues from operating domain name registries for several other TLDs and from providing back-end registry services to a number of TLD registry operators, all of which are not significant in relation to our consolidated revenues. For domain names registered with the .com and .net registries we receive a fee from third-party registrars per annual registration that is fixed pursuant to our agreements with ICANN. Individual customers, called registrants, contract directly with third-party registrars or their resellers, and the third-party registrars in turn register the domain names with Verisign. Changes in revenues are driven largely by changes in the number of new domain name registrations and the renewal rate for existing registrations as well as the impact of new and prior price increases, to the extent permitted by ICANN and the DOC. New registrations and the renewal rate for existing registrations are impacted by continued growth in online advertising, e-commerce, and the number of internet users, as well as marketing activities carried out by us and third-party registrars. We increased the annual fee for a .net domain name registration from \$6.18 to \$6.79 on February 1, 2015, and from \$6.79 to \$7.46 on February 1, 2016. On July 28, 2016, we announced an increase in the annual fee for the .net domain name registration from \$7.46 to \$8.20, effective February 1, 2017. The annual fee for a .com domain name registration is fixed at \$7.85 for the duration of the current .com Registry Agreement through November 30, 2018, except that prices may be raised by up to 7% each year due to the imposition of any new Consensus Policy or documented extraordinary expense resulting from an attack or threat of attack on the Security and Stability (each as defined in the .com Registry Agreement) of the DNS, subject to approval of the DOC. We offer promotional marketing programs for our registrars based upon market conditions and the business environment in which the registrars operate. All fees paid to us for .com and .net registrations are in U.S. dollars.

Revenues from Security Services are not significant in relation to our total consolidated revenues.

A comparison of revenues is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
Revenues	\$ 286,466	9%	\$ 262,539	\$ 568,342	9%	\$ 520,961

The following table compares domain name base for *.com* and *.net* managed by our Registry Services business:

	June 30, 2016	% Change	June 30, 2015
Domain name base for <i>.com</i> and <i>.net</i>	143.2 million	7%	133.5 million

Revenues increased by \$ 23.9 million and \$47.4 million during the three and six months ended June 30, 2016, respectively, as compared to the same periods last year, primarily due to an increase in revenues from the operation of the registries for the *.com* and *.net* TLDs. The increase in revenues from the operation of the registries for the *.com* and *.net* TLDs was driven by a 7% increase in the domain name base for *.com* and *.net* and an increase in the *.net* domain name registration fees in February 2015 and 2016.

Growth in the domain name base has been primarily driven by continued internet growth and marketing activities carried out by us and third-party registrars. During the second half of 2015 and the first quarter of 2016 we experienced an increased volume of new domain name registrations primarily from our registrars in China. The volume of these new registrations has been inconsistent and periodic compared to prior periods, and by the end of the first quarter of 2016, reverted back to a more normalized registration pace. However, ongoing economic uncertainty, competitive pressure from ccTLDs, the introduction of new gTLDs, ongoing changes in internet practices and behaviors of consumers and business, as well as the motivation of existing domain name registrants and how they will manage their investment in domain names, has limited the rate of growth of the domain name base in recent years and may continue to do so in the remainder of 2016 and beyond.

We expect revenues to remain consistent in the second half of 2016, as compared to the six months ended June 30, 2016.

Geographic revenues

We generate revenues in the U.S.; Europe, the Middle East and Africa (“EMEA”); China; and certain other countries including Canada, Australia and Japan.

The following table presents a comparison of our geographic revenues:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
U.S.	\$ 165,756	4 %	\$ 159,208	\$ 329,799	4 %	\$ 316,716
EMEA	52,710	9 %	48,233	103,665	9 %	95,239
China	32,727	71 %	19,092	63,926	73 %	36,969
Other	35,273	(2)%	36,006	70,952	(2)%	72,037
Total revenues	\$ 286,466		\$ 262,539	\$ 568,342		\$ 520,961

Revenues for our Registry Services business are attributed to the country of domicile and the respective regions in which our registrars are located, however, this may differ from the regions where the registrars operate or where registrants are located. Revenue growth for each region may be impacted by registrars reincorporating, relocating, or from acquisitions or changes in affiliations of resellers. Revenue growth for each region may also be impacted by registrars domiciled in one region, registering domain names in another region. Although revenues continued to grow in the more mature markets of the U.S. and EMEA, China saw the highest growth rate for both the three and six months ended June 30, 2016 due to the increased volume of new registrations during the second half of 2015 and the first quarter of 2016.

Cost of revenues

Cost of revenues consist primarily of salaries and employee benefits expenses for our personnel who manage the operational systems, depreciation expenses, operational costs associated with the delivery of our services, fees paid to ICANN, customer support and training, consulting and development services, costs of facilities and computer equipment used in these activities, telecommunications expense and allocations of indirect costs such as corporate overhead.

A comparison of cost of revenues is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Cost of revenues	\$ 48,753	1%	\$ 48,221	\$ 99,335	3%	\$ 96,574

Cost of revenues expenses remained consistent during the three months ended June 30, 2016, as compared to the same period last year.

Cost of revenues increased by \$2.8 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.4 million increase in salary and employee benefits expenses. Salary and employee benefits expenses increased primarily due to an increase in average headcount and an increase in bonus expenses.

We expect cost of revenues as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

Sales and marketing

Sales and marketing expenses consist primarily of salaries, sales commissions, sales operations and other personnel-related expenses, travel and related expenses, trade shows, costs of lead generation, costs of computer and communications equipment and support services, facilities costs, consulting fees, costs of marketing programs, such as online, television, radio, print and direct mail advertising costs, and allocations of indirect costs such as corporate overhead.

A comparison of sales and marketing expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Sales and marketing	\$ 19,757	(19)%	\$ 24,329	\$ 39,784	(15)%	\$ 46,711

Sales and marketing expenses decreased by \$ 4.6 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.3 million decrease in advertising and consulting expenses. Advertising and consulting expenses decreased primarily due to the timing of marketing programs for our Registry Services business and a decrease in expenses related to our Security Services business.

Sales and marketing expenses decreased by \$6.9 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$5.5 million decrease in advertising and consulting expenses. Advertising and consulting expenses decreased primarily due to the timing of marketing programs for our Registry Services business and a decrease in expenses related to our Security Services business.

We expect sales and marketing expenses as a percentage of revenues to increase during the remainder of 2016 compared to the six months ended June 30, 2016 as the volume of marketing initiatives increases. We expect sales and marketing expenses as a percent of revenues for full year 2016 to be at comparable levels to 2015.

Research and development

Research and development expenses consist primarily of costs related to research and development personnel, including salaries and other personnel-related expenses, consulting fees, facilities costs, computer and communications equipment, support services used in our service and technology development, and allocations of indirect costs such as corporate overhead.

A comparison of research and development expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
	(Dollars in thousands)					
Research and development	\$ 14,288	(13)%	\$ 16,347	\$ 31,031	(7)%	\$ 33,499

Research and development expenses decreased by \$2.1 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a decrease in salary and employee benefits expenses and allocated overhead expenses resulting from a reduction in headcount.

Research and development expenses decreased by \$2.5 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a decrease in salary and employee benefits expenses and allocated overhead expenses resulting from a reduction in headcount.

We expect research and development expenses as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

General and administrative

General and administrative expenses consist primarily of salaries and other personnel-related expenses for our executive, administrative, legal, finance, information technology and human resources personnel, costs of facilities, computer and communications equipment, management information systems, support services, professional services fees, certain tax and license fees, and bad debt expense, offset by allocations of indirect costs such as facilities and shared services expenses to other cost types.

A comparison of general and administrative expenses is presented below:

	Three Months Ended June 30,			Six Months Ended June 30,		
	2016	% Change	2015	2016	% Change	2015
(Dollars in thousands)						
General and administrative	\$ 27,401	11%	\$ 24,677	\$ 55,158	8%	\$ 50,975

General and administrative expenses increased by \$2.7 million during the three months ended June 30, 2016, as compared to the same period last year, primarily due to a \$1.6 million increase in legal expenses and a \$1.4 million increase in salary and employee benefits expenses. Legal expenses increased primarily due to an increase in services performed by external legal counsel. Salary and employee benefits expenses increased primarily due to increases in bonus expenses and average headcount.

General and administrative expenses increased by \$4.2 million during the six months ended June 30, 2016, as compared to the same period last year, primarily due to a \$3.4 million increase in salary and employee benefits expenses, and a \$2.3 million increase in legal expenses, partially offset by a \$1.4 million decrease in depreciation expenses. Salary and employee benefits expenses increased primarily due to increases in bonus expenses and headcount. Legal expenses increased due to an increase in services performed by external legal counsel. Depreciation expense decreased due to a decrease in capital expenditures in recent years.

We expect general and administrative expenses as a percentage of revenues to remain consistent during the remainder of 2016 compared to the six months ended June 30, 2016.

Interest expense

The following table presents the components of Interest expense:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(In thousands)				
Contractual interest on Subordinated Convertible Debentures	\$ 10,156	\$ 10,156	\$ 20,312	\$ 20,312
Contractual interest on Senior Notes	15,234	15,234	30,469	24,271
Amortization of debt discount on the Subordinated Convertible Debentures	2,744	2,527	5,433	5,004
Credit facility fees and other interest expense	725	586	1,449	933
Total interest expense	\$ 28,859	\$ 28,503	\$ 57,663	\$ 50,520

Contractual interest on Senior Notes increased during the six months ended June 30, 2016 due to a \$6.2 million increase in interest expense related to the 2025 Senior Notes which were issued in March 2015. We expect interest expense to remain consistent during the remainder of 2016 as compared to the six months ended June 30, 2016.

Non-operating income (loss), net

The following table presents the components of Non-operating income (loss), net:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(In thousands)				
Unrealized (loss) gain on contingent interest derivative on Subordinated Convertible Debentures	\$ (94)	\$ 2,708	\$ 971	\$ (4,311)
Interest income	1,522	373	2,564	632
Other, net	281	120	1,295	1,325
Total non-operating income (loss), net	<u>\$ 1,709</u>	<u>\$ 3,201</u>	<u>\$ 4,830</u>	<u>\$ (2,354)</u>

Unrealized gains and losses on the contingent interest derivative on the Subordinated Convertible Debentures reflect the change in value of the derivative that results primarily from changes in our stock price. Interest income increased during both the three and six months ended June 30, 2016 primarily due to an increase in interest rates and a higher average invested balance.

Income tax expense

The following table presents income tax expense and the effective tax rate:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2016	2015	2016	2015
(Dollars in thousands)				
Income tax expense	\$ 35,907	\$ 30,652	\$ 69,535	\$ 59,079
Effective tax rate	24%	25%	24%	25%

The effective tax rate for the three and six months ended June 30, 2016 and 2015 was lower than the statutory federal rate of 35% primarily due to tax benefits from foreign income taxed at lower rates, partially offset by state income taxes.

Liquidity and Capital Resources

	June 30, 2016	December 31, 2015
	(In thousands)	
Cash and cash equivalents	\$ 170,966	\$ 228,659
Marketable securities	1,736,030	1,686,771
Total	\$ 1,906,996	\$ 1,915,430

As of June 30, 2016, our principal source of liquidity was \$171.0 million of cash and cash equivalents and \$1.7 billion of marketable securities. The marketable securities primarily consist of debt securities issued by the U.S. Treasury meeting the criteria of our investment policy, which is focused on the preservation of our capital through investment in investment grade securities. The cash equivalents consist of amounts invested in money market funds and U.S. Treasury bills purchased with original maturities of less than 90 days. As of June 30, 2016, all of our debt securities have contractual maturities of less than one year. Our cash and cash equivalents are readily accessible. For additional information on our investment portfolio, see Note 2, "Cash, Cash Equivalents, and Marketable Securities," of our Notes to Condensed Consolidated Financial Statements in Part I, Item I of this Quarterly Report on Form 10-Q.

As of June 30, 2016, the amount of cash and cash equivalents and marketable securities held by foreign subsidiaries was \$1.3 billion. Our intent remains to indefinitely reinvest these funds outside of the U.S. and accordingly, we have not provided deferred U.S. taxes for these funds. In the event funds from foreign operations are needed to fund operations in the U.S. and if U.S. tax has not already been provided, we would be required to accrue and pay additional U.S. taxes in order to repatriate these funds.

As of June 30, 2016, we had \$500.0 million principal amount outstanding of the 5.25% senior unsecured notes due 2025 and \$750.0 million principal amount outstanding of the 4.625% senior unsecured notes due 2023.

As of June 30, 2016, there were no borrowings outstanding under the \$200.0 million unsecured revolving credit facility that will expire in 2020.

As of June 30, 2016, we had \$1.25 billion principal amount outstanding of 3.25% subordinated convertible debentures due 2037. The price of our common stock exceeded the conversion price threshold trigger during the second quarter of 2016. Accordingly, the Subordinated Convertible Debentures are convertible at the option of each holder through September 30, 2016. We do not expect a material amount of the Subordinated Convertible Debentures to be converted in the near term as the trading price of the debentures exceeds the value that is likely to be received upon conversion. However, we cannot provide any assurance that the trading price of the debentures will continue to exceed the value that would be derived upon conversion or that the holders will not elect to convert the Subordinated Convertible Debentures. If a holder elects to convert its Subordinated Convertible Debentures, we are permitted under the Indenture to pursue an exchange in lieu of conversion or to settle the conversion value (as defined in the Indenture) in cash, stock, or a combination thereof. If we choose not to pursue or cannot complete an exchange in lieu of conversion, we currently have the intent and the ability (based on current facts and circumstances) to settle the principal amount of the Subordinated Convertible Debentures in cash. However, if the principal amount of the Subordinated Convertible Debentures that holders actually elect to convert exceeds our cash on hand and cash from operations, we will need to draw cash from existing financing or pursue additional sources of financing to settle the Subordinated Convertible Debentures in cash. We cannot provide any assurances that we will be able to obtain new sources of financing on terms acceptable to us or at all, nor can we assure that we will be able to obtain such financing in time to settle the Subordinated Convertible Debentures that holders elect to convert.

On February 15, 2016, we paid contingent interest of \$6.5 million in addition to the normal coupon interest on our Subordinated Convertible Debentures. In February 2016, the upside trigger on the Subordinated Convertible Debentures was met for the six month interest period ending in August 2016. On August 15, 2016, we will pay contingent interest of \$6.8 million in addition to the normal coupon interest to holders of record of the Subordinated Convertible Debentures as of August 1, 2016. The upside trigger is met if the Subordinated Convertible Debentures' average trading price is at least 150% of par during the 10 trading days before each semi-annual interest period. The upside trigger is tested semi-annually for the following six months. The semi-annual upside contingent interest payment, for a given period, can be approximated by applying the annual rate of 0.5% to the aggregate market value of all outstanding Subordinated Convertible Debentures and dividing by two for that semi-annual period payment amount.

We derive significant tax savings from the Subordinated Convertible Debentures. During the first half of 2016 and 2015, the interest deduction, for income tax purposes, related to our Subordinated Convertible Debentures, excluding contingent interest, was \$87.7 million and \$82.4 million, respectively, compared to coupon interest expense of \$20.3 million for each of the same periods. For income tax purposes, we deduct interest expense on the Subordinated Convertible Debentures calculated at 8.5% of the adjusted issue price, subject to adjustment for actual versus projected contingent interest. The adjusted issue price, and consequently the interest deduction for income tax purposes, grows over the term due to the difference between the

interest deduction taken using a comparable yield of 8.5% on the adjusted issue price, and the coupon rate of 3.25% on the principal amount, compounded annually. The interest deduction taken is subject to recapture upon settlement to the extent that the amount paid (in cash or stock) to settle the Subordinated Convertible Debentures is less than the adjusted issue price. Interest recognized in accordance with GAAP, which is calculated at 8.39% of the liability component of the Subordinated Convertible Debentures, will also grow over the term, but at a slower rate. This difference will result in a continuing increase in the deferred tax liability on our Condensed Consolidated Balance Sheet.

Subsequent to June 30, 2016, we incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.

We believe existing cash, cash equivalents and marketable securities, and funds generated from operations, together with our borrowing capacity under the unsecured revolving credit facility should be sufficient to meet our working capital, capital expenditure requirements, and to service our debt for at least the next 12 months. We regularly assess our cash management approach and activities in view of our current and potential future needs.

In summary, our cash flows for the six months ended June 30, 2016 and 2015 are as follows:

	Six Months Ended June 30,	
	2016	2015
	(In thousands)	
Net cash provided by operating activities	\$ 304,291	\$ 307,625
Net cash used in investing activities	(58,508)	(489,285)
Net cash (used in) provided by financing activities	(303,443)	176,732
Effect of exchange rate changes on cash and cash equivalents	(33)	606
Net decrease in cash and cash equivalents	<u>\$ (57,693)</u>	<u>\$ (4,322)</u>

Cash flows from operating activities

Our largest source of operating cash flows is cash collections from our customers. Our primary uses of cash from operating activities are for personnel related expenditures, and other general operating expenses, as well as payments related to taxes, interest and facilities.

Net cash provided by operating activities decreased during the six months ended June 30, 2016, primarily due to an increase in cash paid for interest and cash paid to employees and vendors, partially offset by an increase in cash collected from customers. Cash paid for interest increased due to the interest paid on the 2025 Senior Notes and higher contingent interest related to the Subordinated Convertible Debentures. Payments to employees and vendors increased primarily due to the timing of payments. Cash received from customers increased primarily due to an increase in the number of new and renewal domain name registrations during the six months ended June 30, 2016, and the increases in the .net domain name registration fees in February 2016.

Cash flows from investing activities

The changes in cash flows from investing activities primarily relate to purchases, maturities and sales of marketable securities, and purchases of property and equipment.

The decrease in cash flows used in investing activities was primarily due to a decrease in purchases of marketable securities, net of proceeds from sales and maturities, during the first half of 2016, compared to the same period in 2015, and a decrease in purchases of property and equipment and other investing activities.

Cash flows from financing activities

The changes in cash flows from financing activities primarily relate to share repurchases, proceeds from and repayments of borrowings, our employee stock purchase plan, and excess tax benefits from stock-based compensation.

The change in cash (used in) provided by financing activities during the six months ended June 30, 2016 was primarily due to a decrease in proceeds from borrowings as we issued the 2025 Senior Notes in March 2015, partially offset by a decrease in share repurchases.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no significant changes in our market risk exposures since December 31, 2015.

ITEM 4. CONTROLS AND PROCEDURES

Based on our management's evaluation, with the participation of our Chief Executive Officer (our principal executive officer) and our Chief Financial Officer (our principal financial officer), as of June 30, 2016, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the three months ended June 30, 2016 that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Inherent Limitations of Disclosure Controls and Internal Control over Financial Reporting

Because of their inherent limitations, our disclosure controls and procedures and our internal control over financial reporting may not prevent material errors or fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. The effectiveness of our disclosure controls and procedures and our internal control over financial reporting is subject to risks, including that the control may become inadequate because of changes in conditions or that the degree of compliance with our policies or procedures may deteriorate.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Verisign is involved in various investigations, claims and lawsuits arising in the normal conduct of its business, none of which, in its opinion, will have a material adverse effect on its financial condition, results of operations, or cash flows. The Company cannot assure you that it will prevail in any litigation. Regardless of the outcome, any litigation may require the Company to incur significant litigation expense and may result in significant diversion of management attention.

ITEM 1A. RISK FACTORS

In addition to other information in this Form 10-Q, the following risk factors should be carefully considered in evaluating us and our business because these factors currently have a significant impact or may have a significant impact on our business, operating results or financial condition. Actual results could differ materially from those projected in the forward-looking statements contained in this Form 10-Q as a result of the risk factors discussed below and elsewhere in this Form 10-Q and in other filings we make with the SEC.

Risks arising from our agreements governing our Registry Services business could limit our ability to maintain or grow our business.

We are parties to (i) a Cooperative Agreement (as amended) with the DOC with respect to the .com gTLD and certain other aspects of the DNS and (ii) Registry Agreements with ICANN for .com, .net, .name and other gTLDs including our IDN gTLDs. As substantially all of our revenues are derived from our Registry Services business, limitations in these agreements could have a material impact on our business.

Pricing. Under the terms of the Cooperative Agreement with the DOC and the .com Registry Agreement with ICANN, we are generally restricted from increasing the price of registrations or renewals of .com domain names except that we are entitled to increase the price up to 7%, with the prior approval of the DOC, due to the imposition of any new Consensus Policies or documented extraordinary expense resulting from an attack or threat of attack on the security and stability of the DNS. However, it is uncertain that such circumstances will arise, or if they do, that the DOC will approve our request to increase the price for .com domain name registrations. We also have the right under the Cooperative Agreement to seek the removal of these pricing restrictions if we demonstrate that market conditions no longer warrant such restrictions. However, it is uncertain that such circumstances will arise, or if they do, that the DOC will agree to the removal of these pricing restrictions. In connection with a renewal of the .com Registry Agreement, we can seek an increase of the price for .com domain name registrations. Regardless of whether we seek such an increase, there can be no assurance of the price that DOC will approve in connection with a renewal of the .com Registry Agreement. Under the terms of the .net and .name Registry Agreements with ICANN, we are permitted to increase the price of registrations and renewals in these TLDs up to 10% per year. Additionally, ICANN's registry agreements for the new gTLDs do not contain such pricing restrictions.

Vertical integration. Under the .com, .net and .name Registry Agreements with ICANN, as well as the Cooperative Agreement with the DOC, we are not permitted to acquire, directly or indirectly, control of, or a greater than 15% ownership interest in, any ICANN-accredited registrar. Historically, all gTLD registry operators were subject to this vertical integration prohibition; however, ICANN has established a process whereby registry operators may seek ICANN's approval to remove this restriction, and ICANN has approved such removal in some instances. If we were to seek removal of the vertical integration restrictions contained in our agreements, it is uncertain whether ICANN and/or DOC approval would be obtained. Additionally, ICANN's registry agreement for new gTLDs generally permits such vertical integration, with certain limitations including ICANN's right, but not the obligation, to refer such vertical integration activities to competition authorities. Furthermore, unless prohibited by ICANN as noted above, such vertical integration restrictions do not generally apply to ccTLD registry operators. If registry operators of new or existing gTLDs, or ccTLDs, are able to obtain competitive advantages through such vertical integration, it could materially harm our business.

Termination or non-renewal. Under the Cooperative Agreement (as amended) the DOC must approve any renewal or extension of the .com Registry Agreement. The DOC, under certain circumstances, could refuse to grant its approval to the renewal of the .com Registry Agreement on similar terms, or at all. Any failure of the DOC to approve the renewal of the .com Registry Agreement prior to the expiration of its current term on November 30, 2018 would have a material adverse effect on our business. Under certain circumstances, ICANN could terminate or refuse to renew one or more of our Registry Agreements including those for .com, .net, and our other gTLDs. The Company and ICANN completed the drafting of the Root Zone Maintainer Service Agreement ("RZMA") and the .com Registry Agreement extension amendment (".com Extension"), which extends the expiration date of the .com Registry Agreement to November 30, 2024 and is intended to coincide with the eight year term of the RZMA. In June 2016, ICANN posted on its website the RZMA for public review and the .com Extension for

public comment. We can provide no assurance that the .com Extension or the RZMA will be approved or, if approved, will be in the form described. See the “Industry Regulation” section in Part I, Item 1 of the Company’s Annual Report on Form 10-K for the year ended December 31, 2015, which was filed on February 19, 2016, for further information on the Cooperative Agreement and the RZMA.

Modification or amendment . Our Registry Agreements for new gTLDs, including the Registry Agreements for our IDN gTLDs, include ICANN’s right to amend the agreement without our consent, which could impose unfavorable contract obligations on us that could impact our plans and competitive positions with respect to new gTLDs. At the time of renewal of our .com or .net Registry Agreements, ICANN might also attempt to impose this same unilateral right to amend these registry agreements under certain conditions. ICANN has also included new mandatory obligations on new gTLD registry operators, including us, that may increase the risks and potential liabilities associated with operating new gTLDs. ICANN might seek to impose these new mandatory obligations in our other Registry Agreements under certain conditions.

Legal challenges . Our Registry Agreements have faced, and could continue to face, challenges, including possible legal challenges resulting from our activities or the activities of ICANN, registrars, registrants and others, and any adverse outcome from such challenges could have a material adverse effect on our business.

Consensus Policies . Our Registry Agreements with ICANN require us to implement Consensus Policies. ICANN could adopt Consensus Policies that are unfavorable to us as the registry operator of .com , .net and our other gTLDs, that are inconsistent with our current or future plans, that impose substantial costs on our business, or that affect our competitive position. Such Consensus Policies could have a material adverse effect on our business.

Governmental regulation and the application of new and existing laws in the U.S. and overseas may slow business growth, increase our costs of doing business, create potential liability and have an adverse effect on our business.

Application of new and existing laws and regulations in the U.S. or overseas to the internet and communications industry can be unclear. The costs of complying or failing to comply with these laws and regulations could limit our ability to operate in our current markets, expose us to compliance costs and substantial liability and result in costly and time-consuming litigation. For example, the government of the People’s Republic of China (“PRC”) has indicated that it will issue new regulations, and has begun to enforce existing regulations, that could impose additional costs on our provision of Registry Services in the PRC and could impact the growth or renewal rates of domain name registrations in the PRC. In addition to registry operators, the regulations will require registrars to obtain a government-issued license for each TLD whose domain name registrations they intend to sell directly to registrants. Their failure to obtain the required licenses could also impact the growth of our business in the PRC.

Foreign, federal or state laws could have an adverse impact on our business, financial condition, results of operations and cash flows, and our ability to conduct business in certain foreign countries. For example, laws designed to restrict who can register and who can distribute domain names, the online distribution of certain materials deemed harmful to children, online gambling, counterfeit goods, and cybersquatting; laws designed to require registrants to provide additional documentation or information in connection with domain name registrations; and laws designed to promote cyber security may impose significant additional costs on our business or subject us to additional liabilities. We have contracts pursuant to which we provide services to the U.S. government and they impose compliance costs, including compliance with the Federal Acquisition Regulation, which could be significant to the Company.

Due to the nature of the internet, it is possible that state or foreign governments might attempt to regulate internet transmissions or prosecute us for violations of their laws. We might unintentionally violate such laws, such laws may be modified and new laws may be enacted in the future. In addition, as we launch our IDN gTLDs, we may raise our profile in certain foreign countries thereby increasing the regulatory and other scrutiny of our operations. Any such developments could increase the costs of regulatory compliance for us, affect our reputation, force us to change our business practices or otherwise materially harm our business. In addition, any such new laws could impede growth of or result in a decline in domain name registrations, as well as impact the demand for our services.

Undetected or unknown defects in our service, security breaches, and DDoS attacks could expose us to liability and harm our business and reputation.

Services as complex as those we offer or develop could contain undetected defects or errors. Despite testing, defects or errors may occur in our existing or new services, which could result in compromised customer data, including DNS data, diversion of development resources, injury to our reputation, tort or contract claims, increased insurance costs or increased service costs, any of which could harm our business. Performance of our services could have unforeseen or unknown adverse effects on the networks over which they are delivered as well as, more broadly, on internet users and consumers, and third-party applications and services that utilize our services, which could result in legal claims against us, harming our business. Our failure to identify, remediate and mitigate security breaches or our inability to meet customer expectations in a timely manner

could also result in loss of or delay in revenues, loss of market share, failure to achieve market acceptance, injury to our reputation and increased costs.

In addition to undetected defects or errors, we are also subject to cyber-attacks and attempted security breaches. We retain certain customer and employee information in our data centers and various domain name registration systems. It is critical to our business strategy that our facilities and infrastructure remain secure and are perceived by the marketplace to be secure. The Company, as an operator of critical internet infrastructure, is frequently targeted and experiences a high rate of attacks. These include the most sophisticated forms of attacks, such as advanced persistent threat attacks and zero-hour threats, which means that the threat is not compiled or has been previously unobserved within our observation and threat indicators space until the moment it is launched, and may well target specific unidentified or unresolved vulnerabilities that exist only within the target's operating environment, making these attacks virtually impossible to anticipate and difficult to defend against. The Shared Registration System, the root zone servers, the Root Zone Management System, the TLD name servers and the TLD zone files that we operate are critical to our Registry Services operations. Despite the significant time and money expended on our security measures, we have been subject to a security breach, as disclosed in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, and our infrastructure may in the future be vulnerable to physical break-ins, outages resulting from destructive malware, computer viruses, attacks by hackers or nefarious actors or similar disruptive problems, including hacktivism. It is possible that we may have to expend additional financial and other resources to address such problems. Any physical or electronic break-in or other security breach or compromise of the information stored at our data centers or domain name registration systems may cause an outage of or jeopardize the security of information stored on our premises or in the computer systems and networks of our customers. In such an event, we could face significant liability, customers could be reluctant to use our services and we could be at risk for loss of various security and standards-based compliance certifications needed for operation of our businesses, all or any of which could adversely affect our reputation and harm our business. Such an occurrence could also result in adverse publicity and therefore adversely affect the market's perception of the security of e-commerce and communications over the internet as well as of the security or reliability of our services.

Additionally, our networks have been, and likely will continue to be, subject to DDoS attacks. While we have adopted mitigation techniques, procedures and strategies to defend against such attacks, there can be no assurance that we will be able to defend against every attack, especially as the attacks increase in size and sophistication. Any attack, even if only partially successful, could disrupt our networks, increase response time, negatively impact our ability to meet our contracted service level obligations, and generally hamper our ability to provide reliable service to our Registry Services customers and the broader internet community. Further, we sell DDoS protection services to our Security Services customers. Although we increase our knowledge of and develop new techniques in the identification and mitigation of attacks through the protection of our Security Services customers, the DDoS protection services share some of the infrastructure used in our Registry Services business. Therefore the provision of such services might expose our critical Registry Services infrastructure to temporary degradations or outages caused by DDoS attacks against those customers, in addition to any directed specifically against us and our networks.

Changes to the present multi-stakeholder model of internet governance could materially and adversely impact our business.

The internet is governed under a multi-stakeholder model comprising civil society, the private sector including for-profit and not-for-profit organizations such as ICANN, governments including the U.S. government, academia, non-governmental organizations and international organizations. Changes to the present multi-stakeholder model of internet governance could materially and adversely impact our business.

Role of ICANN . ICANN plays a central coordination role in the multi-stakeholder system. ICANN is mandated by the non-binding Affirmation of Commitments ("AOC") between the DOC and ICANN to uphold a private sector-led multi-stakeholder approach to internet governance for the public benefit. If ICANN fails to uphold or significantly redefines the multi-stakeholder model, it could harm our business and our relationship with ICANN. Additionally, the AOC could be terminated or replaced with a different agreement between ICANN and some other authority which may establish new or different procedures for internet governance that may be unfavorable to us. Also, legal, regulatory or other challenges could be brought challenging the legal authority underlying the roles and actions of ICANN.

Role of foreign governments . Some governments and members of the multi-stakeholder community have questioned ICANN's role with respect to internet governance and, as a result, could seek a multilateral oversight body as a replacement. Additionally, the role of ICANN's Governmental Advisory Committee, which is comprised of representatives of national governments, could change, giving governments more control of internet governance. For example, the AOC has established several multi-party review panels and contemplates a greater involvement by foreign governments and governmental authorities in the oversight and review of ICANN. These periodic review panels may take positions that are unfavorable to us. Some governments and governmental authorities outside the U.S. have in the past disagreed, and may in the future disagree, with the actions, policies or programs of ICANN, the U.S. Government and us relating to the DNS.

Role of the U.S. Government . The U.S. Government through the NTIA coordinates the management of important aspects of the DNS including the IANA functions and the root zone. On March 14, 2014, NTIA announced its intent to transition its oversight of the IANA function to the global multi-stakeholder community. NTIA asked ICANN to convene global stakeholders to develop a proposal to transition the current role played by NTIA in the coordination of the DNS. The NTIA is also coordinating a related and parallel transition of related root zone management functions. These related root zone management functions involve our role as Root Zone Maintainer under the Cooperative Agreement. At NTIA's request, we submitted a proposal with ICANN to NTIA as to how best to remove NTIA's administrative role associated with root zone maintenance in a manner that maintains the security, stability and resiliency of the DNS. We have performed the Root Zone Maintainer function as a community service spanning three decades without compensation at the request of the DOC under the Cooperative Agreement. While it is uncertain how the transition of oversight of the IANA functions and related root zone management functions will affect our role as Root Zone Maintainer, it is anticipated that performance of the root zone maintainer function would be conducted by us under a new Root Zone Maintainer Service Agreement with ICANN once our root zone maintainer function obligations under the Cooperative Agreement are completed. Although our Root Zone Maintainer function is separate from our Registry Agreements, there can be no assurance that the transition of the IANA functions, the transition of the related root zone management functions, and associated transition processes will not negatively impact our business.

As a result of these and other risks, internet governance may change in ways that could materially harm our Registry Services business. For example, after the transition, if we perform the root zone maintainer function under a new agreement, we may be subject to claims challenging the agreement and we may not have immunity from or sufficient indemnification for such claims. If another party is designated to perform the Root Zone Maintainer function, there could be new or increased risks in availability, integrity and publication of the root zone file, which is critical to the operation of the DNS and our operation of our TLDs, including *.com* .

In addition to harming our Registry Services business, changes to internet governance may make it more difficult for us to introduce new services in our Registry Services business and we could also be subject to additional restrictions on how our business is conducted, or to fees or taxes applicable to this business, which may not be equally applicable to our competitors.

We operate two root zone servers and are contracted to perform the Root Zone Maintainer function. Under ICANN's New gTLD program, we face increased risk from these operations.

We operate two of the 13 root zone servers. Root zone servers are name servers that contain authoritative data for the very top of the DNS hierarchy. These servers have the software and DNS configuration data necessary to locate name servers that contain authoritative data for the TLDs. These root zone servers are critical to the functioning of the internet. Under the Cooperative Agreement, we play a key operational role in support of the IANA function as the Root Zone Maintainer. In this role, we provision and publish the authoritative data for the root zone itself multiple times daily and distribute it to all root server operators.

Under its New gTLD Program, ICANN has recommended delegations into the root zone of a large number of new gTLDs. In view of our role as the Root Zone Maintainer, and as a root server operator, we face increased risks should ICANN's delegation of these new gTLDs, which represent unprecedented changes to the root zone in volume and frequency, cause security and stability problems within the DNS and/or for parties who rely on the DNS. Such risks include potential instability of the DNS including potential fragmentation of the DNS should ICANN's delegations create sufficient instability, and potential claims based on our role in the root zone provisioning and delegation process. These risks, alone or in the aggregate, have the potential to cause serious harm to our Registry Services business. Further, our business could also be harmed through security, stability and resiliency degradation if the delegation of new gTLDs into the root zone causes problems to certain components of the DNS ecosystem or other aspects of the global DNS, or other relying parties are negatively impacted as a result of domain name collisions or other new gTLD security issues, such as exposure or other leakage of private or sensitive information.

Additionally, DNSSEC enabled in the root zone and at other levels of the DNS requires new preventative maintenance functions and complex operational practices that did not exist prior to the introduction of DNSSEC. Any failure by us or the IANA functions operator to comply with stated practices, such as those outlined in relevant DNSSEC Practice Statements, introduces risk to DNSSEC relying parties and other internet users and consumers of the DNS, which could have a material adverse impact on our business.

The evolution of internet practices and behaviors and the adoption of substitute technologies may impact the demand for domain names.

Domain names and the domain name system have been used by consumers and businesses to access or disseminate information, conduct ecommerce, and develop an online identity for many years. The growth of technologies such as social media, mobile devices, apps and the dominance of search engines has evolved and changed the internet practices and behaviors of consumers and businesses alike. These changes can impact the demand for domain names by those who purchase domain names for personal, commercial and investment reasons. Factors such as the evolving practices and preferences of internet users

and how they navigate the internet as well the motivation of domain name registrants and how they will monetize their investment in domain names can negatively impact our business. Some domain name registrars and registrants seek to purchase and resell domain names following an increase in their value. Adverse changes in the resale value of domain names could result in a decrease in the demand and/or renewal rates for domain names obtained for resale.

Some domain name registrants use a domain name to access or disseminate information, conduct ecommerce, and develop an online identity. Currently, internet users often navigate to a website either by directly typing its domain name into a web browser, the use of an app on their smart phone or mobile device, the use of a voice recognition technology such as Siri, Cortana, or Echo, or through the use of a search engine. If (i) web browser or internet search technologies were to change significantly; (ii) internet users' preferences or practices shift away from recognizing and relying on web addresses for navigation through the use of new and existing technologies; (iii) internet users were to significantly decrease the use of web browsers in favor of applications to locate and access content; or (iv) internet users were to increasingly use third level domains or alternate identifiers, such as social networking and microblogging sites, in each case the demand for domain names registered by us could decrease. This may trigger current or prospective customers and parties in our target markets to reevaluate their need for registration or renewal of domain names.

Some domain name registrars and registrants seek to generate revenue through advertising on their websites; changes in the way these registrars and registrants are compensated (including changes in methodologies and metrics) by advertisers and advertisement placement networks, such as Google, Yahoo!, Baidu and Bing, have, and may continue to, adversely affect the market for those domain names favored by such registrars and registrants which has resulted in, and may continue to result in, a decrease in demand and/or the renewal rate for those domain names. For example, according to published reports, Google has in the past changed (and may change in the future) its search algorithm, which may decrease site traffic to certain websites and provide less pay-per-click compensation for certain types of websites. This has made such websites less profitable which has resulted in, and may continue to result in, fewer domain registrations and renewals. In addition, as a result of the general economic environment, spending on online advertising and marketing may not increase or may be reduced, which in turn, may result in a further decline in the demand for those domain names.

If any of the above factors negatively impact the renewal of domain names or the demand for new domain names, we may experience material adverse impacts on our business, operating results, financial condition and cash flows.

Many of our target markets are evolving, and if these markets fail to develop or if our products and services are not widely accepted in these markets, our business could be harmed.

We target many new, developing and emerging markets to grow our business. These markets are rapidly evolving, and may not grow. Even if these markets grow, our services may not be widely used or accepted. Accordingly, the demand for our services in these markets is very uncertain. The factors that may affect market acceptance or adoption of our services in these markets include the following:

- regional internet infrastructure development, expansion, penetration and adoption;
- market acceptance and adoption of products and services based upon technologies other than those we use, which are substitutes for our products and services;
- public perception of the security of our technologies and of IP and other networks;
- the introduction and consumer acceptance of new generations of mobile devices, and in particular the use of alternative internet navigation mechanisms other than web browsers;
- increasing cyber threats and the associated customer need and demand for our Security Services offerings;
- government regulations affecting internet access and availability, domain name registrations or the provision of registry services, or e-commerce and telecommunications over the internet;
- preference by markets for the use of their own country's ccTLDs as a substitute or alternative to our TLDs; and
- increased acceptance and use of new gTLDs as substitutes for established gTLDs.

If the market for e-commerce and communications over IP and other networks does not grow or these services are not widely accepted in the market, our business could be materially harmed.

We may face operational and other risks from the introduction of new gTLDs by ICANN and our provision of back-end registry services.

Approximately 1,000 new gTLDs have already been delegated in this initial round of new gTLDs. ICANN plans on offering a second round of new gTLDs after the completion of the initial round, the timing of which is uncertain. As set forth in

the Verisign Labs Technical Report #1130007 version 2.2: New gTLD Security and Stability Considerations released on March 28, 2013, and reiterated in our further publications since then, we continue to believe there are issues regarding the deployment of the new gTLDs that should have been addressed before any new gTLDs were delegated, and despite our and others' efforts, some of these issues have not been addressed by ICANN sufficiently, if at all. For example, domain name collisions have been reported to ICANN, which have resulted in various network interruptions for enterprises as well as confusion and usability issues that have led to phishing attacks. It is anticipated that as additional new gTLDs are delegated more domain name collisions and associated security issues will occur.

We have entered into agreements to provide back-end registry services to other registry operators and applicants for new gTLDs. We may face risks regarding ICANN requirements for mitigating name collisions in the new gTLDs which we operate or for which we provide back-end registry services. For example, the possibility exists that "controlled interruption" periods may disrupt network services or that privacy or secure communications may be impacted as a result of insufficient preparedness by ICANN and the community for the launch of new gTLDs.

Our agreements with ICANN to provide registry services in connection with our new gTLDs, including our IDN gTLDs, and our agreements to provide back-end registry services directly to other applicants and indirectly through reseller relationships expose us to operational and other risks. For example, the increase in the number of gTLDs for which we provide registry services on a standalone basis or as a back-end service provider could further increase costs or increase the frequency or scope of targeted attacks from nefarious actors.

The business environment is highly competitive and, if we do not compete effectively, we may suffer lower demand for our products, price reductions, reduced gross margins and loss of market share.

The internet and communications network services industries are characterized by rapid technological change and frequent new product and service announcements which require us continually to improve the performance, features and reliability of our services, particularly in response to competitive offerings or alternatives to our products and services. In order to remain competitive and retain our market position, we must continually improve our access to technology and software, support the latest transmission technologies, and adapt our products and services to changing market conditions and our customers' and internet users' preferences and practices, or launch entirely new products and services such as new gTLDs in anticipation of, or in response to, market trends. We cannot assure that competing technologies developed by others or the emergence of new industry standards will not adversely affect our competitive position or render our services or technologies noncompetitive or obsolete. In addition, our markets are characterized by announcements of collaborative relationships involving our competitors. The existence or announcement of any such relationships could adversely affect our ability to attract and retain customers. As a result of the foregoing and other factors, we may not be able to compete effectively with current or future competitors, and competitive pressures that we face could materially harm our business.

We face competition in the domain name registry space from other gTLD and ccTLD registries that are competing for the business of entities and individuals that are seeking to obtain a domain name registration and/or establish a web presence. We have applied for new gTLDs including certain IDN gTLDs; however, there is no guarantee that such new gTLDs will be as or more successful than the new gTLDs obtained by our competitors. For example, some of the new gTLDs, including our new gTLDs, may face additional universal acceptance and usability challenges in that current desktop and mobile device software does not ubiquitously recognize these new gTLDs and may be slow to adopt standards or support these gTLDs, even if demand for such products is strong. This is particularly true for IDN gTLDs, but applies to conventional gTLDs as well. As a result of these challenges, it is possible that resolution of domain names within some of these new gTLDs may be blocked within certain state or organizational environments, challenging universal resolvability of these strings and their general acceptance and usability on the internet.

See the "Competition" section in Part I, Item 1 of the Company's Annual Report on Form 10-K for the year ended December 31, 2015, which was filed on February 19, 2016, for further information.

We must establish and maintain strong relationships with registrars and their resellers to maintain their focus on marketing our products and services otherwise our Registry Service business could be harmed.

One registrar accounts for approximately 30% of our revenues. All of our domain name registrations occur through registrars. Registrars and their resellers utilize substantial marketing efforts to increase the demand and/or renewal rates for domain names. Consolidation in the registrar or reseller industry or changes in ownership, management, or strategy among individual registrars or resellers could result in significant changes to their business, operating model and cost structure. Such changes could include reduced marketing efforts or other operational changes that could adversely impact the demand and/or the renewal rates for domain names. With the introduction of new gTLDs, many of our registrars have chosen to, and may continue to choose to, focus their short or long-term marketing efforts on these new offerings and/or reduce the prominence or visibility of our products and services on their e-commerce platforms. Our registrars and resellers not only sell domain name registrations of other competing registries but also sell and support their own services for websites such as email, website hosting, as well as

other services. To the extent that registrars and their resellers focus more on selling and supporting other services and less on the registration and renewal of our TLDs, our revenues could be adversely impacted. Our ability to successfully market our services to, and build and maintain strong relationships with, new and existing registrars or resellers is a factor upon which successful operation of our business is dependent. If we are unable to keep a significant portion of their marketing efforts focused on selling our TLDs as opposed to other competing TLDs or their own services, our business could be harmed.

If we encounter system interruptions or failures, we could be exposed to liability and our reputation and business could suffer.

We depend on the uninterrupted operation of our various systems, secure data centers and other computer and communication networks. Our systems and operations are vulnerable to damage or interruption from:

- power loss, transmission cable cuts and other telecommunications failures;
- damage or interruption caused by fire, earthquake, and other natural disasters;
- attacks, including hacktivism, by miscreants or other nefarious actors;
- computer viruses or software defects;
- physical or electronic break-ins, sabotage, intentional acts of vandalism, terrorist attacks and other events beyond our control;
- risks inherent in or arising from the terms and conditions of our agreements with service providers to operate our networks and data centers;
- state suppression of internet operations; and
- any failure to implement effective and timely remedial actions in response to any damage or interruption.

Most of the computing infrastructure for our Shared Registration System is located at, and most of our customer information is stored in, our facilities in New Castle, Delaware; Dulles, Virginia; and Fribourg, Switzerland. To the extent we are unable to partially or completely switch over to our primary alternate or tertiary sites, any damage or failure that causes interruptions in any of these facilities or our other computer and communications systems could materially harm our business. Although we carry insurance for property damage, we do not carry insurance or financial reserves for such interruptions, or for potential losses arising from terrorism.

In addition, our Registry Services business and certain of our other services depend on the efficient operation of the internet connections to and from customers to our Shared Registration System residing in our secure data centers. These connections depend upon the efficient operation of internet service providers and internet backbone service providers, all of which have had periodic operational problems or experienced outages in the past beyond our scope of control. In addition, if these service providers do not protect, maintain, improve, and reinvest in their networks or present inconsistent data regarding the DNS through their networks, our business could be harmed.

A failure in the operation or update of the root zone servers, the root zone file, the root zone management system, the TLD name servers, or the TLD zone files that we operate, or other network functions, could result in a DNS resolution or other service outage or degradation; the deletion of one or more TLDs from the internet; the deletion of one or more second-level domain names from the internet for a period of time; or a misdirection of a domain name to a different server. A failure in the operation or update of the supporting cryptographic and other operational infrastructure that we maintain could result in similar consequences. A failure in the operation of our Shared Registration System could result in the inability of one or more registrars to register or maintain domain names for a period of time. In the event that a registrar has not implemented back-up services in conformance with industry best practices, the failure could result in permanent loss of transactions at the registrar during that period. Any of these problems or outages could create potential liability, including liability arising from a failure to meet our service level agreements in our Registry Agreements, and could decrease customer satisfaction, harming our business or resulting in adverse publicity that could adversely affect the market's perception of the security of e-commerce and communications over the internet as well as of the security or reliability of our services.

Our operating results may be adversely affected as a result of unfavorable market, economic, social and political conditions.

An unstable global economic, social and political environment, including hostilities and conflicts in various regions both inside and outside the U.S., natural disasters, currency fluctuations, and country specific operating regulations may have a negative impact on demand for our services, our business and our foreign operations. The economic, social and political environment has impacted or may negatively impact, among other things:

- our customers' continued growth and development of their businesses and our customers' ability to continue as going concerns or maintain their businesses, which could affect demand for our products and services;
- current and future demand for our services, including decreases as a result of reduced spending on information technology and communications by our customers;
- price competition for our products and services;
- the price of our common stock;
- our liquidity and our associated ability to execute on any share repurchase plans;
- our ability to service our debt, to obtain financing or assume new debt obligations; and
- our ability to obtain payment for outstanding debts owed to us by our customers or other parties with whom we do business.

In addition, to the extent that the economic, social and political environment impacts specific industry and geographic sectors in which many of our customers are concentrated, that may have a disproportionate negative impact on our business.

Our international operations subject our business to additional economic and political risks that could have an adverse impact on our revenues and business.

A significant portion of our revenues is derived from customers outside the U.S. Doing business in international markets has required and will continue to require significant management attention and resources. We may also need to tailor some of our services for a particular market and to enter into international distribution and operating relationships. We may fail to maintain our ability to conduct business, including potentially material business operations in some international locations, or we may not succeed in expanding our services into new international markets or expand our presence in existing markets. Failure to do so could materially harm our business. Moreover, local laws and customs in many countries differ significantly from those in the U.S. In many foreign countries, particularly in those with developing economies, it is common for others to engage in business practices that are prohibited by our internal policies and procedures or U.S. law or regulations applicable to us. There can be no assurance that our employees, contractors and agents will not take actions in violation of such policies, procedures, laws and/or regulations. Violations of laws, regulations or internal policies and procedures by our employees, contractors or agents could result in financial reporting problems, investigations, fines, penalties, or prohibition on the importation or exportation of our products and services and could have a material adverse effect on our business. In addition, we face risks inherent in doing business on an international basis, including, among others:

- competition with foreign companies or other domestic companies entering the foreign markets in which we operate, as well as foreign governments actively promoting ccTLDs, which we do not operate;
- legal uncertainty regarding liability, enforcing our contracts and compliance with foreign laws;
- tariffs and other trade barriers and restrictions;
- difficulties in staffing and managing foreign operations;
- currency fluctuations;
- potential problems associated with adapting our services to technical conditions existing in different countries;
- difficulty of verifying customer information, including complying with the customer verification requirements of certain countries;
- more stringent privacy policies in some foreign countries;
- additional vulnerability from terrorist groups targeting U.S. interests abroad;
- potentially conflicting or adverse tax consequences;
- reliance on third parties in foreign markets in which we only recently started doing business; and
- potential concerns of international customers and prospects regarding doing business with U.S. technology companies due to alleged U.S. government data collection policies.

We rely on our intellectual property rights to protect our proprietary assets, and any failure by us to protect or enforce, or any misappropriation of, our intellectual property could harm our business.

Our success depends in part on our internally developed technologies and related intellectual property. Despite our precautions, it may be possible for a third party to copy or otherwise obtain and use our intellectual property without authorization. Furthermore, the laws of foreign countries may not protect our proprietary rights in those countries to the same

extent U.S. law protects these rights in the U.S. In addition, it is possible that others may independently develop substantially equivalent intellectual property. If we do not effectively protect our intellectual property, our business could suffer. Additionally, we have filed patent applications with respect to some of our technology in the U.S. Patent and Trademark Office and patent offices outside the U.S. Patents may not be awarded with respect to these applications and even if such patents are awarded, third parties may seek to oppose or otherwise challenge our patents, and such patents' scope may differ significantly from what was requested in the patent applications and may not provide us with sufficient protection of our intellectual property. In the future, we may have to resort to litigation to enforce and protect our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. This type of litigation is inherently unpredictable and, regardless of its outcome, could result in substantial costs and diversion of management attention and technical resources. Some of the software and protocols used in our business are based on standards set by standards setting organizations such as the Internet Engineering Task Force. To the extent any of our patents are considered "standards essential patents," we may be required to license such patents to our competitors on reasonable and non-discriminatory terms.

We also license third-party technology that is used in some of our products and services to perform key functions. These third-party technology licenses may not continue to be available to us on commercially reasonable terms or at all. The loss of or our inability to obtain or maintain any of these technology licenses could hinder or increase the cost of our launching new products and services, entering into new markets and/or otherwise harm our business. Some of the software and protocols used in our Registry Services business are in the public domain or may otherwise become publicly available, which means that such software and protocols are equally available to our competitors.

We rely on the strength of our Verisign brand to help differentiate ourselves in the marketing of our products. Dilution of the strength of our brand could harm our business. We are at risk that we will be unable to fully register, build equity in, or enforce the Verisign logo in all markets where Verisign products and services are sold. In addition, in the U.S. and most other countries' word marks for TLDs have currently not been successfully registered as trademarks. Accordingly, we may not be able to fully realize or maintain the value of these intellectual property assets.

We could become subject to claims of infringement of intellectual property of others, which could be costly to defend and could harm our business.

We cannot be certain that we do not and will not infringe the intellectual property rights of others. Claims relating to infringement of intellectual property of others or other similar claims have been made against us in the past and could be made against us in the future. It is possible that we could become subject to additional claims for infringement of the intellectual property of third parties. The international use of our logo could present additional potential risks for third party claims of infringement. Any claims, with or without merit, could be time consuming, result in costly litigation and diversion of technical and management personnel attention, cause delays in our business activities generally, or require us to develop a non-infringing logo or technology or enter into royalty or licensing agreements. Royalty or licensing agreements, if required, may not be available on acceptable terms or at all. If a successful claim of infringement were made against us, we could be required to pay damages or have portions of our business enjoined. If we could not identify and adopt an alternative non-infringing logo, develop non-infringing technology or license the infringed or similar technology on a timely and cost-effective basis, our business could be harmed.

A third party could claim that the technology we license from other parties infringes a patent or other proprietary right. Litigation between the licensor and a third party or between us and a third party could lead to royalty obligations for which we are not indemnified or for which indemnification is insufficient, or we may not be able to obtain any additional license on commercially reasonable terms or at all.

In addition, legal standards relating to the validity, enforceability, and scope of protection of intellectual property rights in internet-related businesses, including patents related to software and business methods, are uncertain and evolving. Because of the growth of the internet and internet-related businesses, patent applications are continuously being filed in connection with internet-related technology. There are a significant number of U.S. and foreign patents and patent applications in our areas of interest, and we believe that there has been, and is likely to continue to be, significant litigation in the industry regarding patent and other intellectual property rights.

We could become involved in claims, lawsuits or investigations that may result in adverse outcomes.

In addition to possible intellectual property litigation and infringement claims, we are, and may in the future, become involved in other claims, lawsuits and investigations, including with respect to the root zone maintainer agreement now under negotiation with ICANN. Such proceedings may initially be viewed as immaterial but could prove to be material. Litigation is inherently unpredictable, and excessive verdicts do occur. Adverse outcomes in lawsuits and investigations could result in significant monetary damages, including indemnification payments, or injunctive relief that could adversely affect our ability to conduct our business and may have a material adverse effect on our financial condition, results of operations and cash flows. Given the inherent uncertainties in litigation, even when we are able to reasonably estimate the amount of possible loss or range

of loss and therefore record an aggregate litigation accrual for probable and reasonably estimable loss contingencies, the accrual may change in the future due to new developments or changes in approach. In addition, such investigations, claims and lawsuits could involve significant expense and diversion of management's attention and resources from other matters.

We continue to explore new strategic initiatives, the pursuit of any of which may pose significant risks and could have a material adverse effect on our business, financial condition and results of operations.

We are exploring a variety of possible strategic initiatives which may include, among other things, the investment in, and the pursuit of, new revenue streams, services or products, changes to our offerings, initiatives to leverage our patent portfolio, our Security Services business, back-end registry services and IDN gTLDs. In addition, we have evaluated and are pursuing and will continue to evaluate and pursue acquisitions of TLDs that are currently in operation and those that have not yet been awarded as long as they support our growth strategy.

Any such strategic initiative may involve a number of risks, including: the diversion of our management's attention from our existing business to develop the initiative, related operations and any requisite personnel; possible regulatory scrutiny or third-party claims; possible material adverse effects on our results of operations during and after the development process; our possible inability to achieve the intended objectives of the initiative; as well as damage to our reputation if we are unsuccessful in pursuing a strategic initiative. Such initiatives may result in a reduction of cash or increased costs. We may not be able to successfully or profitably develop, integrate, operate, maintain and manage any such initiative and the related operations or employees in a timely manner or at all. Furthermore, under our agreements with ICANN, we are subject to certain restrictions in the operation of *.com*, *.net*, *.name* and other TLDs, including required ICANN approval of new registry services for such TLDs. If any new initiative requires ICANN review or ICANN determines that such a review is required, we cannot predict whether this process will prevent us from implementing the initiative in a timely manner or at all. Any strategic initiative to leverage our patent portfolio will likely increase litigation risks from potential licensees and we may have to resort to litigation to enforce our intellectual property rights.

We depend on key employees to manage our business effectively, and we may face difficulty attracting and retaining qualified leaders.

We operate in a unique competitive and highly regulated environment and we depend on the knowledge, experience, and performance of our senior management team and other key employees in this regard and otherwise. We periodically experience changes in our management team. If we are unable to attract, integrate, retain and motivate these key individuals and additional highly skilled technical, sales and marketing, and other experienced employees, and implement succession plans for these personnel, our business may suffer. For example, our service products are highly technical and require individuals skilled and knowledgeable in unique platforms and software implementation.

Changes in, or interpretations of, tax rules and regulations or our tax positions may adversely affect our effective tax rates.

We are subject to income taxes in both the U.S. and numerous foreign jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain. We are subject to audit by various tax authorities. In accordance with U.S. GAAP, we recognize income tax benefits, net of required valuation allowances and accrual for uncertain tax positions. For example, we claimed a worthless stock deduction on our 2013 federal income tax return and recorded a net income tax benefit of \$380.1 million. Although we believe our tax estimates are reasonable, the final determination of tax audits and any related litigation could be materially different than that which is reflected in historical income tax provisions and accruals. Should additional taxes be assessed as a result of an audit or litigation, an adverse effect on our results of operations, financial condition and cash flows in the period or periods for which that determination is made could result.

A significant portion of our foreign earnings for the current fiscal year was earned in low tax jurisdictions. Our effective tax rate could fluctuate significantly on a quarterly basis and could be adversely affected to the extent earnings are lower than anticipated in countries where we have lower statutory rates and higher than anticipated in countries where we have higher statutory rates.

Various legislative proposals that would reform U.S. corporate tax laws have been proposed by the Obama administration as well as members of Congress, including proposals that would significantly impact how U.S. multinational corporations are taxed on foreign earnings. We are unable to predict whether these or other proposals will be implemented. Although we cannot predict whether or in what form any proposed legislation may pass, if enacted, such legislation could have a material adverse impact on our tax expense or cash flow.

Our foreign earnings, which are indefinitely reinvested offshore, constitute a majority of our cash, cash equivalents and marketable securities, and there is a high cost associated with a change in our indefinite reinvestment assertion or a repatriation of those funds to the U.S.

A majority of our cash, cash equivalents and marketable securities are held by our foreign subsidiaries. Our foreign earnings are indefinitely reinvested offshore and are not available to be used in the U.S. for working capital needs, debt obligations, acquisitions, share repurchases, dividends or other general corporate purposes. In the event that funds from our foreign operations are needed in the U.S. for any purpose, we would be required to accrue and pay additional U.S. taxes in order to repatriate those funds, which could be significant. Further, if we are unable to indefinitely reinvest our foreign earnings our effective tax rate would increase. These could adversely impact our business valuation and stock price.

Our marketable securities portfolio could experience a decline in market value, which could materially and adversely affect our financial results.

As of June 30, 2016, we had \$1.9 billion in cash, cash equivalents, marketable securities and restricted cash, of which \$1.7 billion was invested in marketable securities. The marketable securities consist primarily of debt securities issued by the U.S. Treasury meeting the criteria of our investment policy, which is focused on the preservation of our capital through the investment in investment grade securities. We currently do not use derivative financial instruments to adjust our investment portfolio risk or income profile.

These investments, as well as any cash deposited in bank accounts, are subject to general credit, liquidity, market and interest rate risks, which may be exacerbated by unusual events, such as the U.S. debt ceiling crisis and the Eurozone crisis, which affected various sectors of the financial markets and led to global credit and liquidity issues. During the 2008 financial crisis, the volatility and disruption in the global credit market reached unprecedented levels. If the global credit market deteriorates again or other events negatively impact the market for U.S. Treasury securities, our investment portfolio may be impacted and we could determine that some of our investments have experienced an other-than-temporary decline in fair value, requiring an impairment charge which could adversely impact our results of operations and cash flows.

We are subject to the risks of owning real property.

We own the land and building in Reston, Virginia, which constitutes our headquarters facility. Ownership of this property, as well as our data centers in Dulles, Virginia and New Castle, Delaware, may subject us to risks, including:

- adverse changes in the value of the properties, due to interest rate changes, changes in the commercial property markets, or other factors;
- ongoing maintenance expenses and costs of improvements;
- the possible need for structural improvements in order to comply with environmental, health and safety, zoning, seismic, disability law, or other requirements;
- the possibility of environmental contamination or notices of violation from federal or state environmental agencies; and
- possible disputes with neighboring owners, tenants, service providers or others.

We have anti-takeover protections that may discourage, delay or prevent a change in control that could benefit our stockholders.

Our amended and restated Certificate of Incorporation and Bylaws contain provisions that could make it more difficult for a third party to acquire us without the consent of our Board of Directors ("Board"). These provisions include:

- our stockholders may take action only at a duly called meeting and not by written consent;
- special meetings of our stockholders may be called only by the chairman of the board of directors, the president, our Board, or the secretary (acting as a representative of the stockholders) whenever a stockholder or group of stockholders owning at least thirty-five percent (35%) in the aggregate of the capital stock issued, outstanding and entitled to vote, and who held that amount in a net long position continuously for at least one year, so request in writing;
- vacancies on our Board can be filled until the next annual meeting of stockholders by a majority of directors then in office; and
- our Board has the ability to designate the terms of and issue new series of preferred stock without stockholder approval.

In addition, Section 203 of the General Corporation Law of Delaware prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person which together with its affiliates owns or within the last three years has owned 15% or more of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless in the same transaction the interested stockholder acquired 85% ownership of our voting stock (excluding certain shares) or the business combination is approved in a prescribed manner. Section 203 therefore may impact the ability of an acquirer to complete an acquisition of us after a successful tender offer and accordingly could discourage, delay or prevent an acquirer from making an unsolicited offer without the approval of our Board.

We have a considerable number of common shares subject to future issuance.

As of June 30, 2016, we had one billion authorized common shares, of which 107.2 million shares were outstanding. In addition, of our authorized common shares, 12.7 million common shares were reserved for issuance pursuant to outstanding equity and employee stock purchase plans (“Equity Plans”), and 36.4 million shares were reserved for issuance upon conversion of our 3.25% Junior Subordinated Convertible Debentures due 2037 (“Subordinated Convertible Debentures”). As a result, we keep substantial amounts of our common stock available for issuance upon exercise or settlement of equity awards outstanding under our Equity Plans and/or the conversion of Subordinated Convertible Debentures into our common stock. Issuance of all or a large portion of such shares would be dilutive to existing security holders, could adversely affect the prevailing market price of our common stock and could impair our ability to raise additional capital through the sale of equity securities.

Our financial condition and results of operations could be adversely affected if we do not effectively manage our indebtedness.

We have a significant amount of outstanding debt, and we may incur additional indebtedness in the future. Our substantial indebtedness, including any future indebtedness, requires us to dedicate a significant portion of our cash flow from operations or to arrange alternative liquidity sources to make principal and interest payments, when due, or to repurchase or settle our debt, if triggered, by certain corporate events, certain events of default, or conversion. It could also limit our flexibility in planning for or reacting to changes in our business and our industry, or make required capital expenditures and investments in our business; make it difficult or more expensive to refinance our debt or obtain new debt; trigger an event of default; and increase our vulnerability to adverse changes in general economic and industry conditions. Some of our debt contains covenants which may limit our operating flexibility, including restrictions on share repurchases, dividends, prepayment or repurchase of debt, acquisitions, disposing of assets, if we do not continue to meet certain financial ratios. Any rating assigned to our debt securities could be lowered or withdrawn by a rating agency, which could make it more difficult or more expensive for us to obtain additional debt financing in the future. The settlement amount, contingent interest, and potential recapture of income tax deductions related to our Subordinated Convertible Debentures can be substantial, and can increase significantly based on changes in our stock price. The occurrence of any of the foregoing factors could have a material adverse effect on our business, cash flows, results of operations and financial condition.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

The following table presents the share repurchase activity during the three months ended June 30, 2016 :

	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs (1)
(Shares in thousands)				
April 1 – 30, 2016	550	\$ 89.22	550	\$ 866.7 million
May 1 – 31, 2016	576	\$ 85.40	576	\$ 817.5 million
June 1 – 30, 2016	608	\$ 84.95	608	\$ 765.9 million
	<u>1,734</u>		<u>1,734</u>	

(1) Effective February 11, 2016, our Board of Directors authorized the repurchase of approximately \$611.2 million of our common stock, in addition to the \$388.8 million of our common stock remaining available for repurchase under the previous share repurchase program, for a total repurchase authorization of up to \$1.0 billion of our common stock. The share repurchase program has no expiration date. Purchases made under the program could be effected through open market transactions, block purchases, accelerated share repurchase agreements or other negotiated transactions.

ITEM 5. OTHER INFORMATION

On July 27, 2016, our Board of Directors amended our Bylaws to implement the changes discussed in the Company's proxy statement for the 2016 Annual Meeting of Stockholders. The amended Bylaws were effective upon approval by the Board of Directors.

The Bylaws were amended to provide for "proxy access" by eligible stockholders. Specifically, the Bylaws permit a stockholder, or a group of up to twenty stockholders, that has continuously owned at least 3% of the Company's outstanding stock entitled to vote in the election of directors for at least three years, to nominate and include in the Company's proxy materials for an annual meeting of stockholders up to the greater of two directors or 20% of the number of the directors then in office provided that the nominating stockholder(s) and nominee(s) satisfy the requirements described in the provision. (Article I, Section 14). As a result of these amendments, if any stockholder intends to include a director nominee in the proxy statement for the Company's 2017 Annual Meeting of Stockholders, the stockholder must notify the Secretary of the Company in writing and the notice must be delivered to the Secretary at the principal executive office of the Company not earlier than the close of business on November 30, 2016, nor later than the close of business on December 30, 2016. The nomination must otherwise comply with the applicable requirements of the Bylaws.

In addition, the Bylaws were amended to, among other things:

- Conform the definition of stock ownership used in the provisions on stockholder-requested special meetings to the definition used in the proxy access bylaw. (Article I, Section 2)
- Clarify the methods for giving notice for meetings of stockholders and Board of Directors meetings. (Article I, Section 4 and Article II, Section 11)
- Implement majority voting in uncontested director elections with plurality voting retained for contested elections. (Article I, Section 10 and Article II, Section 3)
- Add provisions requiring all director nominees, regardless of whether nominees are nominated by the Board or a stockholder, to provide certain information and representations. (Article I, Section 12)
- Include an advance notice provision regarding nominating persons for election to the Board and proposing other business to be considered at annual and special stockholder meetings. For annual meetings, this provision requires a stockholder to provide notice and certain information about the stockholder and the nominee or item of business generally not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the previous year's annual meeting of stockholders. (Article I, Section 13) As a result of the amendments, if any stockholder intends to nominate a director candidate or propose other business for consideration at the Company's 2017 Annual Meeting of Stockholders (not including a proposal intended for inclusion in the Company's proxy statement in accordance with the SEC's Rule 14a-8 under the Securities Exchange Act of 1934), the stockholder must notify the Secretary of the Company in writing and the notice must be delivered to the Secretary at the principal executive office of the Company not earlier than the close of business on February 9, 2017, nor later than the close of business on March 11, 2017. The notice also must comply with the applicable requirements of the Bylaws.
- Clarify the Board's ability to use the methods in Delaware General Corporation Law Section 141(f) when the Board is taking action by unanimous consent in lieu of a meeting, which includes the use of electronic transmission. (Article II, Section 14)
- Conform provisions relating to Board committees and subcommittees to amendments to the Delaware General Corporation Law set to take effect on August 1, 2016. (Article II, Section 17)
- Clarify the Board's ability to delegate authority to officers, employees and agents outside the Bylaws. (Article III, Section 1)
- Remove inoperative language about stockholder action by written consent without a meeting of stockholders.
- Other miscellaneous wording changes throughout the document to make corrections, to clarify language and to conform the language in the Bylaws to that of the Certificate or the Delaware General Corporation Law.

This description of the amendments to the Bylaws is qualified in its entirety by reference to the text of the Bylaws filed as Exhibit 3.02 to this Form 10-Q.

ITEM 6. EXHIBITS

As required under Item 6—Exhibits, the exhibits filed as part of this report are provided in this separate section. The exhibits included in this section are as follows:

Exhibit Number	Exhibit Description
3.02	Bylaws of VeriSign, Inc.
31.01	Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(a).
31.02	Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(a).
32.01	Certification of Principal Executive Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350). *
32.02	Certification of Principal Financial Officer pursuant to Exchange Act Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the U.S. Code (18 U.S.C. 1350). *
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema
101.CAL	XBRL Taxonomy Extension Calculation Linkbase
101.DEF	XBRL Taxonomy Extension Definition Linkbase
101.LAB	XBRL Taxonomy Extension Label Linkbase
101.PRE	XBRL Taxonomy Extension Presentation Linkbase

* As contemplated by SEC Release No. 33-8212, these exhibits are furnished with this Quarterly Report on Form 10-Q and are not deemed filed with the SEC and are not incorporated by reference in any filing of VeriSign, Inc. under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in such filings.

BYLAWS
of
VERISIGN, INC.

ARTICLE I
Stockholders

Section 1. Annual Meeting. An annual meeting of the stockholders of the corporation, for the election of the directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, on such date and at such time as the Board of Directors shall each year fix.

Section 2. Special Meetings. (a) Special meetings of the stockholders, for any purpose or purposes prescribed in the notice of the meeting, shall be held at such place, on such date, and at such time as determined by the Board of Directors and may be called only by (i) the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors authorized by resolutions (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), (ii) the Chairman of the Board of Directors, (iii) the President or (iv) the Secretary whenever a stockholder or group of stockholders Owning (as defined below) at least thirty-five percent (35%) in the aggregate of the capital stock issued, outstanding and entitled to vote, and who held that amount in a net long position continuously for at least one year (the "Eligibility Criteria"), so request in writing. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice of the meeting.

In the case of clause (iv) of the immediately preceding sentence, each such written request must be signed by each stockholder making the request and delivered to the Secretary at the principal executive office of the corporation and shall set forth (a) a brief description of the business desired to be brought before the special meeting of the stockholders, including the complete text of any resolutions to be presented at the special meeting of the stockholders with respect to such business, and the reasons for conducting such business at the meeting; (b) the date of request; (c)(i) if any stockholder making the request is a registered holder of the corporation's stock, the name, address and ownership information, as they appear on the corporation's books, of each such stockholder and (ii) if any stockholder making the request is not a registered holder of the corporation's stock, proof of satisfaction by each such stockholder of the Eligibility Criteria which shall be substantially similar to the proof specified by Rule 14a-8(b)(2)(i) or (ii) under the Securities Exchange Act of 1934 (the "Exchange Act"), as amended from time to time, in each case, including a written agreement to update and supplement such information upon the occurrence of any changes thereto; (d) a representation that each requesting stockholder intends to appear in person or by proxy at the special meeting of the stockholders to transact the business specified; and (e) a representation that each requesting stockholder intends to hold the shares of the corporation's stock set forth in the written request through the date of the special meeting of the stockholders; provided that, if any such requesting stockholder (x) fails to satisfy the Eligibility Criteria or to follow one of the procedural requirements described in clauses (a) through (e) of this sentence (the "Procedural Requirements"), the corporation shall not be obligated to call a special meeting unless the remaining requesting stockholders continue to satisfy the Eligibility Criteria and the Procedural Requirements or (y) fails to hold the required number of shares through the date of the special meeting (a "Non Performing Holder"), the corporation may cancel the special meeting (if previously called but not yet held) unless the remaining requesting stockholders have not failed to hold such shares through such date and continue to satisfy the Eligibility Criteria; provided, further, that the corporation may disregard future requests to call special meetings from each Non Performing Holder for the following two calendar years. Following receipt by the Secretary of a written request of stockholders that complies with the requirements set forth in this Section 2 (a "Special Meeting Request"), the Secretary shall call a special meeting of the stockholders.

(b) Revocation of Special Meeting Request. A stockholder may revoke a Special Meeting Request at any time by written revocation. Following such revocation, the Board of Directors, in its discretion, may cancel the special meeting unless, in the case of a Special Meeting Request, any remaining requesting stockholders continue to satisfy the Eligibility Criteria and the Procedural Requirements. For purposes of this Section 2, written revocation shall mean delivering a notice of revocation to the Secretary.

(c) Limitations. The Secretary shall not call a special meeting in response to a Special Meeting Request if (i) an identical or substantially similar item (as determined by the Board of Directors, a “Similar Item”) is included or will be included in the corporation’s notice of meeting as an item of business to be brought before a meeting of stockholders that will be held not later than ninety (90) days after the delivery date of the Special Meeting Request (the “Delivery Date”); (ii) the Delivery Date is during the period commencing ninety (90) days prior to the date of the next annual meeting of stockholders and ending on the date of the next annual meeting of stockholders; (iii) a Similar Item was presented at any meeting of stockholders held within one hundred and eighty (180) days prior to the Delivery Date; (iv) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; or (v) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law. For purposes of this Section 2, the election of directors shall be deemed to be a Similar Item with respect to all items of business involving the election or removal of directors.

For the purposes of this Section 2, a stockholder or beneficial owner is deemed to “Own” only those outstanding shares of capital stock as to which the person possesses both (A) the full voting and investment rights pertaining to the shares and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares, except that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such person in any transaction that has not been settled or closed, (2) borrowed by the person for any purposes or purchased by the person pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by the person, whether the instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of capital stock, if the instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person’s full right to vote or direct the voting of the shares, and/or (y) hedging, offsetting, or altering to any degree any gain or loss arising from the full economic ownership of the shares by the person. The terms “Owned,” “Owning” and other variations of the word “Own,” when used with respect to a stockholder or beneficial owner, have correlative meanings. For purposes of clauses (1) through (3), the term “person” includes its affiliates. A stockholder or beneficial owner “Owns” shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and the right to direct the disposition thereof and possesses the full economic interest in the shares. The person’s Ownership of shares is deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney, or other instrument or arrangement that is revocable at any time by the stockholder.

Section 3. Place of Meetings. All meetings of stockholders shall be held at the principal office of the corporation unless a different place is fixed by the person or persons calling the meeting and stated in the notice of the meeting.

Section 4. Notices of Meetings and Adjourned Meetings. A written notice of each annual or special meeting of the stockholders stating the place, date, and hour thereof, shall be given by the Secretary (or the person or persons calling the meeting), not less than 10 nor more than 60 days before the date of the meeting, to each stockholder entitled to such notice, and, if mailed, shall be given by depositing it postage prepaid in the United States mail, directed to each stockholder at his or her address as it appears on the records of the corporation. Notices of all special meetings of stockholders shall state the purpose or purposes for which the meeting is called. An affidavit of the Secretary, Assistant Secretary, or transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. No notice need be given to any person with whom communication is unlawful or to any person who has waived such notice in the manner permitted by Section 229 of the Delaware General Corporation Law (the “DGCL”). When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken except that, if the adjournment is for more than 30 days or if, after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in this Section 4.

Section 5. Quorum. At any meeting of the stockholders, a quorum for the transaction of business shall consist of one or more individuals appearing in person or represented by proxy and owning or representing a majority of the shares of the corporation then outstanding and entitled to vote thereat, unless or except to the extent that the presence of a larger number may be required by law (including as required from time to time by the DGCL or the Certificate of Incorporation of the corporation (the “Certificate of Incorporation”). Where a separate vote by a class or classes is required, a majority of the shares of such class or classes then outstanding and entitled to vote present in person or by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares of stock entitled to vote thereat who are present, in person or by proxy, may adjourn the meeting to another place, date, or time.

Section 6. Organization. Such person as the Board of Directors may have designated or, in the absence of such a person, the President of the corporation or, in his or her absence, such person as may be chosen by the holders of a majority of the shares entitled to vote thereat who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the corporation, the secretary of the meeting shall be such person as the chairman appoints.

Section 7. Conduct of Business. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her in order.

Section 8. Voting. Unless otherwise provided in the Certificate of Incorporation and subject to the provisions of Section 6 of Article IV hereof, each stockholder shall have one vote for each share of stock entitled to vote held by him or her of record according to the records of the corporation. Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote unless the pledgor in a transfer on the books of the corporation has expressly empowered the pledgee to vote the pledged shares, in which case only the pledgee or his or her proxy shall be entitled to vote. If shares stand of record in the names of two or more persons or if two or more persons have the same fiduciary relationship respecting the shares then, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided to the contrary: (a) if only one votes, his or her act binds all; (b) if more than one votes, the act of the majority so voting binds all; and (c) if more than one votes and the vote is evenly split, the effect shall be as provided by law.

Section 9. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or any group of persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

Section 10. Action at Meeting.

(a) Voting - General. When a quorum is present at any meeting, action of the stockholders on any matter properly brought before such meeting, other than the election of directors, shall require, and may be effected by, the affirmative vote of the holders of a majority in interest of the stock present or represented by proxy and entitled to vote on the subject matter, except where a different vote is expressly required by law, the Certificate of Incorporation or these Bylaws, in which case such express provision shall govern and control.

(b) Voting - Directors. Except as provided in Section 7 of Article II of these Bylaws, each director shall be elected by the affirmative vote of the Majority of the Votes Cast (as defined herein) with respect to that director at any meeting for the election of directors at which a quorum is present, provided that if as of a date that is five business days in advance of the date the corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission ("SEC") the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the votes cast at such meeting. If the Certificate of Incorporation so provides, no ballot shall be required for the election of directors unless requested by a stockholder present or represented at the meeting and entitled to vote in the election. For purposes of this paragraph (b), the term "Majority of the Votes Cast" means, with respect to a nominee for director, that the number of shares voted "for" the election of that nominee must exceed the number of votes cast "against" that nominee.

Section 11. Stockholder Lists. The officer who has charge of the stock ledger of the corporation shall prepare and make available, at least 10 days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting during ordinary business hours, at the principal place of business of the corporation. Such list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this section or the books of the corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 12. Submission of Information by Director Nominees. (a) To be eligible to be a nominee for election or re-election as a director of the corporation, a person must deliver to the Secretary at the principal executive office of the corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and shall represent and agree that such person: (A) consents to serving as a director if elected and (if applicable) to being named in the corporation's proxy statement and form of proxy as a nominee; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the corporation, or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the corporation; and (D) if elected as a director, will comply with all of the corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors (which will be provided to such person promptly following a request therefor); and

(ii) all completed and signed questionnaires required of the corporation's directors (which will be provided to such person promptly following a request therefor).

(b) A nominee for election or re-election as a director of the corporation shall also provide to the corporation such other information as it may reasonably request. The corporation may request such additional information as necessary to permit the corporation to determine the eligibility of such person to serve as a director of the corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) Notwithstanding any other provision of these Bylaws, if a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 13 of this Article I or Section 14 of this Article I, the questionnaires described in Section 12(a)(ii) above and the additional information described in clause (b) of this Section 12 above shall be considered timely if provided to the corporation promptly upon request by the corporation, but in any event within the time period for delivery of a stockholder's notice pursuant to Section 13 of this Article I or Section 14 of this Article I, respectively, and all information provided pursuant to this Section 12 shall be deemed part of the stockholder's notice submitted pursuant to Section 13 of this Article I or Section 14 of this Article I, respectively.

Section 13. Notice of Stockholder Business: Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the corporation's notice of meeting (or any supplement thereto), (B) by or at the direction of the Board of Directors (C) by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 13(a) is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 13(a) or (D) by an Eligible Stockholder (as defined in clause (c) of Section 14 of this Article I) pursuant to the requirements of Section 14 of this Article I. For the avoidance of doubt, the foregoing clauses (C) and (D) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive office of the corporation not later than the close of business (as defined in clause (c)(ii) of this Section 13) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in clause (c)(ii) of this Section 13) of the date of such meeting is first made by the corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or with respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, and (2) the information required to be submitted by nominees pursuant to clause (a)(i) of Section 12 of this Article I above;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the corporation's books, and the name and address of such beneficial owner,

(2) the class or series and number of shares of stock of the corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting, and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a "Control Person"):

(1) the class or series and number of shares of stock of the corporation which are beneficially owned (as defined in clause (c) (ii) of this Section 13) by such stockholder or beneficial owner and by any Control Person as of the date of the notice, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the corporation beneficially owned by such stockholder or beneficial owner and by any Control Person as of the record date for the meeting,

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or Control Person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(3) a description of any agreement, arrangement or understanding (including without limitation any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder, beneficial owner or Control Person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the corporation's stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or Control Person with respect to securities of the corporation, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting,

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation, within the meaning of Exchange Act Rule 14a-1(l), with respect to the nomination or other business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least

fifty percent (50%) of the corporation's stock entitled to vote generally in the election of directors in the case of a nomination and to holders of at least the percentage of the corporation's stock required to approve or adopt the business to be proposed, in the case of a proposal.

(iii) Notwithstanding anything in clause (ii) of this Section 13(a) or clause (b) of this Section 13 to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 13 shall set forth a representation that the stockholder will notify the corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 13(a), and such information when provided to the corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 13(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 13(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the corporation naming all of the nominees for directors or specifying the size of the increased Board of Directors made by the corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with clause (ii) of this Section 13(a), a stockholder's notice required by this Section 13(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the corporation at the principal executive office of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(b) Special Meeting. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors, (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 13(b) is delivered to the Secretary of the corporation, who is entitled to vote at the meeting and upon such election and who delivers a written notice setting forth the information required by clause (a) of this Section 13 and provides the additional information required by clause (a) of Section 12 of this Article I above, or (iii) in the case of a stockholder-requested special meeting, by any stockholder of the corporation pursuant to clause (a)(iv) of Section 2 of this Article I. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the notice required by this Section 13(b) shall be delivered to the Secretary at the principal executive office of the corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the corporation. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 13 shall be eligible to be elected or re-elected at any meeting of stockholders of the corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 13. Except as otherwise required by law, each of the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 13. If any proposed nomination or other business is not in compliance with this Section 13, then except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 13, unless otherwise required by law, or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder does not provide

the information required under Section 12 of this Article I above or clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 13 to the corporation within the time frames specified herein, or if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation. For purposes of these Bylaws, to be considered a qualified representative of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the corporation prior to the making of such nomination or proposal at such meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 13, the “close of business” shall mean 6:00 p.m. local time at the principal executive office of the corporation on any calendar day, whether or not the day is a business day, and a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 13, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (B) the right to vote such shares, alone or in concert with others and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

Section 14. Proxy Access for Director Nominations.

(a) Subject to the terms and conditions of these Bylaws, in connection with an annual meeting of stockholders at which directors are to be elected, the corporation (i) shall include in its proxy statement and on its form of proxy the names of, and (ii) shall include in its proxy statement the “Additional Information” (as defined below) relating to, a number of nominees specified pursuant to clause (b) of this Section 14 below (the “Authorized Number”) for election to the Board of Directors submitted pursuant to this Section 14 (each, a “Stockholder Nominee”), if:

(i) the Stockholder Nominee satisfies the eligibility requirements in this Section 14;

(ii) the Stockholder Nominee is identified in a timely notice (the “Stockholder Notice”) that satisfies this Section 14 and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder (as defined below);

(iii) the Eligible Stockholder satisfies the requirements in this Section 14 and expressly elects at the time of the delivery of the Stockholder Notice to have the Stockholder Nominee included in the corporation’s proxy materials; and

(iv) the additional requirements of these Bylaws are met.

(b) The maximum number of Stockholder Nominees appearing in the corporation’s proxy materials with respect to an annual meeting of stockholders (the “Authorized Number”) shall not exceed the greater of (i) two or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 14 with respect to the annual meeting, or if such amount is not a whole number, the closest whole number (rounding down) below twenty percent (20%); provided that the Authorized Number shall be reduced (i) by any Stockholder Nominee whose name was submitted for inclusion in the corporation’s proxy materials pursuant to this Section 14 but whom the Board of Directors decides to nominate as a Board of Directors nominee, and (ii) by any nominees who were previously elected to the Board of Directors as Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at the annual meeting by the Board of Directors as a Board of Directors nominee. In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Authorized Number shall be calculated based on the number of directors in office as so reduced.

(c) To qualify as an “Eligible Stockholder,” a stockholder or a group as described in this Section 14(c) must:

(i) Own and have Owned (as defined below), continuously for at least three years as of the date of the Stockholder Notice, a number of shares (as adjusted to account for any stock dividend, stock split, subdivision, combination, reclassification or recapitalization of the shares of capital stock issued, outstanding and entitled to vote generally in the

election of directors (for purposes of this Section 14, "Voting Capital Stock") that represents at least three percent (3%) of the outstanding shares of Voting Capital Stock as of the date of the Stockholder Notice (the "Required Shares"); and

(ii) thereafter continue to Own the Required Shares through such annual meeting of stockholders.

For purposes of satisfying the ownership requirements of this Section 14(c), a group of not more than twenty (20) stockholders and/or beneficial owners may aggregate the number of shares of Voting Capital Stock that each group member has individually Owned continuously for at least three years as of the date of the Stockholder Notice if all other requirements and obligations for an Eligible Stockholder set forth in this Section 14 are satisfied by and as to each stockholder or beneficial owner comprising the group whose shares are aggregated. No shares may be attributed to more than one Eligible Stockholder, and no stockholder or beneficial owner, alone or together with any of its affiliates, may individually or as a member of a group qualify as or constitute more than one Eligible Stockholder under this Section 14. A group of any two or more funds shall be treated as only one stockholder or beneficial owner for this purpose if they are (A) under common management and investment control or (B) under common management and funded primarily by a single employer. For the purposes of this Section 14, the term "affiliate" or "affiliates" shall have the meanings ascribed thereto under the rules and regulations promulgated under the Exchange Act.

(d) For purposes of this Section 14:

(i) The terms "Own," "Owned," "Owning" and other variations of the word "Own" when used with respect to a stockholder or beneficial owner shall have the same meanings as defined in Section 2 of this Article I.

(ii) A stockholder or beneficial owner's Ownership of shares shall be deemed to continue during any period in which the person has loaned the shares if the person has the power to recall the loaned shares on not more than five business days' notice.

(e) For purposes of this Section 14, the "Additional Information" referred to in clause (a) of this Section 14 that the corporation will include in its proxy statement is:

(i) the information set forth in the Schedule 14N provided with the Stockholder Notice concerning each Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement by the applicable requirements of the Exchange Act and the rules and regulations thereunder; and

(ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder (or, in the case of a group, a written statement of the group), not to exceed 500 words, in support of its Stockholder Nominee(s), which must be provided at the same time as the Stockholder Notice for inclusion in the corporation's proxy statement for the annual meeting (the "Statement").

Notwithstanding anything to the contrary contained in this Section 14, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 14 shall limit the corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(f) The Stockholder Notice shall set forth all information, representations and agreements required under clause (a)(ii) of Section 13 of this Article I above, including the information required with respect to (i) any nominee for election as a director, (ii) any stockholder giving notice of an intent to nominate a candidate for election, and (iii) any stockholder, beneficial owner or other person on whose behalf the nomination is made under this Section 14. In addition, such Stockholder Notice shall include:

(i) a copy of the Schedule 14N that has been or concurrently is filed with the SEC under the Exchange Act;

(ii) a written statement of the Eligible Stockholder (and in the case of a group, the written statement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder), which statement(s) shall also be included in the Schedule 14N filed with the SEC: (A) setting forth and certifying to the number of shares of Voting Capital Stock the Eligible Stockholder Owns and has Owned (as defined in clause (d) of this Section 14) continuously for at least three years as of the date of the Stockholder Notice, and (B) agreeing to continue to Own such shares through the annual meeting;

(iii) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the corporation, setting forth the following additional agreements, representations, and warranties:

(A) it shall provide (1) within five business days after the date of the Stockholder Notice, one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, specifying the number of shares that the Eligible Stockholder Owns, and has Owned continuously in compliance with this Section 14, (2) within five business days after the record date for the annual meeting both the information required under clause (a)(ii)(D)(1) of Section 13 of this Article I and notification in writing verifying the Eligible Stockholder's continuous Ownership of the Required Shares, in each case, as of such date, and (3) immediate notice to the corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting;

(B) it (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the corporation, and does not presently have this intent, (2) has not nominated and shall not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 14, (3) has not engaged and shall not engage in, and has not been and shall not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board of Directors, and (4) shall not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the corporation; and

(C) it will (1) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provided to the corporation, (2) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of the nomination or solicitation process pursuant to this Section 14, (3) comply with all laws, rules, regulations and listing standards applicable to its nomination or any solicitation in connection with the annual meeting, (4) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the corporation's annual meeting of stockholders, one or more of the corporation's directors or director nominees or any Stockholder Nominee, regardless of whether the filing is required under Exchange Act Regulation 14A, or whether any exemption from filing is available for such materials under Regulation 14A under the Exchange Act, and (5) at the request of the corporation, promptly, but in any event within five business days after such request, (or by the day prior to the day of the annual meeting, if earlier) provide to the corporation such additional information as reasonably requested by the corporation; and

(iv) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all members of the group with respect to the nomination and matters related thereto, including withdrawal of the nomination and the written agreement, representation, and warranty of the Eligible Stockholder that it shall provide within five business days after the date of the Stockholder Notice, documentation reasonably satisfactory to the corporation demonstrating that the number of stockholders and/or beneficial owners within such group does not exceed twenty (20), including whether a group of funds qualifies as one stockholder or beneficial owner within the meaning of clause (c) of this Section 14.

All information provided pursuant to this Section 14(f) shall be deemed part of the Stockholder Notice for purposes of this Section 14.

(g) To be timely under this Section 14, the Stockholder Notice must be delivered by a stockholder to the Secretary of the corporation at the principal executive office of the corporation not later than the close of business (as defined in clause (c)(ii) of Section 13 of this Article I) on the 120th day nor earlier than the close of business on the 150th day prior to the first anniversary of the date or approximate date (as stated in the corporation's proxy materials) the definitive proxy statement was first released to stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event the annual meeting is more than 30 days before or after the anniversary of the previous year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Stockholder Notice must be so delivered not earlier than the close of business on the 150th day prior to such annual meeting and not later than the close of business on the later of the 120th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in clause (c)(ii) of Section 13 of this Article I) of the date of such meeting is first made by the corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice has been given or with

respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of the Stockholder Notice as described above.

(h) Within the time period for delivery of the Stockholder Notice, for each Stockholder Nominee, all written and signed representations and agreements and all completed and signed questionnaires required pursuant to clause (a) of Section 12 of this Article I, including consent to being named in the corporation's proxy statement and form of proxy as a nominee, shall be delivered to the Secretary of the corporation at the principal executive office of the corporation. The Stockholder Nominee must promptly, but in any event within five business days after such request, provide to the corporation such other information as it may reasonably request. The corporation may request such additional information as necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the requirements of this Section 14.

(i) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 14.

(j) Notwithstanding anything to the contrary contained in this Section 14, the corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee shall occur, notwithstanding that proxies in respect of such vote may have been received by the corporation, if:

(i) the Eligible Stockholder or Stockholder Nominee breaches any of its agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 14), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 14) was not, when provided, true, correct and complete, or the Eligible Stockholder or applicable Stockholder Nominee otherwise fails to comply with its obligations pursuant to these Bylaws, including, but not limited to, its obligations under this Section 14;

(ii) the Stockholder Nominee (A) is not independent under any applicable listing standards, any applicable rules of the SEC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors, (B) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (C) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past 10 years or (D) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended;

(iii) the corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in clause (a)(i)(C) of Section 13 of this Article I; or

(iv) the election of the Stockholder Nominee to the Board of Directors would cause the corporation to violate the Certificate of Incorporation of the corporation, these Bylaws, any applicable law, rule, regulation or listing standard.

(k) An Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 14 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials and include such assigned rank in its Stockholder Notice submitted to the corporation. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 14 exceeds the Authorized Number, the Stockholder Nominees to be included in the corporation's proxy materials shall be determined in accordance with the following provisions: one Stockholder Nominee who satisfies the eligibility requirements in this Section 14 shall be selected from each Eligible Stockholder for inclusion in the corporation's proxy materials until the Authorized Number is reached, going in order of the amount (largest to smallest) of shares of the corporation each Eligible Stockholder disclosed as Owned in its Stockholder Notice submitted to the corporation and going in the order of rank (highest to lowest) assigned to each Stockholder Nominee by such Eligible Stockholder. If the Authorized Number is not reached after one Stockholder Nominee who satisfies the eligibility requirements in this Section 14 has been selected from each Eligible Stockholder, this selection process shall continue as many times as necessary, following the same order each time, until the Authorized Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 14 thereafter is

nominated by the Board of Directors, thereafter is not included in the corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 14), no other nominee or nominees shall be included in the corporation's proxy materials or otherwise submitted for election as a director at the applicable annual meeting in substitution for such Stockholder Nominee.

(l) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these Bylaws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice), shall be ineligible to be a Stockholder Nominee pursuant to this Section 14 for the next two annual meetings.

(m) Notwithstanding the foregoing provisions of this Section 14, unless otherwise required by law or otherwise determined by the Chairman of the Board of Directors, the Board of Directors or the chairman of the meeting, if the stockholder delivering the Stockholder Notice (or a qualified representative of the stockholder, as defined in clause (c)(i) of Section 13 of this Article I) does not appear at the annual meeting of stockholders of the corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the corporation. Without limiting the Board of Directors' power and authority to interpret any other provisions of these Bylaws, the Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 14 and to make any and all determinations necessary or advisable to apply this Section 14 to any persons, facts or circumstances, in each case, acting in good faith. This Section 14 shall be the exclusive method for stockholders to include nominees for director election in the corporation's proxy materials.

ARTICLE II

Directors

Section 1. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by law or these Bylaws directed or required to be exercised or done by the stockholders.

Section 2. Number of Directors. The Board of Directors shall consist of one or more members. The number of directors shall be no less than six (6) and no more than nine (9), the number thereof to be fixed from time to time by resolution of the Board of Directors.

Section 3. Election and Tenure. Each director shall be elected by the vote specified in clause (b) of Section 10 of Article I or as provided in Section 7 of this Article II. Each director shall serve until his or her successor is elected and qualified, or until his or her earlier resignation or removal.

Section 4. Qualification. No director need be a stockholder.

Section 5. Removal. Any director or the entire Board of Directors may be removed with or without cause, by the holders of a majority of the shares then entitled to vote at an election of the directors except as otherwise provided by law.

Section 6. Resignation. Any director of the corporation may resign at any time by giving written notice to the Board of Directors, to the Chairman of the Board of Directors, if any, to the President, or to the Secretary, and any member of a committee may resign therefrom at any time by giving notice as aforesaid or to the chairman or secretary of such committee. Any such resignation shall take effect at the time (or upon the happening of an event) specified therein, or, if the time (or event) be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7. Vacancies and Newly Created Directorships. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled (a) by the stockholders at any meeting, (b) by a majority of the directors then in office, although less than a quorum, or (c) by a sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more Directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the Directors elected by such class, classes or series then in office or by the sole remaining director so elected. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of directors who are entitled to act on the filling of

such vacancy or vacancies and who are then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies by vote to take effect when such resignation or resignations shall become effective.

Section 8. Annual Meeting. The first meeting of each newly elected Board of Directors may be held without notice immediately after an annual meeting of stockholders (or a special meeting of stockholders held in lieu of an annual meeting) at the same place as that at which such meeting of stockholders was held; or such first meeting may be held at such place and time as shall be fixed by the consent in writing of all the directors, or may be called in the manner hereinafter provided with respect to the call of special meetings.

Section 9. Regular Meetings. Regular meetings of the directors may be held at such times and places as shall from time to time be fixed by resolution of the Board of Directors, and no notice need be given of regular meetings held at times and places so fixed, provided, however, that any resolution relating to the holding of regular meetings shall remain in force only until the next annual meeting of stockholders and that, if at any meeting of Directors at which a resolution is adopted fixing the times or place or places for any regular meetings any Director is absent, no meeting shall be held pursuant to such resolution without notice to or waiver by such absent Director pursuant to Section 11 of this Article II.

Section 10. Special Meetings. Special meetings of the directors may be called by the Chairman of the Board of Directors, if any, the President, or by at least one-third of the directors then in office (rounded up to the nearest whole number), and shall be held at the place and on the date and hour designated in the call thereof.

Section 11. Notices. Notices of any special meeting of the directors shall be given to each director by the Secretary or an Assistant Secretary (a) by mailing to him or her, postage prepaid, and addressed to him or her at his or her address as registered on the books of the corporation, or if not so registered at his or her last known home or business address, a written notice of such meeting at least 4 days before the meeting, (b) by delivering such notice by hand or by telegram, telecopy, telex, facsimile or electronic transmission (including without limitation e-mail) to him or her at least 48 hours before the meeting, or (c) by giving such notice in person or by telephone at least 48 hours in advance of the meeting. Any notice given personally or by telephone, telegram, telecopy, telex, facsimile or electronic transmission (including without limitation e-mail) may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. In the absence of the Secretary or an Assistant Secretary, such notice may be given by the officer or one of the directors calling the meeting. Notice need not be given to any director who has waived notice in accordance with Section 229 of the DGCL. A notice or waiver of notice of a meeting of the directors need not specify the business to be transacted at or the purpose of the meeting.

Section 12. Quorum. At any meeting of the directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, a majority of those present (or, if not more than two directors are present, any director present) may adjourn the meeting from time to time to another place, date or time, without notice other than announcement at the meeting prior to adjournment, until a quorum shall be present.

Section 13. Participation in Meetings by Conference Telephone. One or more members of the Board of Directors, or any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 13 shall constitute presence in person at such meeting.

Section 14. Conduct of Business; Action by Written Consent. At any meeting of the Board of Directors at which a quorum is present, business shall be transacted in such order and manner as the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, except as otherwise provided in these Bylaws or required by law. Without limiting the manner by which a consent of directors may be given under Section 141(f) of the DGCL, action may be taken by the Board of Directors, or any committee thereof, without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the records of proceedings of the Board of Directors or committee.

Section 15. Place of Meetings. The Board of Directors may hold its meetings, and have an office or offices, within or without the State of Delaware.

Section 16. Compensation. The Board of Directors shall have the authority to fix stated salaries for directors for their service in such capacity and to provide for payment of a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors. The Board of Directors shall also have the authority to provide for payment of a fixed sum and expenses of attendance, if any, payable to members of committees for attending committee

meetings. Nothing herein contained shall preclude any director from serving the corporation in any other capacity and receiving compensation for such services.

Section 17. Committees. (a) The Board of Directors, by resolution passed by a majority of the number of directors required at the time to constitute a full Board of Directors as fixed in or determined pursuant to these Bylaws as then in effect, may from time to time designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have such power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution or resolutions providing for the issuance of shares of stock adopted by the Board of Directors as provided in Subsection (a) of Section 151 of the DGCL, fix the designations and any preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the corporation or conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation or fix the number of shares in a series of stock or authorize the increase or decrease in the shares of any series), adopting an agreement of merger or consolidation under Sections 251, 252, 254, 255, 256, 257, 258, 263, or 264 of the DGCL, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property or assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the Bylaws of the corporation. Such a committee may, to the extent expressly provided in the resolution of the Board of Directors, have the power or authority to declare a dividend or to authorize the issuance of stock or to adopt a certificate of ownership and merger pursuant to Section 253 of the DGCL.

(b) At any meeting of any committee or subcommittee of a committee, a majority of the directors then serving on such committee of the Board of Directors or subcommittee of a committee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the Certificate of Incorporation, these Bylaws, a resolution of the Board of Directors or a resolution of a committee that created the subcommittee requires a greater or lesser number, provided that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the Certificate of Incorporation, these Bylaws, a resolution of the Board of Directors or a resolution of a committee that created the subcommittee requires a greater number.

(c) Each committee, except as otherwise provided by resolution of the Board of Directors, shall fix the time and place of its meetings within or without the State of Delaware, shall adopt its own rules and procedures, and shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

(d) Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE III

Officers

Section 1. Officers and Their Election. The officers of the corporation shall be a Chief Executive Officer, a President, a Secretary, a Chief Financial Officer and such Vice Presidents, Assistant Secretaries, Assistant Chief Financial Officers and other officers as the Board of Directors may from time to time determine and elect or appoint. The Board of Directors may appoint one of its members to the office of Chairman of the Board of Directors and another of its members to the office of Vice-Chairman of the Board of Directors and from time to time define the powers and duties of these and other officers, employees or agents of the corporation notwithstanding any other provisions of these Bylaws. All officers shall be elected by the Board of Directors and shall serve at the will of the Board of Directors. Any officer may, but need not, be a director. Two or more offices may be held by the same person. All officers shall perform such duties and have such powers as the Board of Directors shall designate by resolution, or in the absence of such resolution, as set forth in these Bylaws. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article III.

Section 2. Term of Office. The Chief Executive Officer, the President, the Chief Financial Officer and the Secretary shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Section 3. Vacancies. Any vacancy at any time existing in any office may be filled by the Board of Directors.

Section 4. Chairman of the Board of Directors. The Board of Directors may, in its discretion, elect a Chairman of the Board of Directors from among its members. He or she may be the Chief Executive Officer of the corporation if so designated by the Board of Directors, and he or she shall preside at all meetings of the Board of Directors at which he or she is present and shall exercise and perform such other powers and duties as may from time to time be assigned to him or her by the Board of Directors or prescribed by the Bylaws.

Section 5. Chief Executive Officer. The Board of Directors may elect a Chief Executive Officer of the corporation who may also be the Chairman of the Board of Directors or President of the corporation or both. It shall be his or her duty and he or she shall have the power to see that all orders and resolutions of the Board of Directors are carried into effect. He or she shall from time to time report to the Board of Directors all matters within his or her knowledge which the interests of the corporation may require to be brought to its notice.

Section 6. President. If there is no Chief Executive Officer, the President shall be the chief executive officer of the corporation except as the Board of Directors may otherwise provide. The President shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 7. Vice Presidents. In the absence or disability of the President, his or her powers and duties shall be performed by the vice president, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each vice president shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 8. Chief Financial Officer. The Chief Financial Officer shall be the treasurer of the corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all monies and other valuable effects in the name and to the credit of the corporation in such depositories as shall be designated by the Board of Directors or in the absence of such designation in such depositories as he or she shall from time to time deem proper. The Chief Financial Officer (or any Assistant Chief Financial Officer) shall sign all stock certificates as treasurer of the corporation. He or she shall disburse the funds of the corporation as shall be ordered by the Board of Directors, taking proper vouchers for such disbursements. He or she shall promptly render to the Chief Executive Officer and to the Board of Directors such statements of his or her transactions and accounts as the Chief Executive Officer and Board of Directors respectively may from time to time require. The Chief Financial Officer shall perform such duties and have such powers additional to the foregoing as the Board of Directors may designate.

Section 9. Assistant Chief Financial Officers. In the absence or disability of the Chief Financial Officer, his or her powers and duties shall be performed by the Assistant Chief Financial Officer, if only one, or if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Chief Financial Officer shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 10. Secretary. The Secretary shall issue notices of all meetings of stockholders, of the Board of Directors and of committees thereof where notices of such meetings are required by law or these Bylaws. He or she shall record the proceedings of the meetings of the stockholders and of the Board of Directors and shall be responsible for the custody thereof in a book to be kept for that purpose. He or she shall also record the proceedings of the committees of the Board of Directors unless such committees appoint their own respective secretaries. Unless the Board of Directors shall appoint a transfer agent and/or registrar, the Secretary shall be charged with the duty of keeping, or causing to be kept, accurate records of all stock outstanding, stock certificates issued and stock transfers. He or she shall sign such instruments as require his or her signature. The Secretary shall have custody of the corporate seal and shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his or her absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his or her duties thereat. He or she shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 11. Assistant Secretaries. In the absence or disability of the Secretary, his or her powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Secretary shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 12. Salaries. The salaries and other compensation of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors. No officer shall be prevented from receiving a salary or other compensation by reason of the fact that he or she is also a director of the corporation.

Section 13. Removal. The Board of Directors may remove any officer, either with or without cause, at any time.

Section 14. Bond. The corporation may secure the fidelity of any or all of its officers or agents by bond or otherwise.

Section 15. Resignations. Any officer of the corporation may resign at any time by giving written notice to the Board of Directors, to the Chairman of the Board of Directors, if any, to the Chief Executive Officer or to the Secretary of the corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE IV

Capital Stock

Section 1. Stock Certificates; Uncertificated Shares. The shares of capital stock of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the adoption of such a resolution, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of, the corporation by the Chairman or Vice-Chairman of the Board of Directors or the President or a Vice President, and by the Chief Financial Officer (in his or her capacity as treasurer) or an Assistant Chief Financial Officer (in his or her capacity as assistant treasurer), or the Secretary or an Assistant Secretary, certifying the number of shares owned by him or her in the corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before the certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 2. Classes of Stock. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the face or back of each certificate issued by the corporation to represent such class or series shall either (a) set forth in full or summarize the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions thereof, or (b) contain a statement that the corporation will furnish a statement of the same without charge to each stockholder who so requests. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered holder thereof such written notice as may be required by law as to the information required by law to be set forth or stated on stock certificates.

Section 3. Transfer of Stock. Shares of stock shall be transferable only upon the books of the corporation pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe. The Board of Directors may at any time or from time to time appoint a transfer agent or agents or a registrar or registrars for the transfer or registration of shares of stock. Except where a certificate, or uncertificated shares, are issued in accordance with Section 5 of Article IV of these Bylaws, one or more outstanding certificates representing in the aggregate the number of shares involved shall be surrendered for cancellation before a new certificate, or uncertificated shares, are issued representing such shares.

Section 4. Holders of Record. Prior to due presentment for registration of transfer the corporation may treat the holder of record of a share of its stock as the complete owner thereof exclusively entitled to vote, to receive notifications and otherwise entitled to all the rights and powers of a complete owner thereof, notwithstanding notice to the contrary.

Section 5. Stock Certificates. The Board of Directors may direct that a new stock certificate or certificates, or uncertificated shares, be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates or his or her legal representative, to give the corporation a bond sufficient to indemnify it

against any claim that may be made against the corporation on account of the alleged loss, theft, or destruction, of such certificates or the issuance of such new certificate or certificates, or uncertificated shares.

Section 6. Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders, or to receive payment of any dividend or other distribution or allotment of any rights or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action other than stockholder action by written consent, the Board of Directors may fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall not be more than 60 nor less than 10 days before the date of any meeting of stockholders, nor more than 60 days prior to the time for such other action as hereinbefore described; provided, however, that if no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held, and, for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board of Directors adopts a resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

ARTICLE V

Miscellaneous Provisions

Section 1. Interested Directors and Officers. (a) No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or her or their votes are counted for such purpose, if:

(i) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the number of disinterested directors is less than a quorum; or

(ii) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(iii) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the shareholders.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 2. Indemnification.

(a) Right to Indemnification. The corporation shall indemnify and hold harmless each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director or officer, to the fullest extent authorized by law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that except as provided in Subsection (c) of this Section with respect to proceedings

to enforce rights to indemnification, the corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation; and provided further that as to any matter disposed of by a compromise payment by such person, pursuant to a consent decree or otherwise, no indemnification either for said payment or for any other expenses shall be provided unless such compromise and indemnification therefor shall be appropriated:

(i) by a majority vote of a quorum consisting of disinterested directors;

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the Board of Directors consisting of all the disinterested directors;

(iii) if there are not two or more disinterested directors in office, then by a majority of the directors then in office, provided they have obtained a written finding by special independent legal counsel appointed by a majority of the directors to the effect that, based upon a reasonable investigation of the relevant facts as described in such opinion, the person to be indemnified appears to have acted in good faith in the reasonable belief that his or her action was in the best interests of the corporation (or, to the extent that such matter relates to service with respect to an employee benefit plan, in the best interests of the participants or beneficiaries of such employee benefit plan);

(iv) by the holders of a majority of the shares of stock entitled to vote for the election of directors, which majority may include interested directors and officers; or

(v) by a court of competent jurisdiction.

An “interested” director or officer is one against whom in such capacity the proceeding in question or other proceeding on the same or similar grounds is then pending. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Right to Advancement of Expenses. The right to indemnification conferred in Subsection (a) of this Section shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise, which undertaking may be accepted without reference to the financial ability of such person to make repayment.

(c) Right of Indemnitee to Bring Suit. If a claim under Subsection (a) or (b) of this Section is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) any suit by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking the corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the corporation to recover an

advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the corporation.

(d) Non-exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, certificate of incorporation, bylaw, agreement, vote of disinterested directors or otherwise. The corporation's indemnification under this Section 2 of any person who is or was a director or officer of the corporation, or is or was serving, at the request of the corporation, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the corporation, (ii) from such other corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision.

(e) Joint Representation. If both the corporation and any person to be indemnified are parties to an action, suit or proceeding (other than an action or suit by or in the right of the corporation to procure a judgment in its favor), counsel representing the corporation therein may also represent such indemnified person (unless such dual representation would involve such counsel in a conflict of interest in violation of applicable principles of professional ethics), and the corporation shall pay all fees and expenses of such counsel incurred during the period of dual representation other than those, if any, as would not have been incurred if counsel were representing only the corporation; and any allocation made in good faith by such counsel of fees and disbursements payable under this paragraph by the corporation versus fees and disbursements payable by any such indemnified person shall be final and binding upon the corporation and such indemnified person.

(f) Indemnification of Employees and Agents of the Corporation. Except to the extent that rights to indemnification and advancement of expenses of employees or agents of the corporation may be required by any statute, the Certificate of Incorporation, this Section or any other bylaw, agreement, vote of disinterested directors or otherwise, the corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the corporation to the fullest extent of the provisions of this Section with respect to the indemnification and advancement of expenses of directors and officers of the corporation.

(g) Insurance. The corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL (as currently in effect or hereafter amended), the Certificate of Incorporation or these Bylaws.

(h) Nature of Indemnification Right; Modification of Repeal of Indemnification. Each person who is or becomes a director or officer as described in subsection (a) of this Section 2 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Section 2. All rights to indemnification (and the advancement of expenses) under this Section 2 shall be deemed to be provided by a contract between the corporation and the person who serves as a director or officer of the corporation at any time while these Bylaws and other relevant provisions of the DGCL and other applicable law, if any, are in effect. Such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any modification or repeal of this Section 2 shall not adversely affect any right or protection existing under this Section 2 at the time of such modification or repeal.

Section 3. Stock in Other Corporations. Subject to any limitations that may be imposed by the Board of Directors, the President or any person or persons authorized by the Board of Directors may, in the name and on behalf of the corporation, (a) call meetings of the holders of stock or other securities of any corporation or other organization, stock or other securities of which are held by this corporation, (b) act, or appoint any other person or persons (with or without powers of substitution) to act in the name and on behalf of the corporation, or (c) express consent or dissent, as a holder of such securities, to corporate or other action by such other corporation or organization.

Section 4. Checks, Notes, Drafts and Other Instruments. Checks, notes drafts and other instruments for the payment of money drawn or endorsed in the name of the corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board of Directors to do so.

Section 5. Corporate Seal. The seal of the corporation shall be circular in form, bearing the name of the corporation, the word "Delaware", and the year of incorporation, and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 6. Books and Records. The books, accounts and records of the corporation, except as may be otherwise required by law, may be kept outside of the State of Delaware, at such place or places as the Board of Directors may from time to time appoint. Except as may otherwise be provided by law, the Board of Directors shall determine whether and to what extent the books, accounts, records and documents of the corporation, or any of them, shall be open to the inspection of the stockholders.

Section 7. Severability. If any term or provision of the Bylaws, or the application thereof to any person or circumstances or period of time, shall to any extent be invalid or unenforceable, the remainder of the Bylaws shall be valid and enforced to the fullest extent permitted by law.

Section 8. Interpretations. Words importing persons include firms, associations and corporations, all words importing the singular number include the plural number and vice versa, and all words importing the masculine gender include the feminine gender.

Section 9. Amendments. The Board of Directors is expressly empowered to adopt, amend or repeal these Bylaws; provided that the Board of Directors shall not have the power to alter, amend or repeal any bylaw adopted by the stockholders that by its terms may be altered, amended or repealed only by the stockholders. The stockholders also have the power to adopt, amend or repeal the Bylaws of the corporation.

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, D. James Bidzos, Chief Executive Officer of VeriSign, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2016 , as filed with the Securities and Exchange Commission (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2016

/S/ D. JAMES BIDZOS

D. James Bidzos
Chief Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002**

I, George E. Kilguss, III, Chief Financial Officer of VeriSign, Inc. (the “Company”), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

1. the Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended June 30, 2016 , as filed with the Securities and Exchange Commission (the “Report”), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 28, 2016

/S/ G EORGE E. K ILGUSS , III

George E. Kilguss, III
Chief Financial Officer

EXHIBIT RM-17



August 1, 2016

Verisign Statement Regarding .Web Auction Results

RESTON, Va.--(BUSINESS WIRE)-- VeriSign, Inc. (NASDAQ:VRSN), a global leader in domain names and internet security, today announced the following information pertaining to the .web top-level domain (TLD):

The Company entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. We are pleased that the Nu Dot Co bid was successful.

We anticipate that Nu Dot Co will execute the .web Registry Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and will then seek to assign the Registry Agreement to Verisign upon consent from ICANN.

As the most experienced and reliable registry operator, Verisign is well-positioned to widely distribute .web. Our expertise, infrastructure, and partner relationships will enable us to quickly grow .web and establish it as an additional option for registrants worldwide in the growing TLD marketplace. Our track record of over 19 years of uninterrupted availability means that businesses and individuals using .web as their online identity can be confident of being reliably found online. And these users, along with our global distribution partners, will benefit from the many new domain name choices that .web will offer.

About Verisign

Verisign, a global leader in domain names and internet security, enables internet navigation for many of the world's most recognized domain names and provides protection for websites and enterprises around the world. Verisign ensures the security, stability and resiliency of key internet infrastructure and services, including the .com and .net domains and two of the internet's root servers, as well as performs the root zone maintainer functions for the core of the internet's Domain Name System (DNS). Verisign's Security Services include intelligence-driven Distributed Denial of Service Protection, iDefense Security Intelligence and Managed DNS. To learn more about what it means to be Powered by Verisign, please visit Verisign.com.

VRSNF

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VeriSign, Inc.

Investor Relations:

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EXHIBIT RM-18



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8 August 2016

Mr. Akram Atallah
 President, Global Domains Division
 Internet Corporation for Assigned Names and Numbers
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094

Re: .WEB Auction

Dear Akram:

Afilias Domains No. 3 Limited, a wholly-owned subsidiary of Afilias plc, is an applicant for the .WEB top-level domain under the ICANN new gTLD program. On 27-28 August 2016, ICANN conducted an auction (the "Auction") for the .WEB string per the rules and procedures set forth in the New gTLD Applicant Guidebook (the "Guidebook"). As announced by ICANN on 28 August 2016 (<https://www.icann.org/news/announcement-2-2016-07-28-en>), the successful bidder in the Auction was Nu Dot Co LLC ("NDC").

Subsequent to the conclusion of the auction, it has been publically disclosed that VeriSign, Inc. acquired rights in the NDC application for .WEB. VeriSign's press release, dated 1 August 2016, states *"The Company [i.e., VeriSign] entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. We are pleased that the Nu Dot Co bid was successful. We anticipate that Nu Dot Co will execute the .web Registry Agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) and will then seek to assign the Registry Agreement to Verisign upon consent from ICANN."* (<https://investor.verisign.com/releasedetail.cfm?ReleaseID=981994>)

Further, in its 10-Q for the quarter ended 30 June 2016, filed with the U.S. Securities and Exchange Commission on 28 July 2016, VeriSign states *"Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016."*

Paragraph 10 of the Terms and Conditions set forth in the Guidebook includes in part the following language: "Applicant may not resell, assign or transfer any of applicant's rights or obligations in connection with the application." We have not been able to review a copy of the agreement(s) between NDC and VeriSign with respect to this arrangement, but it appears likely, given the public statements of VeriSign, that DNC and VeriSign entered into an agreement in the form of an option or similar arrangement with respect to the rights and obligations of NDC regarding its .WEB application. An option to acquire a string won at auction, together with a promise to fund the auction, is exactly the type of transfer of rights and obligations in connection with an application that ICANN was attempting to stop by including this language in the Terms and Conditions. Otherwise, such language would have no real purpose. The language of paragraph 10 precludes not only a transfer of all rights or obligations in an application, but of any rights or obligations. There is no materiality threshold, and



no procedure to seek consent or waiver of these terms. It is an absolute prohibition of this type of arrangement in clear and unambiguous terms.

The purposes of a prohibition on transferring rights and obligations in an application are obvious. ICANN and the community spent years engaged in a stakeholder driven process to develop the important processes and procedures by which one could submit an application for a new gTLD. These procedures were developed to endure a level playing field for gTLD applicants and to protect the integrity of the process. The application requirements and associated filing deadlines were clear and strictly enforced from the beginning. To allow third parties to circumvent the entire Guidebook process simply by buying rights in an application once filed renders the entire Guidebook and ICANN process mere folly and negatively impacts to a material degree the rights and expectations of applicants that have played by the rules.

There is no cure provided in the Guidebook for violations of paragraph 10 of the Terms and Conditions. The only reasonable and fair solution is to disqualify the NDC application and proceed to the next highest bidder in the auction to contract for the string, at the price at which the third highest bidder exited the auction.

Further, section 1.2.7 of the Guidebook provides:

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.

Clearly, an agreement to provide at least \$135 Million to an applicant constitutes a material change in that applicant's financial condition. Further, the type of option agreement that apparently exists between NDC and VeriSign likely constitutes a change in control of the applicant. A change in control can be effected by contract as well as by changes in equity ownership. It is our understanding that NDC never notified ICANN of these changes per the terms of the Guidebook. In the interest of fairness to the other .WEB auction participants, ICANN should exercise its right under paragraph 1.2.7 and deny NDC's application.

We request that ICANN promptly undertake an investigation of the matters set forth in this letter and take appropriate action against NDC and its .WEB application for violations of the Guidebook as we have requested.

In addition to this letter, we are filing a complaint with the ICANN Ombudsman with regard to this matter. We strongly urge ICANN to stay any further action in this matter with respect to NDC, including entering into a registry agreement for .WEB with NDC, or acting on any request of NDC or VeriSign to



assign such agreement to VeriSign, until the Ombudsman has had an opportunity to investigate and report on this matter.

Regards,

A handwritten signature in blue ink, appearing to read "M. Scott Hemphill". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

M. Scott Hemphill
Vice President & General Counsel

cc: Steve Crocker, Chairman of the Board
Göran Marby, President and CEO

EXHIBIT RM-19



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9 September 2016

Via E-Mail

Mr Akram Attallah
President, Global Domains Division
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094

Re: .WEB auction

Dear Mr. Atallah:

On behalf of Afilias Domains No. 3 Limited ("Afilias"), a wholly-owned subsidiary of Afilias plc, I write with reference to our letter of 8 August 2016, in which we requested that ICANN disqualify and reject Nu Dot Co LLC's ("NDC") application for .WEB.

Specifically, NDC entered into an agreement to transfer any rights it acquired in connection with its application for .WEB to VeriSign, Inc. ("VeriSign"), which it did not disclose prior to the .WEB auction. The evidence strongly suggests that NDC acted as a front for and participated in the .WEB auction (the "Auction") for and on behalf of VeriSign. Given ICANN's failure to respond to our prior letter, we request that ICANN promptly, and by no later than 16 September, 2016, (1) disclose the steps (if any) that it has taken to disqualify NDC's bid on the basis that NDC violated the rules applicable to its application; and (2) provide an undertaking that it has not, and will not, enter into a registry agreement for .WEB with NDC until (a) the Ombudsman has completed his investigation; (b) ICANN's Board has reviewed NDC's conduct and determined whether or not to disqualify NDC's bid and reject its application; and, (c) to the extent Afilias seeks review of any decision of ICANN relating to .WEB through ICANN's accountability mechanisms, such mechanisms are completed. We nonetheless emphasize that Afilias reserves all of its rights to pursue any and all rights or remedies available to it in any forum against ICANN, NDC or VeriSign in connection with the delegation of the .WEB gTLD.

We take the opportunity of this letter to further explain the reasons why ICANN must disqualify NDC's application for .WEB and proceed to contract for .WEB with Afilias, the next highest bidder in the Auction, in compliance with its obligations under ICANN's Articles of Incorporation and Bylaws (as well as principles of international law and California law), as set forth below.



NDC violated the New gTLD Applicant Guidebook and the Auction Rules for New gTLDs

First, NDC violated Paragraph 10 of the Terms and Conditions in Module 6 of the New gTLD Applicant Guidebook (the "Guidebook"), which expressly prohibits any applicant for a gTLD to "*resell, assign or transfer any of applicant's rights or obligations in connection with the application*". As we explained in our letter of August 8, 2016, Verisign publicly disclosed that it "*provided funds*" for NDC's bid for .WEB and that NDC would "*seek to assign the Registry Agreement to VeriSign.*" Although the specific terms of the agreement between VeriSign and NDC have not been disclosed, it is clear from Verisign's own press release and its disclosure in its Form 10-Q filed with the U.S. Securities and Exchange Commission for the quarter ended June 30, 2016, that both companies entered into an arrangement well in advance of the Auction to transfer NDC's rights and obligations regarding its .WEB application to VeriSign.

Second, NDC violated Section 1.2.7 of the Guidebook, which requires applicants to "*promptly notify ICANN via submission of the appropriate forms*" "*if at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate,*" including "*changes in financial position and changes in ownership or control of the applicant*". In this regard, we find remarkable that the Form 10-Q VeriSign filed with the U.S. Securities and Exchange Commission on 28 July, 2016—the day after the Auction—contained the following statement: "*Subsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during the third quarter of 2016.*" When rumors surfaced that another company was behind NDC's application for .WEB, NDC sent a note to ICANN's Ombudsman on 8 July 2016, stating merely that "*neither the governance, management nor the ownership in NuDotcoco [sic] has changed.*" Clearly, by then, relevant changes concerning NDC's financial position had, at a minimum, been agreed to and should have been reported to ICANN, namely, that the VeriSign had agreed to fund NDC's bid for .WEB.

Third, NDC violated the Auction Rules for New gTLDs ("Auction Rules"). Rule 12 provides that "*participation in an Auction is limited to Bidders, which is defined by the Auction Rules as a "Qualified Applicant" or a "party designated by a Qualified Applicant to bid on its behalf*". This rule prohibits bids placed on behalf of a third-party that is not a "Qualified Applicant", defined by the Auction Rules as "*an entity that has submitted an Application for a new gTLD, has received all necessary approvals from ICANN, and which is included within a Contention Set to be resolved by an Auction.*" Accordingly, Rule 40(b) provides that "*in order to be valid*" "*a Bid must be placed by a Bidder for its Application in an Open Contention Set.*"



ICANN has the duty to deny NDC's application, disqualify its bid and proceed to contract with the next highest bidder in the Auction

ICANN's governing documents clearly dictate the appropriate response ICANN should take in connection with NDC's improper conduct:

- 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 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."* [Articles of Incorporation, Art.4]
- ICANN is required to *"mak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness"* [Bylaws, Art.I § 2 (8)]
- ICANN is required to *"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."* [Bylaws, Art. II3]
- ICANN is required to *"Act[] 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."* [Bylaws, Art. I§ 2 (9)]
- ICANN is directed to *"operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness"* [Bylaws, Art. III § 1].
- ICANN is required to *"promot[e] competition in the registration of domain names where practicable and beneficial in the public interest"* [Bylaws, Art. I § 2 (6)]
- ICANN is required to *"Remain[] accountable to the Internet community through mechanisms that enhance ICANN's effectiveness."* [Bylaws, Art. I. § 2 (10)]

VeriSign chose not to apply for .WEB, as it could have done. Instead, VeriSign improperly and surreptitiously funded NDC's application. NDC's and VeriSign's attempt to game the system and obtain control over .WEB for VeriSign (which already controls.COM), must be sanctioned by ICANN by disqualifying NDC's bid and rejecting its application.

In these circumstances, we submit that ICANN should disqualify NDC's bid and offer to accept the application of Afilias, which placed the second highest exit bid. Consistent with Auction Rules No. 46 and No. 47, the winning price should be deemed to be the second-highest remaining exit bid after disqualifying NDC and striking its exit bid as invalid.

This course of action is consistent not only with ICANN's Guidebook and Auction Rules, but also with the principles of due process and fairness that ICANN is obligated to observe pursuant to its governing documents. In this regard, we note that NDC's violations must not affect the rights of other applicants that participated in the Auction in full compliance with the applicable rules, and that a new auction would be improper since the bidders have already



seen the outcome of the first Auction. Thus, ICANN must protect the integrity of the gTLD auction and delegation process from being tainted by the actions of one bidder. The only way to do this is to disqualify NDC and proceed as we have outlined above.

Finally, we remind ICANN that "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program" (Bylaws, Art. II, § 1; Guidebook, Section 5.1), and that "material changes in circumstances" require "additional Board review" before "formal approval" of a registry agreement for the delegation of a gTLD. We therefore request that ICANN provide us with an undertaking that it has not, and will not, enter into a registry agreement for .WEB with NDC until ICANN's Board has reviewed NDC's conduct and reached a considered decision on whether or not to disqualify NDC's bid and reject its application; the Ombudsman has completed his investigation and the Board has considered and reached a decision on his report; and, to the extent Afilias seeks review of any decision of ICANN relating to .WEB through ICANN's accountability mechanisms, Afilias has exhausted such mechanisms.

Conclusion

For the reasons set out above, ICANN's Board and officers are obligated under the Articles of Incorporation, Bylaws and the Guidebook (as well as international law and California law) to disqualify NDC's bid immediately and proceed with the contracting of a registry agreement with Afilias, the second highest bidder. We look forward to receiving a response from ICANN by no later than 16 September 2016.

Afilias reserves all of its rights at law and in equity, including, without limitation, relating to the issues raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Scott Hemphill". The signature is fluid and extends across the width of the page.

M. Scott Hemphill
Vice President & General Counsel

cc: Steve Crocker, Chairman of the ICANN Board
Göran Marby, President and Chief Executive Officer
Arif Hyder Ali, Dechert LLP

EXHIBIT RM-20



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October 7, 2016

Christine A. Willett
 Vice President, gTLD Operations
 Internet Corporation for Assigned Names and Numbers
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094

Re: Response of Afilias Domains No. 3 Ltd. ("Afilias") to 16 September 2016 Request for
 Comments from the Internet Corporation for Assigned Names and Numbers ("ICANN")

Dear Ms. Willett:

We appreciate the opportunity to provide comments on behalf of Afilias to the questions posed by ICANN in its 16 September 2016 letter. Further, we acknowledge receipt of the letter from Mr. Atallah, dated 30 September 2016, providing a response to previous letters submitted by Afilias regarding this matter. However, we note that Mr. Atallah's letter fails to respond to the serious issues concerning the auction for the rights to administer the .WEB generic top-level domain ("gTLD") raised in Scott Hemphill's letters of 8 August 2016 and 9 September 2016. Further, Mr. Atallah states that, while the .WEB/.WEBS contention set was placed on hold by ICANN on 19 August 2016, such action was taken because of the initiation of an ICANN Accountability Mechanism by another applicant. We are concerned that this statement appears to imply that ICANN is not placing the contention set on hold in order to address the issues raised by Afilias.

As reflected in the accompanying answers to ICANN's questions, Afilias reaffirms its position that the actions taken by NU DOT CO LLC ("NDC") and Verisign, Inc. ("Verisign") in connection with the auction and NDC's failure to disclose material information relating to its bid for the .WEB rights should result in the disqualification of NDC as a member of the contention set for .WEB and the invalidation of NDC's bid.

As part of its review, ICANN must recognize and investigate the significant harm to competition arising from Verisign's agreement with NDC to acquire the rights to .WEB. Verisign's actions are clearly designed to preserve Verisign's existing monopoly in gTLD services that results from its control of .COM and .NET. If awarded to Afilias, the .WEB gTLD will be uniquely situated to challenge Verisign's gTLD services dominance by providing registrants a compelling alternative to .COM and .NET. If Verisign is permitted by ICANN to succeed in its efforts to secure the rights to .WEB, on the other hand, this potential for important new competition will be destroyed. Verisign (through NDC) cannot be allowed to obtain the rights to .WEB through subterfuge, when all of the remaining applicants agreed to and played by the rules.

Accordingly, we urge ICANN to disqualify NDC's bid and prevent Verisign from obtaining control over the .WEB gTLD in order to ensure competition in the gTLD marketplace and prevent an unlawful act of monopolization based on anti-competitive behavior.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kane". The signature is stylized and includes a long horizontal line extending to the right.

John Kane
 Vice President, Corporate Services

Directors: Henry Lubsen (American), Huw Spiers (British), Jonathan Robinson (British), Scott Hemphill (American), Thomas Moerz (German), Dennis Jennings (Irish), Kenyon Stubbs (American), Michael Heller (German), Philipp Grabensee (German).
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Afilias' Comments on ICANN's September 16, 2016 Topics

Topic 01. Afilias and Ruby Glen have alleged that NDC failed promptly to notify ICANN of "changes in ownership and control of the applicant" [i.e., NDC], as contemplated by Section 1.2.7 of the gTLD Applicant Guidebook (Version 2012-06-04) (AGB). Please provide or describe any evidence of which you are aware regarding whether ownership or control of NDC changed after NDC applied for the .WEB gTLD.

Response. According to Afilias' review of publicly available documents, "ownership or control of NDC changed after NDC applied for the .WEB gTLD." Specifically,

- Verisign's 1 August 2016 press release states that it "entered into an agreement with Nu Dot Co LLC wherein the Company provided funds for Nu Dot Co's bid for the .web TLD. ... We anticipate that Nu Dot Co ... will then seek to assign the Registry Agreement to Verisign upon consent from ICANN."
- Verisign's 10-Q for the quarter ended 30 June 2016, filed with the U.S. Securities and Exchange Commission on 28 July 2016, states that "[s]ubsequent to June 30, 2016, the Company incurred a commitment to pay approximately \$130.0 million for the future assignment of contractual rights, which are subject to third-party consent. The payment is expected to occur during third quarter of 2016."
- Ruby Glen alleges that "NDC also made statements indicating a potential change in the ownership of NDC, including an admission that the board of NDC had changed to add 'several others'" in its Amended Complaint for *Ruby Glen, LLC v. ICANN*.

In the unique circumstances of the present case, the arrangement between Verisign and NDC constitutes the effective control of NDC by Verisign. If NDC is granted the rights to administer the .WEB gTLD from ICANN, those rights would constitute the principal business asset of NDC. NDC appears to have given Verisign de facto control over NDC's business by entering into an agreement by which Verisign will fund NDC's bid for .WEB and which gives Verisign the power to direct and control NDC's participation in the auction for .WEB in exchange for an assignment of all rights in .WEB from NDC to Verisign. Thus, Afilias has a good faith basis to believe that "ownership or control of NDC changed after NDC applied for the .WEB gTLD" and NDC did not disclose this change in violation of ICANN's rules.

Accordingly, ICANN must carefully investigate NDC's conduct by obtaining further information from NDC and Verisign, including: (1) agreements between NDC and Verisign; (2) changes to NDC's board of directors; and (3) inter-company transactions between NDC and Verisign, including the sale of assets to Verisign. Such information must also be disclosed to Afilias, the party materially affected and injured by Verisign's and NDC's actions.

Topic 02. In the *Ruby Glen, LLC v. ICANN* lawsuit, two NDC officers, Jose Ignacio Rasco III and Nicolai Bezsonoff, provided declarations dated 25 July 2016 under penalty of perjury regarding ownership and control of NDC. What evidence, if any, is there that statements made in those declarations are false?

Response. Please see our response to Topic 01. In the event that Messrs. Rasco and Bezsonoff are deposed or questioned by ICANN, Afilias requests that it be informed of the



same. If necessary, in due course, we will seek the deposition of Messrs. Rasco and Bezsonoff among others.

Topic 03. AGB Section 1.2.7 speaks of changes in ownership and control specifically "*of the applicant.*" Please describe other NDC activities besides its having applied for the .WEB gTLD, and the activities relating to that application. Do you think that a change regarding only one of many activities of an applicant constitutes a change in ownership and control within the meaning of AGB Section 1.2.7? Please explain why or why not.

Response. Please see our response to Topic 01.

Topic 04. In his 8 August 2016, letter, Scott Hemphill stated: "A change in control can be effected by contract as well as by changes in equity ownership." Do you think that an applicant's making a contractual promise to conduct particular activities in which it is engaged in a particular manner constitutes a "change in control" of the applicant? Do you think that compliance with such a contractual promise constitutes such a change in control? Please give reasons.

Response. Please see our response to Topic 01.

Topic 05. Do you think that AGB Section 1.2.7 requires an applicant to disclose to ICANN all contractual commitments it makes to conduct its affairs in particular ways? If not, in what circumstances (if any) would disclosure be required?

Response. The plain language of AGB § 1.2.7 states that disclosure "via submission of the appropriate forms" is required when "information previously submitted by an applicant becomes untrue or inaccurate" or gives rise to a material "change in circumstances" during the evaluation process. The plain language of the AGB thus clearly identifies circumstances that require a disclosure to ICANN. Afilias believes that the AGB requires applicants to disclose extraordinary commitments and changes in circumstances that materially affect the implications of the award of registry rights in terms of ICANN's authorities. Here, as the commitment between NDC and Verisign uniquely raises antitrust issues, Afilias believes that NDC was required to disclose its contractual arrangement with Verisign because such arrangement will potentially destroy any new competition given Verisign's existing monopoly in gTLD services. ICANN's exercise of its authorities includes a duty to ensure that there will be an effective potential for development of competition among providers of gTLD registry services. One of ICANN's core values is to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. 1 § 2(6). A third party (such as Verisign) secretly funding bids to gain or preserve a monopoly directly contravenes this core value.

Topic 06. In his 8 August 2016, letter, Scott Hemphill stated that "an agreement to provide at least \$135 Million to an applicant constitutes a material change in that applicant's financial condition." In your view, does AGB Section 1.2.7 require applicants to notify ICANN of all changes in their financial condition? If the requirement is limited by an (unstated) materiality test, how should materiality be determined?

Response. Please see our response to Topic 05.



Topic 07. Do you think that changes to an applicant's financial condition that do not negatively reflect on an applicant's qualifications to operate the gTLD should be deemed material? If so, why? Do you think that an applicant's obtaining a funding commitment from a third party to fund bidding at auction negatively affects that applicant's qualifications to operate the gTLD? Please explain why, describing your view of the relevance of (a) the funding commitment the applicant received and (b) the consideration the applicant gave to obtain that commitment (e.g., a promise to repay; a promise to use a particular backend provider; an option to receive some ownership interest in the applicant in the future; some promise about how the gTLD will be operated).

Response. The plain language of AGB § 1.2.7 requires the applicant to "promptly notify ICANN" if "at any time during the evaluation process information [including changes in financial position] previously submitted by an applicant becomes untrue or inaccurate". And 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."

An applicant that obtains a funding commitment from a third party to fund bidding at an auction negatively affects that applicant's qualifications when the third party is attempting to gain or preserve a monopoly. One of ICANN's core values is to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. 1 § 2(6). A third party secretly funding bids to obtain a monopoly directly contravenes this core value.

Verisign's significant financial strength was built upon its ICANN-granted position as a monopoly provider of registry services. When those monopolist profits are then employed to finance a bid to maintain that dominant market position, it is anticompetitive and material to the affected bid and to ICANN new gTLD process as a whole.

Here, NDC's agreement with Verisign is essentially an agreement not-to-compete, which stifles competition. Neither NDC nor Verisign has offered any procompetitive justification for the deal or otherwise indicated that they are engaged in a procompetitive joint venture to operate the .WEB gTLD. Verisign's monopoly position gives it significant market power in the gTLD registration market. Through its secret agreement with NDC, Verisign intends to foreclose the possibility of any competition from .WEB.

Verisign's acquisition of .WEB likely means (1) fewer resources being invested in maximizing .WEB's competitive potential, (2) a dramatically reduced chance that .WEB will act as a competitive check on .COM and .NET, and (3) that .WEB will not be marketed to compete and siphon away customers from .COM and .NET. This will deprive Internet users, businesses, and Web site developers of commercially promising and viable new domains for their Web sites. This competitive harm will likely never be undone.

Topic 08. Do you have any knowledge or information that applicants in other circumstances have obtained post-application funding commitments (whether received through loans, contributions from affiliated companies, or otherwise) for their auction bidding or other operations? If so, please elaborate. Do you know if applicants have commonly notified ICANN of those funding commitments? If so, please explain. Should applicants be required to notify ICANN of those funding commitments? If so, in what circumstances?

Response. We are not aware of similar arrangements that would have the effect of creating or preserving a monopoly in gTLD registry services like Verisign's monopoly. Afilias is aware



of applications in other circumstances that have obtained post-application funding commitments. These situations are not analogous to the commitment between NDC and Verisign, however, because Verisign's acquisition of .WEB raises serious antitrust issues by stifling competition in favor of Verisign's dominance in gTLD services. Prior applicants' circumstances have no relevance to this unique situation.

Topic 09. Do you think that requiring applicants to disclose funding commitments (whether through loans, contributions from affiliated companies, or otherwise) they obtain for auction bids would help or harm the auction process? Would a requirement that applicants disclose their funding arrangements create problems for applicants (for example, making funding commitments harder to obtain)? To what extent, if any, do you think scrutinizing such arrangements (beyond determining whether they negatively reflect on an applicant's qualifications) would be within ICANN's proper mission? Would required disclosure of applicants' funding sources pose any threat to robust competition?

Response. Please see our response to Topic 08.

Disclosure is required when there is a change in circumstances that affects competition. AGB § 1.2.7 clearly states that a disclosure "via submission of the appropriate forms" is required when "information previously submitted by an applicant becomes untrue or inaccurate" during the application process. NDC deliberately chose not to disclose its relationship with Verisign in order to avoid questions about their anti-competitive relationship, deliberately violating AGB § 1.2.7 and thus harming the auction process.

ICANN should act in accordance with its core values, which dictate that it should not only "promote and sustain a competitive environment" but also "introduce[e] and promot[e] competition in the registration of domain names where practicable and beneficial to the public interest." Bylaws, Art. I §§ 2(5), (6). In accordance with its mission, then, ICANN must therefore scrutinize arrangements that contravene these values and stifle competition – such as the one between NDC and Verisign.

The importance of a competitive environment is particularly stressed in ICANN's Bylaws. Despite ICANN's core value of "applying documented policies neutrally and objectively, with integrity and fairness", Bylaws, Art. I § 2(8), ICANN's own Bylaws permit the disparate treatment of parties for the "promotion of effective competition." Bylaws, Art. II § 3.

Topic 10. The final sentence of AGB Section 1.2.7 states that failures to notify ICANN of changes "may result in denial of the application." What standards do you think ICANN should follow in determining whether a particular failure to make a required notification should lead to denial of an application? If an applicant or related entities have multiple applications and it is discovered that the applicant or related entities have external funding commitments not disclosed to ICANN, should all of that applicant's or its related entities' applications be denied?

Response. Consistent with ICANN's obligations to promote competition, ICANN must deny an application improperly and surreptitiously funded by a third party in order to obtain control over a gTLD and to stifle competition and harm consumers. Here, ICANN must disqualify NDC's bid and prevent Verisign from acquiring the rights in .WEB. Verisign, which already exercises exclusive control over .COM and .NET, chose not to apply for .WEB, as it could have done. Rather, Verisign secretly funded NDC's application to game the system and to obtain control over .WEB for Verisign in order to stifle competition for .COM and .NET's



existing monopoly. Indeed, Verisign has few incentives to market .WEB aggressively because its growth would inevitably come at the expense of Verisign's dominant position with .COM and .NET. The damage will likely be irreparable as ICANN contracts are generally automatically renewed.

Indeed, there are several standards from ICANN's own Articles of Incorporation and Bylaws that support NDC's disqualification. They are as follows:

- 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 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." Articles of Incorporation, Art. 4.
- ICANN is required to "[m]ak[e] decisions by applying documented policies neutrally and objectively, with integrity and fairness." Bylaws, Art. I § 2(8).
- ICANN is required to "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." Bylaws, Art. II § 3.
- ICANN is required to "[a]ct[] 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." Bylaws, Art. I § 2(9).
- ICANN is directed to "operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." Bylaws, Art. III § 1.
- ICANN is required to "promot[e] competition in the registration of domain names where practicable and beneficial in the public interest." Bylaws, Art. I § 2(6).
- ICANN is required to "[r]emain[] accountable to the Internet community through mechanisms that enhance ICANN's effectiveness." Bylaws, Art. I § 2(10).

Topic 11. Afilias and Ruby Glen have also raised questions as to whether NDC violated the last sentence of AGB, Module 6, Paragraph 10, which states: "Applicant may not resell, assign, or transfer any of the applicant's rights or obligations in connection with the application." Do you think the "rights or obligations" mentioned in that sentence are limited to those that flow from approval of the application (e.g., the right to enter a registry agreement), or do you think that they also include rights and obligations concerning the prosecution of the application (e.g., obligations to respond to additional inquiries from ICANN; rights to assist in pursuing the application by raising or addressing concerns)? In responding on this topic, please address the context established by the first two sentences of AGB Module 6, Paragraph 10.

Response. Under the plain language of AGB Module 6, Paragraph 10, an "[a]pplicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application." Thus, it is clear that "any" rights or obligations in "connection" with the application cannot be resold, assigned, or transferred to a third party.



Topic 12. Do you have knowledge or information that gTLD applicants in other circumstances have assigned others to handle aspects of the process by which applications are evaluated? If so, please describe with specifics what you know about this practice. For example, do applicants empower persons or companies with which they are working to take charge of handling various stages of the evaluation process? If so, do you think this violates AGB Module 6, Paragraph 10?

Response. Afilias is not aware of other circumstances where an applicant (such as NDC) empowers a person or a company to improperly gain or preserve a monopoly in violation of ICANN's Bylaws. The commitment between NDC and Verisign uniquely raises antitrust issues for the reasons discussed above. Prior applicants' circumstances thus have no relevance to this unique situation.

Topic 13. Specifically with regard to the auction process, what knowledge or information do you have regarding the extent to which applicants within contention sets have taken suggestions or direction from others regarding how to conduct bidding? How common is this practice? (It is noted that Clause 68 of the "Auction Rules for New gTLDs (Version 2014-11-03)" (Auction Rules) and Section 2.6 of the "New gTLD Auctions Bidder Agreement (Version 2014-04-03)" (Bidder Agreement) prohibit certain collusive activities between applicants; the immediately preceding two questions are directed to suggestions or directions not violating those prohibitions.) Clause 12 of the Auction Rules states in part "Before an Auction to resolve a given Contention Set, each Qualified Applicant may designate a party to bid on its behalf ('Designated Bidder')." Designated Bidders must execute Bidder Agreements with the Auction Manager reflecting their rights and obligations concerning the conduct of the auction. Do you think that designation of a Designated Bidder violates the last sentence of AGB Module 6, Paragraph 10?

Response. The actions of other gTLD applicants are not relevant to NDC's actions. NDC deliberately chose not to disclose its relationship with Verisign in order to avoid questions about their anti-competitive relationship and deliberately violated AGB § 1.2.7's requirement to "promptly notify ICANN" of "any change in circumstance" that would have a material effect on the potential to create effective new competition for Verisign's existing monopoly in gTLD services.

NDC is helping Verisign solidify its monopoly over gTLDs. Verisign has enjoyed uninterrupted gTLD dominance for over a decade thanks to its control over .COM and .NET. As a result of this control, Verisign has a dominant share of all gTLD registrations. The next closest competitors have much smaller shares.

As stated above, Verisign's acquisition of .WEB likely means (1) fewer resources being invested in maximizing .WEB's competitive potential, (2) a dramatically reduced change that .WEB will act as a competitive check on .COM and .NET, and (3) that .WEB will not be marketed to compete and siphon away customers from .COM and .NET. If NDC and Verisign are permitted to consummate their arrangement, the result will deprive Internet users, businesses, and Web site developers of commercially promising and viable new domains for their Web sites. This competitive harm will likely never be undone.

Topic 14. Clause 12 of the Auction Rules states that a purpose for an applicant's selection of a Designated Bidder is to allow the Designated Bidder to bid on the applicant's behalf. Do you think that clause merely states a purpose for designation, or does it obligate the Designated Bidder to bid on



behalf of only the applicant? What do you think the phrase "its behalf" means in the Auction Rules and Bidder Agreement? Do you think it indicates that the Designated Bidder acts in the stead of the applicant, or does it additionally indicate that the Designated Bidder must act in only the interest of the applicant? (In this regard, please discuss the wording of the seventh recital in the Bidder Agreement.) Where no Designated Bidder is designated, do you think the Auction Rules or the Bidder Agreement requires that an applicant acting for itself as the Bidder act only in its own interest? If so, please explain why. As relevant to this topic 14, do you think there are any inconsistencies between the Auction Rules and the Bidder Agreement? If so, please explain those inconsistencies in detail.

Response. Afilias believes that in applying its rules in the present circumstances, ICANN should focus on the uniquely harmful competition implications of an undisclosed arrangement between NDC and Verisign, the current dominant monopolist in gTLD services. Other applications or potential applications of the rules in other circumstances are not necessarily relevant to the present unique situation.

Topic 15. Clause 13 of the Auction Rules states: "Before each Auction, each Bidder shall nominate up to two people ('Authorized Individuals') to bid on its behalf in the Auction." Authorized Individuals have certain rights and obligations in connection with the auction. Do you think that an applicant's nomination of an Authorized Individual violates the last sentence of AGB Module 6, Paragraph 10?

Response. Please see our response to Topic 14.

Topic 16. Do you think that an applicant's entry into a contract promising in exchange for a payment of money to make bids and otherwise participate in the auction in the manner directed by the other party to the contract constitutes "resell[ing], assign[ing], or transfer[ing] any of applicant's rights or obligations in connection with the application," as prohibited by AGB Module 6, Paragraph 10? Please explain why or why not.

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 17. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to request ICANN's consent to transfer to another party any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant agreed, before entry into a registry agreement, to seek ICANN's consent to transfer the agreement after it is entered?

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 18. Do you think that AGB Module 6, Paragraph 10 would be violated by a contractual promise by an applicant to seek to transfer to another party, but only upon consent of ICANN, any registry agreement it receives as the result of its application? If so, under what circumstances? To the best of your knowledge and information, in the context of any other gTLD has an applicant made such an agreement?

Response. Please see our responses to Topics 05, 07, 08, and 14.



Topic 19. Do you think that AGB Module 6, Paragraph 10 means that a resale, assignment, or transfer contrary to its last sentence constitutes a violation that can result in forfeiture or denial of the application, or is its effect simply that any such attempted resale, assignment, or transfer of the application is ineffective? In your response, please address Restatement (Second) of Contracts §§ 317 and 322 (including comment b) and any other applicable legal principles.

Response. Please see our responses to Topics 05, 07, 08, and 14.

Topic 20. In his 9 September 2016 letter, Scott Hemphill stated that NDC and Verisign's efforts to give Verisign control over the .WEB gTLD "must be sanctioned by ICANN by disqualifying NDC's bid and rejecting its application." Assuming that a resale, assignment, or transfer contrary to the last sentence of AGB Module 6, Paragraph 10 can result in forfeiture or denial of the application (see topic 19 above), do you think that the application must be forfeited or denied in all cases? If ICANN has discretion to determine an appropriate remedy, what factors do you think should guide ICANN's discretion?

Response. Afilias contests the specific circumstances surrounding NDC's actions, which violate the AGB, and declines to make generalizations regarding resales, assignments, or transfers contrary to the AGB. For the reasons provided in our responses above, ICANN should disqualify NDC's bid based on the principles found in ICANN's Bylaws and Articles of Incorporation, and on NDC's violations of the AGB. ICANN cannot permit Verisign to acquire rights in .WEB and thereby stifle competition and preserve its existing monopoly of gTLD services in direct contravention of ICANN's core values, all to the likely detriment of consumer choice and trust in ICANN.